



Patron, Chief Justice the Hon. Susan Kiefel AC

27 February 2019

Australian Women Lawyers Ltd. submission into the National Inquiry into

Sexual Harassment in Australian Workplaces

Australian Women Lawyers Ltd. (AWL) was established on 9 September 1997, in Melbourne, Victoria. AWL is incorporated under the *Corporations Act 2001* (Cth) and is a company limited by guarantee. AWL is governed by a board of directors comprising representatives from each State and Territory Women Lawyers' Association and the Women Barristers Association of Victoria. The objects of AWL are to:

- Achieve justice and equality for all women;
- Further understand and support for the legal rights of all women;
- Identify, highlight and eradicate discrimination against women inherent in the legal system and in the community generally;
- Advance equality for women in the legal profession;
- Create and enhance awareness of women's contribution to the practise and development of law; and
- Provide a professional and social network for women lawyers.

Background

AWL has for many years held concerns about the prevalence of sexual harassment both within the legal profession and beyond. It has been an issue on the agenda of the AWL biennial national conference on numerous occasions. Partly due to the pressure put on the profession by AWL and our constituent bodies across the countries, our profession has, in the last 5-7 years, begun having this conversation more broadly and creating some mechanisms to address this.

This has been primarily led by former AWL President, Fiona McLeod SC, during her time as President of the Law Council of Australia (LCA), and in the last few years the work of the Equal Opportunity Committee of the LCA, on which AWL also sits. Through the LCA, we have seen reforms to the profession's conduct rules to explicitly list sexual harassment as conduct contrary to the rules, and further measures to increase gender equity such as Equitable Briefing and unconscious bias training.

Gender Discrimination as a root cause

There is general agreement between members that a large part of sexual harassment is the manifestation of the wider problem of gender discrimination in the workplace. While men are

also victims, most of the victims are women, and the context in which sexual harassment often occurs is within a wider scenario of more broad gender discrimination. Unequal wages, pregnancy discrimination and other issues around gender bias in the workplace and in society more broadly are part of an environment where women are devalued and treated as less worthy than men. An extreme end of this inequity is sexual harassment, sexual assault, and other forms of violence against women.

Addressing sexual harassment therefore should be focused on fostering respect. Any approach to addressing sexual harassment on a systematic level, in our opinion, must address the underlying biases and discrimination based on sex and gender, as well as intersectional biases such as those of race, religion, and class. Funding should be given to the Australian Human Rights Commission (AHRC) to develop preventative programs such as bystander training, addressing the gender pay gap, unconscious bias and other programs, which are a vital part of any holistic reform in this area.

The other common theme discussed by AWL over many years is the strongly held view that the current system of complaint based compliance is insufficient in dealing with sexual harassment in the workplace. Victims suffer fear of repercussions in making complaints due to a culture of victim blaming and general inequity. This is another reason why any approach to address sexual harassment must have systematic cultural change at the heart of it.

Submissions of other bodies

We were able to provide some evidence to this Inquiry with our Vice President, Leah Marrone, who attended the Inquiry in Adelaide on AWL's behalf, and Immediate Past President, Ann Marie-David, attending in Brisbane. We have since had several discussions about providing further submissions. We resolved that, as several of our constituent bodies have made a submission to this Inquiry, and as we have fed into the very extensive LCA's submission to the Inquiry, we would not provide extensive further submissions as these other submissions have covered the majority of AWL's views and concerns.

We broadly support the submissions of our constituent bodies; we also bring the Inquiry's attention to the various studies and data produced in the submission drafted by the LCA as evidence which provides a relevant basis to our comments in this submission.

Supported reform proposals

In perusing the submissions of our constituent bodies and the LCA, AWL wishes to emphasise our particular support to the following proposed measures which feature in the various submissions:

- Preventative cultural change measures, in particular education, training and awareness programs fostering a culture of respect. We especially see the need for increased training for bystanders;
- Expansion of the AHRC jurisdiction in sex discrimination matters to investigate and commence court proceedings on its own initiative'
- Increased funds to the AHRC for performing its current and potential increased functions'

- Extension of time limits to raise AHRC complaints on all forms of sex discrimination to a minimum of 6 years;
- Prohibition of confidentiality clauses in settlement agreements, unless the complainant requests them;
- Ensure releases in settlement agreements do not prohibit the pursuit of professional conduct reporting (e.g. lawyers are subject to professional conduct rules and sexual harassment is against the conduct rules) or criminal law proceedings (e.g. sexual assault charges);
- Enacting a standalone provision within the *Fair Work Act 2009* (Cth) relating specifically to sexual harassment within the workplace;
- Greater collation nationally of (and funding for) data on sexual harassment in the workplace and mandatory reporting; and
- Greater support for victims and more significant consequences for employers who are aware of improper behaviour and fail to take adequate and appropriate actions.

We also wish to bring attention to the Women Barrister's Association (WBA) submission, particularly in relation to the way in which Barristers are employed as sole traders and how this limits options for them in complaining about many forms of sexual harassment that they may face. Women Barristers are not adequately covered by the existing legal framework and seek a broadening of current legislative power to capture the places and people associated to their work from whom they may be harassed.

Thank you for the opportunity to provide submissions to this Inquiry. We ask that once the review has been completed and recommendations are presented, that relevant legal bodies, including AWL, be consulted and given a chance to provide further submissions on those refined recommendations.

Australian Women Lawyers represents:

