



# What can I do if I am subject to or witness unacceptable conduct by a barrister or member of the judiciary in NSW?

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There is no excuse for unacceptable conduct in the legal profession or at the New South Wales Bar. If you have experienced unacceptable conduct, you are not alone. The New South Wales Bar Association would like you to know there are a range of services, avenues and people available to support you and offer different types of assistance, whatever you decide you would like to do. These are outlined in this Guide and summarised in our factsheet titled “*Who can I talk to about sexual harassment at the Bar?*”.

Before outlining these services, we first set out some different kinds of conduct that are not acceptable in the profession and that for barristers are forbidden by the Rule 123 of the Legal Profession Uniform Conduct (Barristers) Rules 2015 (Barristers Rules).

If you are a witness to such conduct, these support services and avenues are also available for you. The best interests of the person subject to unacceptable conduct of the type below, their wishes and wellbeing will usually be the paramount consideration.

### THE CONDUCT

The Association is committed to seeking to ensure that barristers and those who work with us are safe in our workplaces and not subject to discrimination, sexual harassment or bullying. Under the Barristers' Rules:

#### 123 Anti-discrimination and harassment

- (1) A barrister must not in the course of, or in connection with, legal practice or their profession, engage in conduct which constitutes:
  - (a) discrimination,
  - (b) sexual harassment, or
  - (c) bullying.
- (2) For the purposes of subrule (1), conduct in connection with a barrister's profession includes, but is not limited to:
  - (a) conduct at social functions connected with the bar or the legal profession, and
  - (b) interactions with a person with whom the barrister has, or has had, a professional relationship.

#### 125 Definitions

***Bullying*** means unreasonable behaviour that could reasonably be expected to intimidate, degrade, humiliate, isolate, alienate or cause serious offence to a person.

Discrimination, harassment or bullying can also constitute a breach of other Conduct Rules that apply to barristers and can constitute professional misconduct and/or unsatisfactory professional conduct within the meaning of the Legal Profession Uniform Law (NSW).

The *Anti-Discrimination Act 1977* (NSW) and Federal discrimination laws including the *Racial Discrimination Act 1975* (Cth), *Sex Discrimination Act 1984* (Cth), *Disability Discrimination Act 1992* (Cth), *Age Discrimination Act 2004* (Cth) and the *Fair Work Act 2009* (Cth) make it unlawful to engage in conduct constituting discrimination, harassment, vilification and victimisation in most areas of work and the provision of services.

## **Discrimination**

Discrimination includes both direct and indirect discrimination:

*Direct discrimination* includes less favourable treatment of a person who is relevantly in the same circumstances, or in circumstances which are not relevantly materially different, on account of a range of actual, imputed or appertaining characteristics (such as race, nationality, colour, descent, sex, sexual orientation, gender identity, disability, age, marital or relationship status, pregnancy, potential pregnancy, breastfeeding, status as a parent or carer and religious beliefs or ethno religious origin).

*Indirect discrimination* arises where there is a policy, procedure or requirement that appears to be neutral on its face but has a disproportionate adverse impact on people with a particular characteristic, such as those referred to in the definition of direct discrimination above. It is unlawful to require a person with a particular characteristic (such as race, gender, disability, age or religious belief) to comply with an unreasonable requirement or condition where the person with the characteristic cannot comply.

## **Bullying**

Bullying is unreasonable behaviour that could reasonably be expected to intimidate, degrade, humiliate, isolate, alienate, or cause serious offence to a person working in a workplace. It can include but is not limited to aggressive or intimidating conduct, making belittling or humiliating comments, unreasonable work expectations, deliberate exclusion from work-related activities and pressure to behave in an inappropriate manner.

## **Harassment/sexual harassment**

Harassment is unwelcome, uninvited or unsolicited behaviour, which offends, humiliates, intimidates or belittles someone. Sexual harassment includes uninvited sexual advances, requests for sexual favours or other uninvited conduct of a sexual nature that a reasonable person would anticipate would possibly offend, intimidate or humiliate the person harassed.

## **Victimisation**

Victimisation includes subjecting a person to a detriment because they have made a complaint or propose to make a complaint under anti-discrimination legislation or provide any information or document in relation to the investigation of conduct that would constitute unlawful discrimination under anti-discrimination legislation or support someone else making a complaint.

## **Vilification**

Vilification includes any public act that incites hatred, serious contempt or severe ridicule against other person or group of people because of their race (including ethno-religious origin), homosexuality, transgender status or HIV/AIDS status.

***If you are subject to any of the above conduct, there is support available for you. We set out below some different options for support and different steps you may wish to consider taking in relation to the conduct.***

## **SEXUAL HARASSMENT OFFICER**

The Association's Sexual Harassment Officer, Jenny Houen, can provide trauma-informed support and mentoring, and information (but not legal advice) regarding complaints and support pathways. The role is completely independent of the Bar Association.

The Sexual Harassment Officer is available to listen to reports of inappropriate behaviour and provide support to those who have experienced or witnessed it. The Officer is not a grievance handler and does not have any involvement in investigating or adjudicating complaints.

You can contact the Sexual Harassment Officer directly for support and referral to services, or to seek advice about your options for making complaints.

You can contact Jenny via Spot (see below), or directly on **0427 317 958** or at [sexualharassmentofficer@nswbar.asn.au](mailto:sexualharassmentofficer@nswbar.asn.au). All communications with the Sexual Harassment Officer are entirely confidential.

## **SPOT**

**Spot** is an online tool which allows those who have experienced or witnessed discrimination, bullying and sexual harassment at the New South Wales Bar to make a confidential record or [anonymously report the](#) behaviour to the Sexual Harassment Officer.

<http://talktospot.com/nswbar>

Spot is a completely secure online application which is designed to guide you through the process of reporting any incident.

To report an incident, you can initiate a conversation with Spot through the online platform. Spot is a bot, and is available 24 hours a day. It will prompt you to record exactly what you witnessed or experienced, who was involved, who saw it, where it happened and when. You are in control of the process. Spot will allow you to skip questions, add details and upload documents or records.

Anything you report to Spot will be entirely confidential and will not be seen by any other person.

Once you have created a record of an incident, Spot will provide you with a time stamped contemporaneous record of the incident which you can retain for your records.

If you wish, you can submit your record on an anonymous basis to the Bar Association's independent Sexual Harassment Officer. You will be given the option of deciding whether or not you would like to be contacted by the Sexual Harassment Officer about the incident.

## **COUNSELLING**

### **BarCare**

Confidential counselling can be accessed through BarCare. BarCare is available to all members of the Association and their immediate families as well as any person who has been the subject of unacceptable conduct such as discrimination, sexual harassment or bullying by a member of the Association. Up to six consultations are provided free of charge.

BarCare specialises in linking persons in or connected with the legal profession to confidential counselling and other assistance. Contacting BarCare and accessing counselling may also assist you in determining what, if any further steps you wish to take, including those set out below.

BarCare operates independently of the Association. The service is strictly confidential and BarCare does not give any personal information to the Association without the express permission of the barrister or other person who contacts BarCare.

Jenny Houen is also the Director of BarCare and can be contacted on **0427 317 958**.

### **National Sexual Assault, Domestic Family Violence Service – 1800RESPECT**

Confidential counselling, support and information can be accessed through dialing **1800RESPECT** or **1800 737 732** or via [webchat](#) through its website. This is a 24 hour service. Trained counsellors can guide a person through traumatic episodes where a person feels there is something not right about the way they are being treated, suspected abusive relationships and cases of sexual assault, domestic and family violence. The trained counsellors can offer support and referral to other appropriate persons. The service is funded by the Australian Government Department of Social Services (DSS).

### **FORMAL COMPLAINTS**

There are several avenues for formal complaint.

#### **Complaint to the Office of Legal Services Commissioner**

The Office of the Legal Services Commissioner (OLSC) is an independent statutory body that deals with complaints about lawyers under the Legal Profession Uniform Law Application Act 2014 (NSW). The OLSC consists of the Legal Services Commissioner and staff who advise and assist the Commissioner in the exercise of his functions and powers.

The Legal Services Commissioner receives all complaints about solicitors and barristers in New South Wales. In addition to receiving complaints, the Legal Services Commissioner oversees the investigation of complaints and may take disciplinary action against a solicitor or barrister, or commence disciplinary proceedings in the NSW Civil and Administrative Tribunal (NCAT) - Occupational Division.

The OLSC cannot deal with complaints about judges or magistrates.

Details as to how to make a complaint to the OLSC are available on the OLSC's website:

<https://www.olsc.nsw.gov.au/Pages/inappropriate-personal-conduct/inappropriate-personal-conduct.aspx>

The OLSC has prepared an [Information Sheet](#) explaining how to make a formal complaint to the OLSC about inappropriate personal conduct by someone in a law practice. It also explains the investigation process should a formal complaint or notification be made.

If you wish to make a complaint to the OLSC, you can contact them by:

- Call (02) 9377 1865 and say you want to talk about a Personal Conduct issue.
- Submitting a complaint form to the OLSC.

In addition to formal complaints, and as referred to below, the OLSC also takes informal notifications from those who experience or witness sexual harassment or bullying and may not wish to make a formal complaint (at least initially).

### **Complaint to the New South Wales Bar Association**

All formal complaints regarding NSW barristers must go to the Office of the Legal Services Commissioner, which may refer to the complaint to the Bar Council of the Association. Further information is available on the Association's website: <https://nswbar.asn.au/using-barristers/make-a-complaint>

### **Complaint to the Judicial Commission of NSW**

A formal complaint about the conduct of a judicial officer can be made to the Judicial Commission of NSW. The Commission has published an information guide about the process which is available on its website: <https://www.judcom.nsw.gov.au/complaints/>

### **Complaint to NSW Police**

If you suspect that the conduct amounts to criminal conduct, a complaint can be made to NSW Police by calling either 000, Crime Stoppers 1800 333 000 or the Local Police Station closest to you. If you are in danger, call 000.

### **Complaint to the Australian Human Rights Commission**

The Australian Human Rights Commission investigates and conciliates complaints about [discrimination and breaches of human rights](#). There is information on making a complaint here: <https://humanrights.gov.au/complaints#main-content>

### **Complaint under the Anti-Discrimination Act 1977 (NSW)**

Anti-Discrimination NSW runs an information hotline about sexual harassment and handles complaints under this State legislation. Information can be accessed and complaints can be made by calling 1800 670 812 or by submitting a complaint form to Anti-Discrimination NSW.

Information about the complaints process is available on its website: [www.antidiscrimination.justice.nsw.gov.au](http://www.antidiscrimination.justice.nsw.gov.au).

### **Apply for orders from the Fair Work Commission**

The Fair Work Commission (FWC) is the national workplace relations tribunal which is responsible for administering the provisions of the Fair Work Act 2009 (Cth).

To apply to the Commission to stop sexual harassment at work, you must be:

- a worker and
- working in a constitutionally-covered business and
- still connected to the workplace where the conduct occurred.

The sexual harassment must have occurred when the worker was at work. A worker can be at work even when they're working away from the work premises.

[Information about the process and eligibility can be found on its website https://www.fwc.gov.au/issues-we-help/sexual-harassment/who-can-apply-orders-stop-sexual-harassment-work](https://www.fwc.gov.au/issues-we-help/sexual-harassment/who-can-apply-orders-stop-sexual-harassment-work)

## **INFORMAL NOTIFICATION/DISCLOSURE**

### **Informal ‘notification’ to the Office of Legal Services Commission (OLSC)**

To those who experience sexual harassment or bullying and those who may witness it – the OLSC wants you to contact them and give them whatever information you feel comfortable sharing with them.

The OLSC realises that many people do not want to make a formal complaint, certainly not at first.

They are looking for any informal disclosures (anonymously if you wish) to get a better idea of what is happening in the legal profession and to assist them to improve the culture of the legal profession.

According to the OLSC’s website, you will have control over what use the OLSC makes of your information and their guiding principle is never to cause you further trauma.

The OLSC can be contacted by calling (02) 9377 1800 and saying you want to talk about a Personal Conduct issue. You will be put straight through to one of the trained team members so you will not have to repeat your story.

You can also use one of the relevant Notification forms available on the [OLSC’s website](#):

- [Notification of inappropriate personal conduct in a law practice \(Subject\)](#)
- [Notification of inappropriate personal conduct in a law practice \(Anonymous\)](#)
- [Notification of inappropriate personal conduct in a law practice \(Witness\)](#)

### **ELKER**

[Elker](#) is an initiative of the OLSC that is supported by the Law Society of NSW and NSW Bar Association. It is a secure online platform that facilitates reports of inappropriate conduct, including harassment, bullying and discrimination, by victims and witnesses.

The encrypted platform will facilitate informal disclosures, including anonymous if preferred, that can be made at any time.

The platform will log the person’s matter, provide them with some preliminary information, connect them to the OLSC support team and provide the person with a mechanism for checking on their matter’s progress.

Only the OLSC will have access to the data reported on the platform. They can respond by way of encrypted chat to anyone who desires more information or a suitable referral for personal assistance.

The OLSC will regularly review the data received from the informal disclosures to inform targeted audits of law practices, without reference to alleged perpetrators or informants.

### **Disclosure to a barrister**

Over 40 barristers’ chambers in NSW have adopted the Association’s Best Practice Guidelines. If your concern relates to a barrister in one of those chambers or if you work with barristers in one of those chambers, you can speak with the contact officer(s) nominated by the chambers under the Best Practice Guidelines. A list of barristers’ chambers which have adopted the Best Practice Guidelines is available [here](#).

### **Bar Council**

An informal notification can also be made to a member of the Executive of Bar Council, who will in turn raise the matter with the President of the Bar. Generally, this should only occur with the consent of the person who has been subject to the conduct.

If the matter is an informal notification about judicial conduct, the President can informally raise the matter with a head of jurisdiction, who will consider the matter and what steps, if any, may be taken to address it.

If the matter is an informal notification about the conduct of a barrister, the President will consider the matter and what steps, if any should be taken to address it, which may include:

- raising the matter with the barrister's head of chambers;
- speaking to a group of judicial officers and/or barristers about such conduct in a general way, requesting that such conduct cease and speaking about appropriate conduct;
- confidentially monitoring future conduct for a time.

## **WE ARE COMMITTED TO A SAFE AND INCLUSIVE PROFESSION**

The Association is committed to a respectful and safe profession for everyone.

We will continue to work to make sure that NSW barristers uphold the standards of conduct expected of them.

We will continue to work to ensure that anyone who has been impacted in any way by unacceptable conduct does not feel alone, but is supported to access the assistance and information they need.

We will continue to work to ensure that our processes promote dignity, respect and fairness, and that unacceptable behaviour is properly sanctioned, without fear of repercussion, victimisation or vilification for the brave people who come forward to disclose.