Crossing the line: Behaviour that gets barristers into trouble

… the Bar cannot be the last bastion where sexual harassment and assault is countenanced in the workplace"[1]

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High standards are required of legal practitioners. The relationships between legal practitioner and client, between legal practitioners, and between legal practitioner and court are those which carry with them mutual respect and trust in the performance of professional functions. There must be confidence in the public and in those engaged in the administration of justice that legal practitioners will properly perform these functions.[2]

Such high standards have – in line with modern recognition of proscribed behaviour in the workplace – found particular articulation in *Legal Profession Uniform Conduct (Barristers) Rules* 2015. Rule 123 provides that a barrister must not, in the course of practice, engage in conduct which constitutes discrimination, sexual harassment or workplace bullying.

Sexual harassment may involve a single or one-off incident or ongoing persistent behaviour.

Our focus is sexual harassment. For the purpose of Rule 123 'sexual harassment' is defined by reference to 'the applicable state, territory or federal anti-discrimination or human rights legislation' (Rule 125).

What is sexual harassment?

In New South Wales, the *Sex Discrimination Act 1984* (Cth) (SDA) and the *Anti-Discrimination Act 1977* (NSW) (ADA) apply. Section 28A of the SDA defines sexual harassment as follows:

Meaning of sexual harassment

> *(1) For the purposes of this Division, a person sexually harasses another person (the person harassed) if:*
>
> (a) the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or
>
> (b) engages in other unwelcome conduct of a sexual nature in relation to the person harassed;
>
> in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.
>
> (1A) For the purposes of subsection (1), the circumstances to be taken into account include, but are not limited to, the following:
>
> (a) the sex, age, sexual orientation, gender identity, intersex status, marital or relationship status, religious belief, race, colour, or national or ethnic origin, of the person harassed;
>
> (b) the relationship between the person harassed and the person who made the advance or request or who engaged in the conduct;
>
> (c) any disability of the person harassed;
>
> (d) any other relevant circumstance.
>
> (2) In this section:
>
> ***'conduct of a sexual nature'*** includes making a statement of a sexual nature to a person, or in the presence of a person, whether the statement is made orally or in writing.

Section 22A of the ADA provides:

> For the purposes of this Part, a person sexually harasses another person if:
>
> (a) the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person, or
>
> (b) the person engages in other unwelcome conduct of a sexual nature in relation to the other person,
>
> in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.

The SDA and ADA do not exhaustively define the type of conduct amounting to sexual harassment. Sexual harassment may involve a single or one-off incident or ongoing persistent behaviour. There is an endless array of behaviour that may constitute sexual harassment from comments, taunts, invasive questioning, email, texts, to physical contact, touching and sexual assault.

Unwelcome conduct

If the conduct of a sexual nature is welcome or there is mutual attraction there is no sexual harassment. Anti-discrimination laws should not be taken to discourage consensual sexual conduct whether in the workplace or elsewhere. As Mathews DCJ said in *O'Callaghan v Loder* (1984) EOC ¶92-024 at 75,516:

> '....equal opportunity legislation does not extend to impugn sexual approaches from one person to another merely because they are in disparate positions in the work-force. The object of the legislation is not to sterilise human relationships, but to encourage their development on a free and equal basis.'

Unwelcome conduct is essentially any sexual conduct that is not invited or reciprocated by the woman. This is the subjective element and turns on the reaction of the woman to whom the conduct is directed. The woman is not required to reject the advances expressly or tell the perpetrator it is unwelcome in order for the conduct in question to be unwelcome.

Reasonable person test

Not all unwelcome conduct will amount to sexual harassment. There are some additional elements. First, the conduct in question must be capable of offending, humiliating or intimidating the recipient. The expressions offend, humiliate and intimidate bear their ordinary meaning. Generally, an unwelcome sexual advance or unwelcome sexual conduct will offend or humiliate or

intimidate the recipient but not always. If the unwelcome sexual advance or conduct results from a misunderstanding but causes no offence, then there is no unlawful sexual harassment.

However, it is important to note that the question is not how the reasonable woman should have reacted to the unwelcome sexual conduct. So claims that the sexual conduct was a joke, done while under the influence of alcohol or was inadvertent or should not have caused offence are misplaced. The perpetrator's motives and reasons for engaging in the conduct are irrelevant. Rather, the question is focussed on how the reasonable bystander appraised of all the circumstances assesses the situation. The key question for the SDA is whether a reasonable person, having regard to all the circumstances, would have anticipated *the possibility* that the woman to whom the sexual advance or conduct was directed *would* be offended, humiliated or intimidated. Section 22A of the ADA requires more than the possibility. For the ADA the question is whether the reasonable person would have anticipated that the woman concerned *would* be offended, humiliated or intimidated.

There are no defences to sexual harassment. The perpetrator's motives and intentions are not relevant.

For the SDA, s 28A(1A) sets out the factors that are relevant to applying the objective test. These factors focus on the power disparity between the parties, their relationship in the context of the workplace or particular setting and whether the recipient of the conduct has any particular vulnerability.

In *Filas v Fourtounis* (1996) EOC ¶92 -780, the allegations of unwelcome sexual conduct concerned invitations for sex, questioning about private and sexual matters and physical contact. Ms Filas said she was 'revolted' but she was not distressed or intimidated by the perpetrator's conduct. She thought that such behaviour by men was 'normal'. In finding the elements of s 28A were satisfied, the Commissioner observed:

Unwelcome conduct is essentially any sexual conduct that is not invited or reciprocated by the woman.

> 'It is a sad comment on the workplaces in which Ms Filas has been employed if she finds such totally inappropriate behaviour normal. It demonstrates that Australian society still has a long way to go before women can go to work knowing that they can focus on the tasks which they have to do, and not be bothered by men who do not have the decency and professionalism to treat them with the respect and courtesy that all work colleagues, irrespective of their gender, deserve.'(at 78,797)

Sex-based harassment

Persistent unwelcome and offensive sexualised conduct may fall short of the definition of sexual harassment. However, such conduct may amount to unlawful sex discrimination because exposure to a hostile work environment subjects women to detriment in their employment or as recipients of services. It may also amount to bullying. An example is in *Hill v Water Resources Commission* (1985) EOC ¶92-127, where the New South Wales Equal Opportunity Tribunal upheld a complaint of sex discrimination where the complainant was exposed to sexual harassment and sex-based harassment. The incidents of harassment were as follows:

- receiving telephone calls where no-one spoke or where an offensive recorded message was played, including one from a sexual health clinic;
- cartoons and sexually offensive material sent anonymously in the mail;
- sexist comments being directed to her;
- throwing cartons at the complainant with unnecessary force;
- general taunting and teasing;
- advertisements for brothels and other offensive notices placed on notice boards; and
- being subjected to practical jokes.

For the purpose of Rule 123, sexual harassment must be 'in the course of practice'.

In that case, the EOT noted the great number of incidents which occurred over a prolonged period. Clearly some of the incidents did not amount to sexual harassment as defined by s 22A of the ADA, but did constitute a form of harassment of Ms Hill because she was a woman. Male employees in a similar situation did not experience such treatment.

Defences

There are no defences to sexual harassment. The perpetrator's motives and intentions are not relevant. Likewise, claiming that the offensive conduct was intended to be a joke or humorous is not an excuse.

In the course of practice

For the purpose of Rule 123, sexual harassment must be 'in the course of practice'. This phrase bears its ordinary meaning. For barristers, this is not limited to a particular place (i.e. chambers) or to particular persons (i.e. employees or colleagues). The question is whether the conduct is referable to the barrister's professional work.

In *New South Wales Bar Association v Cummins* (2001) 52 NSWLR 279 Spigelman CJ (Mason P and Handley JA agreeing) discussed the distinction between personal misconduct and 'professional misconduct' noting that professional misconduct may not be limited to conduct that is 'directly' referable to professional work. At [56] he said:

> 56 There is authority in favour of extending the terminology 'professional misconduct' to acts not occurring directly in the course of professional practice. That is not to say that any form of personal conduct may be regarded as professional misconduct. The authorities appear to me to suggest two kinds of relationships that justify applying the terminology in this broader way. First, acts may be sufficiently closely connected with actual practice, albeit not occurring in the course of such practice. Secondly, conduct outside the course of practice may manifest the presence or absence of qualities which are incompatible with, or essential for, the conduct of practice. …

If a question of the proper interpretation of the expression 'in the course of practice' arose with respect to Rule 123, a tribunal may be assisted by considering the way the SDA has been interpreted when questions arise whether sexual harassment has occurred 'in connection' with employment. The line between the private domain and work may be blurred.[3]

Experience of sexual harassment and sex-based harassment at the bar

Over the past 20 years, women barristers have consistently reported experiencing sexual harassment at the bar.

In 1995 the Keys Young Report on *Gender Bias in the Legal Profession* identified a number of areas where women legal practitioners did not have the same opportunities as men in the profession. Keys Young Report noted alarming reports of sexual harassment for women barristers.[4] The women barristers reported sexual harassment by clients, solicitors, fellow barristers and members of the judiciary. The women concerned did not make any formal complaint to address the conduct.

On 2 June 1995, the Bar Council resolved to implement an equal opportunity policy in response to the Keys Young Report. The Bar Council condemned all forms of sexual harassment, discrimination on the grounds of sex or sexual preference and sexist be-

haviour of any kind. It resolved to address equal opportunity at the Bar. It established a Gender Issues Committee.

In Victoria in 1998, Hunter and McKelvie published *Equality of Opportunity for Women at the Victorian Bar: A Report to the Victorian Bar Council* (1998).[5] The research was not confined to sexual harassment but reported on the experience of women barristers. Women described the courtroom was being 'sexualised' with respect to the manner in which they were addressed and treated. They noted the expressions some magistrates or judges had used to address women barristers, such as 'girlie', 'love', 'young lady', or 'having a cat fight are we ladies?'.

More than one in ten (12%) of all respondents reported having experienced sexual harassment while at the Bar.

In October 1999, Regulations 69B and 69C were introduced as part of the *Legal Profession Regulation 1994* (NSW).[6] Regulation 69B provided that: A legal practitioner must not, in connection with the practice of law, engage in any conduct, whether consisting of an act or omission, that constitutes unlawful discrimination (including unlawful sexual harassment) under the *Anti-Discrimination Act 1977*. Regulation 69C required legal practitioners to undertake mandatory continuing education in the areas of equal opportunity, discrimination and occupational health and safety. These regulations applied in substance up to the introduction of uniform practice rules in 2015.

In 2004, the Bar Council approved the Model Sexual Harassment and Discrimination Policy. The objective of the Model Policy was that each set of chambers would adopt the policy.

On 6 January 2014, Rule 117 of the Barristers Rules came into effect. It proscribes sexual harassment, discrimination and workplace bullying. Rule 117 is the predecessor to the present Rule 123.

In February 2014 the Law Council of Australia released the *National Attrition and Re-engagement Study Report* (NARS Report). Sexual harassment was identified as a significant barrier to women's participation in the profession. The results of the NARS Survey were disturbing for the bars. In summary, the NARS Report said:

- 80% of women barristers experienced bullying or intimidation:
  - 84% discrimination due to gender;
  - 55% discrimination due to age;
  - 40% of discrimination due to family responsibilities;[7] and
- Women barristers were twice as likely as those in private practice or in-house roles to believe they have *ever* experienced sexual harassment at their workplace;
- With respect to the harassment, 56% of women did nothing;
- Not one woman lodged a formal complaint.

In response to the NARS Report, the then president of the New South Wales Bar Association Jane Needham SC established a working group. Together with the Equal Opportunity Committee and Women Barristers Forum, the response to the NARS Report included the adoption of the four new Best Practice Guidelines (BPGs). The Best Practice Guidelines on *Harassment, Discrimination, Victimisation and Vilification* (which superseded the 2004 Model Sexual Harassment and Discrimination Policy) and on *Bullying* provide strong statements that such conduct is unacceptable. They deal with acceptable standards of conduct and engagement in barristers' daily professional lives. The Harassment, Discrimination, Victimisation and Vilification BPG recognised that barristers' workplaces extended beyond chambers to the courts, tribunal, participation in Bar Association and other practice related activities.

The Grievance Handling BPG was designed to provide a procedure for handling complaints of offending conduct confidentially, impartially, and promptly. The BPG set out the appropriate procedure to be adopted by complaint contact officers in chambers and at the Bar Association.

The 2015 New South Wales Bar Association Practicing Certificate Renewal Survey asked about sexual harassment and the experience of NSW barristers. The results of the survey revealed:

- More than one in ten (12%) of all respondents reported having experienced sexual harassment while at the Bar;
- Three quarters (73%) of this group were women;
- The majority (85%) of women who experienced sexual harassment indicated that the source of harassment was a fellow barrister
- Male barristers who experienced sexual harassment were more likely to report the source of harassment as a client or solicitor;
- Over half (56%) of females and close to half of males (49%), took no action. A minority raised the issue with a colleague or a clerk;
- Not one person (male or female) made a formal complaint of sexual harassment.

While a practitioner should advocate fearlessly on behalf of the interests of their client, that is not an excuse for discourtesy.

Sexual harassment and sex-based harassment as professional conduct

Sexual harassment in a professional context is not unique to Australia. In comparable overseas jurisdictions there have been some high profile cases.

In 2004, a practitioner described as a 'veteran Toronto litigator' was the first Ontario lawyer to be disbarred for sexual harassment of two women in the mid-1990s. The ruling was later overturned and a 12-month suspension imposed.[8]

In 2006, New Zealand barrister Christopher Harder was struck off with respect to allegations involving sexual harassment.[9] He admitted making suggestive and inappropriate comments to a female lawyer and that he made suggestive and persistent phone calls to her and that this amounted to misconduct.

In 2011, a former municipal court judge in Arizona (who resigned from the bench following allegations of sexual harassment) was suspended from practising as a lawyer for two years and was prohibited from serving on the bench in the future. Mr Ted Abrams was alleged to have 'engaged in a prolonged and relentless effort to sexually harass an assistant public defender' who appeared in his court. It was alleged that during a 14-month period, Mr Abrams (when a judge) sent the woman at least 28 voice mails and 85 text messages, many of which were sexually suggestive. At least one he admitted was 'obscene'. He repeatedly pressured the woman for sex, made slurping noises and at one point fondled her buttocks.[10]

More recently in Singapore, a lawyer was disbarred for sexually harassing an employee: *Law Society of Singapore v Ismail bin Atan* [2017] SGHC 190.[11] In explaining the order to strike off the practitioner, the chief justice said:

> 18 We turn then to the question of the appropriate sanction in this case. We begin with the observation that the respondent's conduct was egregious. He had abused a junior colleague after leading her to a confined space under the pretext of carrying out work on a case. He had also abused the dominance he exercised over her by virtue of the position he held in the firm and then engaged in conduct that constituted a serious criminal offence upon her person. Furthermore, the offence appears to have been premeditated with a considerable degree of planning, and involved multiple unsolicited advances. Additionally, the respondent was a senior lawyer, having been in practice for about 16 years at the material time, and it is well established that the more senior an advocate and solicitor, the more damage he does to the integrity (and therefore the standing) of the legal profession.

"Remember the good ol' days when sexual harassment wasn't such a big deal."

Farris / Cartoonstock

Australia

There are few reported cases in Australia.

In 2004, a Victorian barrister was suspended from practice for six months for making sexual advances toward a client during a pre-trial conference. The Legal Profession Tribunal found the barrister guilty of unsatisfactory conduct. The barrister was also reprimanded.[12]

In *Legal Profession Complaints Committee v in de Braekt* [2013] WASC 124, the barrister's conduct included (a) knowingly misleading the Magistrates' Court; (b) persistent discourtesy to the Deputy Chief Magistrate; (c) sending discourteous and offensive emails to a police officer; (d) sending a discourteous, offensive and threatening email to another officer; (e) behaving in a discourteous and abusive manner to an officer of the Central Law Courts complex – including racist, abusive, and possibly sexist remarks. In ordering that the barrister be struck off, the Full Bench of the Supreme Court of Western Australia observed that the importance of courtesy in the legal system, and in the relationship between the legal profession, the court system, and general public should not be understated. While a practitioner should advocate fearlessly on behalf of the interests of their client, that is not an excuse for discourtesy.[13] From 'the point of view of a profession which seeks to maintain standards of decency and fairness, it is essential that the privilege, and the power of doing harm which it confers, should not be abused'.[14]

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This case highlights that courtesy, civility and restraint of power is fundamental to the character of the legal profession – reflecting respect for the dignity of every participant in the administration of justice (regardless of the individual's position). Viewed in this light, Rule 123 embodies an obvious dimension of values which have always been present in the regulation of barristers' conduct.

In *PLP v McGarvie and VCAT* [2014] VSCA 253 a solicitor engaged in persistent acts of sexual harassment toward a person undertaking legal practical training with him, including: sexual comments and advances to her; showing her a pornographic video of a prostitute performing a sexual act on him; sending her a photograph of him naked; giving her an unwelcome massage; having his partner tell her that if the complainant did not sleep with the applicant he would not sign off on her training; on one day engaging in no fewer than 78 requests to have sexual intercourse with her. When relations soured, the solicitor terminated her position.

VCAT (Garde J) found the solicitor had sexually harassed the complainant on 11 separate occasions, and awarded the complainant $100,000 compensation.[15] In subsequent disciplinary proceedings, VCAT (Judge Jenkins) found each of the 11 occasions constituted professional misconduct, cancelled the solicitor's practising certificate for eight months and ordered he not be eligible to regain his certificate unless he satisfied a set of conditions.

The Court of Appeal recognised that the conduct was serious, '[t]o treat a woman under his training in that fashion was unquestionably despicable unprofessional conduct',[16] but considered the risk to the public of repetition of the conduct was low. The court set aside the penalty – finding the $100,000 imposed by Garde J was a significant sanction likely to provide specific and general deterrence, and protection against reoffending could be achieved by a condition that he not employ any women in legal trainee positions. However, because he was a sole practitioner the cancellation of his practising certificate was another significant financial burden that would diminish the goodwill of his practice and put his livelihood at risk.

If an allegation of sexual harassment is made to a colleague, clerk, head of chambers or the Bar Association, there is an obligation to report.

In *Legal Services Commissioner v Nguyen* [2015] QCAT 211, Mr Nguyen, a barrister, twice sexually assaulted a legal secretary who was instructing him at court on a sentencing hearing. He pleaded guilty to two charges of sexual assault, for which he was initially convicted and sentenced to three months' imprisonment, suspended. On appeal the sentence was reduced to a fine of $2000 with no conviction recorded.

The Legal Services Commission pursued disciplinary proceedings on grounds including that Nguyen had engaged in sexual harassment in breach of the Queensland equivalent to Rule 123.[17] It was the first case of this kind.[18] His conduct was described as 'near the lowest possible edge of seriousness for such offences'[19] and reference is made to Mr Nguyen's 'mistaken belief … that his flirtatious behaviours were not unwelcome'. The tribunal found he had engaged in unsatisfactory professional conduct,[20] rather than professional misconduct. By the time of the disciplinary hearing, Mr Nguyen had addressed his 'identified deficiency in … perceptual awareness, and thus his ability to communicate and respond appropriately to women,'[21] obviating the need for any prospective conditions.

Mr Nguyen was publicly reprimanded and fined ($20,000), with general deterrence a significant consideration in the punishment imposed: 'the Bar cannot be the last bastion where sexual harassment and assault is countenanced in the workplace. Whilst it is not suggested that this is the case, such conduct must be strongly deterred.… [Sexual harassment and sexual assault] is conduct which must be discouraged.'

Other consequences

Society's growing consciousness of the degrading effect of sexual harassment, discrimination and workplace bullying has resulted in a perceived willingness to speak out. There is greater awareness of a person's rights to make a complaint to regulatory bodies such as the Australian Human Rights Commission and Anti-Discrimination Board. When

complaints become the subject of litigation, the courts have expressed the view that damages awards should reflect community values: see *Richardson v Oracle Corporation Australia Pty Ltd* (2014) 223 FCR 334.

In *Richardson* the Full Court confirmed that compensation requires an evaluation of the actual, subjective harm inflicted upon the victim, observing that whether a victim of sexual harassment (in this case, in the workplace) or a victim of (workplace) bullying and harassment lacking a sexual element, in both types of case the victim may suffer psychological injuries and distress of a comparable kind.

The impact on victims can be significant. For example, in *Tan v Xenos* (No 3) ([2008] VCAT 584, Dr Tan was a neurosurgical registrar. She came to develop a supportive professional relationship with Dr Xenos and to discuss her progress with him. Over the period from January 2005, Dr Xenos commenced inviting her to his private rooms which were adjacent to the hospital, for extra tuition. In early 2005, she accepted an invitation him to meet him at his rooms. Dr Tan was assaulted. Her reaction to the incident was profound.[22] Dr Tan pursed a complaint alleging sexual harassment. She was successful in VCAT. She was awarded $100,000 in damages – at the time one of the highest awards for a sexual harassment claim.

...a bystander may be liable for a failure to act to prevent circumstances where another person is at a known risk of sexual harassment.

Criminal issues

Barristers should also be aware of s 316(1) of the *Crimes Act 1900* (NSW). If an allegation of sexual harassment is made to a colleague, clerk, head of chambers or the Bar Association, there is an obligation to report. A person who fails to report conduct which amounts to a serious indictable offence is liable to imprisonment for two years.

The elements of the section are:

- a person (including a company) has committed a serious indictable offence;
- another person (including a company) knows or believes that the offence has been committed
- that other person has information which might be of material assistance in securing the apprehension of the offender or the prosecution or conviction of the offender; and
- that other person fails, without reasonable excuse, to bring that information to the attention of a member of the Police Force or other appropriate authority.

A serious indictable offence is an indictable offence which is punishable by imprisonment for life or for a term of five years or more. It is not necessary that the person know the relevant conduct amounts to a serious indictable offence, only that it is an offence.

In NSW, a serious indictable offence can include sexual harassment that involves sexual assault.

Bystanders and accessory liability

The former Chief of Army Lieutenant General David Morrison famously said 'the standard you walk past is the standard you accept.'[23] For barristers we should ask whether walking past sexual harassment in chambers, court or our professional endeavours means a tacit acceptance of inappropriate conduct.

Section 52 of the ADA makes it unlawful for a person to cause, instruct, induce, aid or permit another person to do an act that is unlawful by reason of a provision of this Act.

Section 105 of the SDA does not apply to sexual harassment but it does apply to discrimination (including sex-based harassment). The reach of the accessory liability provisions is illustrated in the Federal Court decision of *Elliott v Nanda* (2001) 111 FCR 240. The issue was whether the Commonwealth Employment Service (CES) was an accessory to sex discrimination when it placed a job seeker with an employer who had been the subject of complaints. Justice Moore held that CES had permitted the unlawful conduct to take place. Its knowledge of previous complaints of sexual harassment about the employer should have alerted the CES to the possibility that any young female sent to work for the employer was at risk of sexual harassment. At [163] Moore J said:

> In my opinion, a person can, for the purposes of s 105, permit another person to do an act which is unlawful, such as discriminate against a woman on the ground of her sex, if, before the unlawful act occurs, the permitter knowingly places the victim of the unlawful conduct in a position where there is a real, and something more than a remote, possibility that the unlawful conduct will occur. That is certainly so in circumstances where the permitter can require the person to put in place measures designed to influence, if not control, the person's conduct or the conduct of the person's employees.[24]

In summary, a bystander may be liable for a failure to act to prevent circumstances where another person is at a known risk of sexual harassment.

ENDNOTES

1 *Legal Services Commissioner v Nguyen* [2015] QCAT 211 at [64].
2 *Legal Services Commissioner v Nguyen* [2015] QCAT 211 at [18], citing *New South Wales Bar Association v Murphy* (2002) 55 NSWLR 23 at 52 (per Giles JA).
3 See *Lee v Smith & Ors* [2007] FMCA 59, (2007) EOC ¶93–456 *South Pacific Resort Hotels Pty Ltd v Trainor* (2005) 144 FCR 402; *Smith v The Christchurch Press Company Limited* [2001] 1 NZLR 407; *Chief Constable of the Lincolnshire Police v Stubbs* [1999] ICR 547; [1999] IRLR 81, Hely B 'Open All Hours: The Reach of Vicarious Liability in 'Off-Duty' Sexual Harassment Complaints' [(2008) 36(2) *Federal Law Review* 173.
4 Keys Young, *Research on Gender Bias and Women Working in the Legal System*, Report (6 March 1995). See also NSW Government, Department for Women, *Response to Gender Bias and the Law - Women Working in the Legal Profession in NSW* (October 1995) and NSW Attorney-General's Department, Department for Women, *Gender Bias and the Law: Women Working in the Legal Profession - Report of the Implementation Committee*, 1 October 1996. See also Bourke, 'Gender Bias in the Legal Profession' *Law Society Journal* February 1997, p.52 and Hennessy N '*Solicitors' obligations as employers under anti-discrimination laws*'(1995) 33 (4) *Law Society Journal*, 'Sex Discrimination and Sexual Harassment. Should there be a professional conduct and practice rule' *Law Society Journal* December 1995, p.48.
5 See also Justice Kenny *Women's Law Collective: Experiences of Women in the Courtroom* www.fedcourt.gov.au/digital-law-library/judges-speeches/justice-kenny/kenny-j-20030811
6 http://www.austlii.edu.au/au/legis/nsw/num_reg/lpar19991999562350.pdf
7 See NARS Report at p.80.
8 http://www.lawtimesnews.com/author/na/court-overturns-neinsteins-disbarment-8778/
9 https://www.lawyersweekly.com.au/news/1640-nz-criminal-defence-lawyer-learns-hard-lessons
10 https://www.leagle.com/decision/inazco20110804001.xml
11 http://www.tnp.sg/news/singapore/lawyer-disbarred-sexual-harassment
12 http://www.theage.com.au/articles/2004/04/25/1082831435141.html. See also http://www.olsc.nsw.gov.au/Documents/civility_professionalisam_standards_courtesy.pdf
13 at [28]-[30].
14 *Clyne v New South Wales Bar Association* (1960) 104 CLR 186:
15 *PLP v McGarvie and VCAT* [2014] VSCA 253. See other examples of practitioners being ordered to pay damages - In *McAlister v SEQ Aboriginal Corporation* [2002] FMCA 109, Ms McAlister was sexually harassed by Mr Lamb, a legal practitioner. Mr Lamb attended her home to provide legal advice regarding her divorce. An issue arose as to whether the conduct occurred in the course of Mr Lamb's employment. The court ordered that Mr Lamb compensate Ms McAlister in the order of $5,100.
16 At [87].
17 Rule 127 of the Barristers' Rules 2004 (Qld).
18 *Legal Services Commissioner v Nguyen* [2015] QCAT 211 at [66].
19 at [19].
20 at [37]-[40].
21 at [44].
22 http://www.theage.com.au/victoria/surgeon-caroline-tan-breaks-silence-over-sexual-harassment-in-hospitals-20150311-141hfi.html
23 https://www.youtube.com/watch?v=QaqpoeVgr8U
24 (2001) 111 FCR 240, 292-293 [163].