

‘Us Too?’ – findings on bullying and harassment in the legal profession¹

By Penny Thew

Described as the largest ever global survey of legal professionals, the results of the 2018 survey conducted by the International Bar Association were released in May 2019 in a report entitled ‘Us Too?’ *Bullying and Harassment in the Legal Profession* (the **IBA report**).

The opening words to the executive summary of the IBA report are ‘[t]he legal profession has a problem’, words that do appear to be supported by the stark data revealed in the report. Almost 7,000 individuals from legal workplaces across 135 countries responded to the survey, including barristers, solicitors, in-house counsel, the judiciary and legal professionals employed within government.

The results of the survey disclosed that 50% of women respondents and one in three men who responded had been bullied in the workplace, while one in three women respondents and one in 14 men had been sexually harassed in connection with work (p8). These figures were significantly higher when only Australian data was considered, which disclosed that 73% of women responding and 50% of men had been bullied and 47% of women respondents and 13% of men had been sexually harassed (p87). Of those globally who reported having been bullied, 65% had left or were considering leaving the workplace as a result (p9), with 57% of bullying cases and 75% of sexual harassment cases said to have gone unreported (p8). Australia had the highest response rate to the survey by country with the IBA concluding that ‘bullying and sexual harassment are rife in Australian legal workplaces’ (p87).

This data is not new and surveys conducted within the legal profession in Australia have in the past demonstrated similar rates of those surveyed reporting having been bullied and/or harassed. In 2014 the Law Council of Australia National Attrition and Re-engagement Study Report (the **NARS report**), which surveyed approximately 4,000 legal professionals across Australia, disclosed that 50% of women respondents, and over 33% of men, reported having been bullied in their current workplace. When the results of only women barristers were considered, the NARS report indicated that 55% of all practising women barristers surveyed across the country had experienced sexual harassment, and 80% had experienced bullying or intimidation.



The results of a survey conducted with practising certificate renewals in 2014 by the New South Wales Bar Association showed that 42% of women barristers who responded to the survey said that they had experienced harassment and 64% reported being bullied.²

The consistently high percentage of legal professionals, and barristers in particular, reporting being bullied and/or harassed is of concern.

On 26 June 2019, an LSJ Speaker Series panel discussion entitled ‘Bullying in the legal profession’ was conducted based on the findings of the IBA survey, with a central message being that significant reputational damage occurs to the profession generally as well as to individuals and organisations when a culture of bullying is left unaddressed. This message was echoed in both the IBA report (p16) and the NARS report (p87), with the latter inversely referring to the positive reputational impact on business and the profession of addressing harassment and bullying and identifying this as a driver for change. Linked to this, the IBA report in addition cited research demonstrating the negative impact of bullying and harassment on productivity and profitability, as well as the estimated financial loss resulting from bullying and harassment (p15-17).

Significantly, the IBA report emphasised that, while women in the legal profession are disproportionately affected by both bullying and sexual harassment, the data disclosed that

‘these are not ‘women’s issues’, given bullying and harassment impacts all genders both directly and indirectly, the latter as a result of the adverse workplace impact (p17-8).

In its report, the IBA makes 10 recommendations, which importantly include implementing policies and standards and exploring flexible reporting models (p10). According to the IBA report, effective reporting systems that empower targets of bullying and sexual harassment to report their experiences are ‘among the most critical elements’ of a strategy to address such conduct (p106).

At the NSW Bar, reporting mechanisms are available for individual chambers to implement, for instance in the form of the Bar Association’s Model Grievance Handling Best Practice Guideline (the **Grievance Handling BPG**). While the BPGs have had a successful rate of adoption across the NSW Bar, with more than 52% of chambers at the NSW Bar adopting one or more of the BPGs, and while the BPGs are successfully used, as with all workplaces there will be occasions where those within chambers do not feel able to make a complaint internally within the workplace.

A reluctance to report is an issue facing workplaces universally and is not unique to the legal profession or the NSW Bar. The most commonly cited reason for individuals not reporting, according to the IBA report, was fear of repercussion and a lack of confidence in reporting procedures (p106). For the NSW Bar, added to this is that, while over half of all chambers in NSW have adopted the BPGs, almost half have not, meaning that there is no internal complaint mechanism within those chambers. The observation made generally in the IBA report was that ‘[t]he profession should therefore urgently consider revising existing reporting models... [including] in external organisations that receive reports (a function often held by professional regulators or law societies and bar associations)’ (p106).

A model held up by the IBA in its report as one to be considered is that adopted by the Victorian Bar Association whereby an anonymous complaint or reporting portal is available via a link on the Victorian Bar Association’s webpage,³ with complaints thereafter investigated, conciliated and/or (where appropriate) referred to the professional regulator (p107).



As is acknowledged within the IBA report, improving flexible reporting models will not be a cure-all. Other strategies, which could be implemented in tandem with an anonymous reporting mechanism, include incorporating 'bystander provisions' within the existing framework, including for instance within the BPGs.

Bystander provisions would require those witnessing bullying, harassing or discriminatory conduct to report, rather than leaving that responsibility solely with the target. Such a strategy is recognised in the IBA report as one 'showing significant promise', with bystander intervention training recommended (p102-3) and is a strategy in line with the current framework of the BPGs and a position advocated generally in continuing professional development seminars given by the NSW Bar Association in relation to the BPGs. Many organisations already impose not dissimilar obligations on senior members of the workplace to assist in minimising the risk of vicarious liability under statute.

Significantly, however, obligations on bystanders to report will be of no utility in the absence of somewhere (for both bystanders and victims alike) to make the reports or complaints of bullying, sexual harassment and/or discrimination. The anonymous complaint

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portal adopted by the Victorian Bar Association and held up as a model by the IBA, or a variation thereof, is one that could provide bystanders and victims at the NSW Bar with somewhere to report.

Commensurate with the IBA recommendations, in June 2019 the New South Wales Office of the Legal Services Commissioner called for 'disclosures of' sexual harassment and bullying and launched its guide to reporting bullying, sexual harassment or discrimination under rule 42 of the *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015* or rule 123 of the *Legal Profession Uniform Conduct (Barristers) Rules 2015*.⁴ The guide is said to

apply to those subject to the conduct or those who have witnessed it or have knowledge of it and states that those who practise from barristers' chambers 'have an obligation to prevent a culture of harassment and bullying.'

Australian Women Lawyers has in addition called for the reinstatement of mandatory continuing professional development seminars, as well as practising certificate declarations, in respect of sexual harassment and bullying in the wake of the IBA report.

Overall, the findings in the IBA report demonstrate the ongoing work needed to address what is recognised as a significant issue within the profession, with the reader urged in the Foreword to the report to absorb the findings and 'then make a difference.'

ENDNOTES

- 1 This article, drafted on 14 July 2019 under the title '*Us Too: the International Bar Association's survey findings on bullying and harassment in the legal profession*', was used as a briefing paper for speakers in a Continuing Professional Development seminar hosted by the Bar Association's Diversity and Equality Committee on 21 August 2019.
- 2 *NSW Bar Association 2014 Member Profile Report* (Urbis Pty Ltd, March 2015).
- 3 <https://www.vicbar.com.au/public/about/governance/internal-conduct-policies-and-reports>.
- 4 <http://www.olsc.nsw.gov.au/Documents/Information%20sheet%20Inappropriate%20Personal%20Conduct%202019.pdf>.