

DON'T JUST STAND THERE, DO SOMETHING

LEGAL PROFESSION LEADERS, PARTICULARLY MEN, MUST STAND UP AND CALL OUT SEXUAL HARASSMENT.

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On 22 June 2020, I, along with so many others, read Chief Justice Susan Kiefel's statement regarding the conduct of former High Court Justice Dyson Heydon. I shared the sense of outrage that a number of lawyers felt – that a person in such a position of authority could have behaved in such an appalling manner. But when people described being “shocked”, that did not quite sit right with me.

I do not believe that in 2020 we should be particularly shocked to hear allegations that a male lawyer in a position of power has mistreated the women in his sphere of influence. There are so many sources of information telling us that this behaviour is endemic in Australia, and within our profession. Three recent examples come to mind:

In May 2019, the International Bar Association published a report which included a finding that of the 936 Australian respondents, 47 per cent of female respondents reported they had experienced sexual harassment.¹

On 5 March 2020, the Australian Human Rights Commission released the results of its national inquiry into sexual harassment in Australian workplaces, which included a finding that 39 per cent of women had experienced sexual harassment in the workplace in the past five years.²

On 1 April 2020, the Victorian Legal Services Board and Commissioner published its report based on a 2019 survey of around 2300 lawyers (approximately 10 per cent of the lawyers in Victoria) – 61 per cent of female respondents reported experiencing sexual harassment in the legal sector.³

These results may well be affected by non-response bias – people are more likely to take the time to complete a survey on

sexual harassment if they have experienced sexual harassment. Even if we accept that premise, it is hard to explain away such high numbers. If you have any residual doubt, ask a female lawyer whether she finds these survey results surprising.

We are told that sexual harassment by men towards women is prevalent,⁴ and that it most frequently involves senior staff harassing more junior staff.⁵ We are told that, by and large, perpetrators are not challenged and that many do not face consequences.⁶ In that context, should we be particularly surprised to read that this behaviour also occurs in the judiciary? And, looking at our own firms – can we really assume that it wouldn't happen here?

What can I do to effect change?

It seems generally accepted that there needs to be cultural change in the legal sector to eradicate sexual harassment. I struggle with the term “cultural change”. First, it is a term which lacks urgency: we all know that cultural change can take a while, after all, so we need not feel too bad if not much happens in the first year or two. Second, it pushes us towards thinking about the organisation or the sector as a whole, and perhaps overlooking our responsibilities as individuals.

For me, the question should not be “What can we do to solve this problem?” but “What can I do, day to day, to make a difference?”

One thing I can do is be an active bystander: take action when I observe unacceptable behaviour, whether that is sexual harassment, other discrimination or bullying. This is critical because:

- it tells the perpetrator that this behaviour is not accepted
- it tells the person affected by the behaviour that they are supported

- it sets the standard for other observers
- it creates the opportunity for immediate change.

This is not an easy path to take, and junior staff in an hierarchical environment will understandably be reluctant to call out the behaviour of a senior lawyer or client. As a result, partners and managers need to demonstrate leadership in this area and have those difficult conversations. While this applies to leaders of all genders, it is particularly important that male leaders stand up and call out sexism and sexual harassment. We can't expect women to do all the heavy lifting on gender equality.

If we fail to call out unacceptable behaviour, we abdicate responsibility to the person experiencing that behaviour – we rely on them perceiving the behaviour as inappropriate, filing a complaint, trusting that their complaint will be addressed appropriately, and trusting that they will not face negative consequences. That is asking a lot of a person who is likely to be feeling vulnerable.

As leaders, we can and must do better at demonstrating appropriate behaviour in the workplace, not just in terms of what we do and say, but also what we tolerate. In the words of Governor-General David Hurley: “the standard you walk past is the standard you accept”. ■

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1. Us Too? Bullying and Sexual Harassment in the Legal Profession, p87.
2. Respect@Work Sexual Harassment National Inquiry Report, p18.
3. Sexual Harassment in the Legal Sector, p19.
4. Note 3 above, p29.
5. Note 3 above, p31.
6. Note 3 above, p47.