

#US TOO? BULLYING AND SEXUAL HARASSMENT IN THE LEGAL PROFESSION.

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Reasonable Cause Conference
Mandatory Bundle Rule 6.1
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OVERVIEW

- There is no doubt that the awareness of two pressing issues have increased within the legal profession:
 - sexual harassment (and discrimination issues); and
 - Bullying including judicial bullying.
- CPD and engagement by legal practitioners has been critical in developing not only professional skills and knowledge of substantive law surrounding these issues but more importantly in raising awareness of the myriad of forms that comprises both sexual harassment and judicial bullying.

CULTURAL CHANGE

- From my observations, cultural change in the legal profession occurs through:
 - Increasing awareness and knowledge of the society whose laws we administer;
 - Diversity in the profession, and
 - Acceptance of the desirability for change.

HISTORY: SEXUAL HARASSMENT AND THE LEGAL PROFESSION

- Discrimination on the grounds of sex and sexual harassment have been a feature of the legal profession
- Historically, the NSW Legal Profession Conduct Rules did not proscribe sexual harassment or discrimination.
- Women Lawyers' Association, NSW Young Lawyers and the Law Society's Equal Opportunity Committee engaged in advocacy and education to increase awareness of gender bias, discrimination and sexual harassment.

AUSTRALIAN LAW REFORM COMMISSION REPORT “EQUALITY BEFORE THE LAW, 1994

▪ :

- Women in private practice more likely to experience discrimination than those working in universities or government;
- Law firms have only tokenistic regard for anti-discrimination law and recruitment and promotion;
- Structural and cultural barriers to women’s advancement in the legal profession;
- Women lawyers are segregated into ‘soft’ areas such as family law, which had a consequent impact that women achieved lower incomes.
- Reluctance to use anti-discrimination legislation for fear of victimisation.

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NSW MINISTRY FOR THE STATUS AND ADVANCEMENT OF WOMEN: "GENDER BIAS AND THE LAW" 1995

- Women are disproportionately represented in lower positions within the profession
- Women take longer to attain partnership than their male colleagues
- The average income for women in the legal profession is lower than for men
- 50% of graduates leaving the College of Law were women. However, women comprise only 23% of lawyers in private firms. On the other hand women hold the majority of legal positions in the community sector and 41% of positions in government.
- 39% of solicitors and 59% of female barristers interviewed said that they had been subject to sexual harassment.

SEXUAL HARASSMENT AS PROFESSIONAL MISCONDUCT ?



“I do not accept that there is a major discrimination and harassment problem in the profession. I have been a practitioner for over 30 days, and I have never seen an instance or had one reported to me.” Richard Gulley

Figure 1. “Battle of the Briefs: lawyers lock horns over new behaviour code,” Sydney Morning Herald, 11 April 1996

NSW RESPONSE

- Heated debates took place the legal profession as to the issues raised
- Sometimes violent reactions of members of the legal profession (including the reaction of members of the then Law Society Council) to the notion of any form of regulation to address the abovementioned problems
- NSW Government released 'Response to Gender Bias and the Law: Women working in the legal profession in NSW' which included a series of recommendations including a new conduct rule to make discrimination and sexual harassment matters capable of being unsatisfactory professional conduct or misconduct .

REGULATION 69C & REGULATION 176

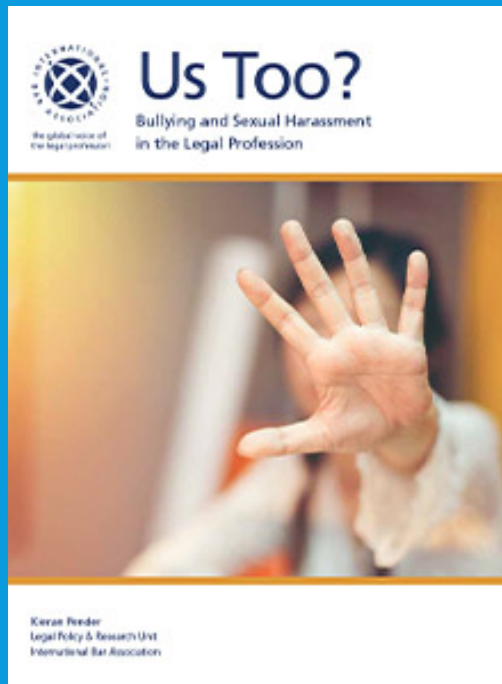
- Regulation 69C in October 1999.
- Every 3 years, 1 CPD session addressing:
 - Equal employment opportunity
 - unlawful discrimination (including unlawful sexual harassment)
 - occupational health and safety
- In 2006, it changed to Regulation 176 and was extended to include:
 - employment law
 - the management of legal practice consistent with all of the above

2015 REGULATIONS

- Disappeared in 2015 and was replaced by:
 - ethics and professional responsibility
 - practice management and business skills
 - professional skills
 - substantive law.

REG 42: LEGAL PROFESSION UNIFORM LAW SOLICITORS' CONDUCT RULES 2015

- 42.1 A solicitor must not in the course of practice, engage in conduct which constitutes:
 - 42.1.1 discrimination,
 - 42.1.2 sexual harassment, or
 - 42.1.3 workplace bullying.



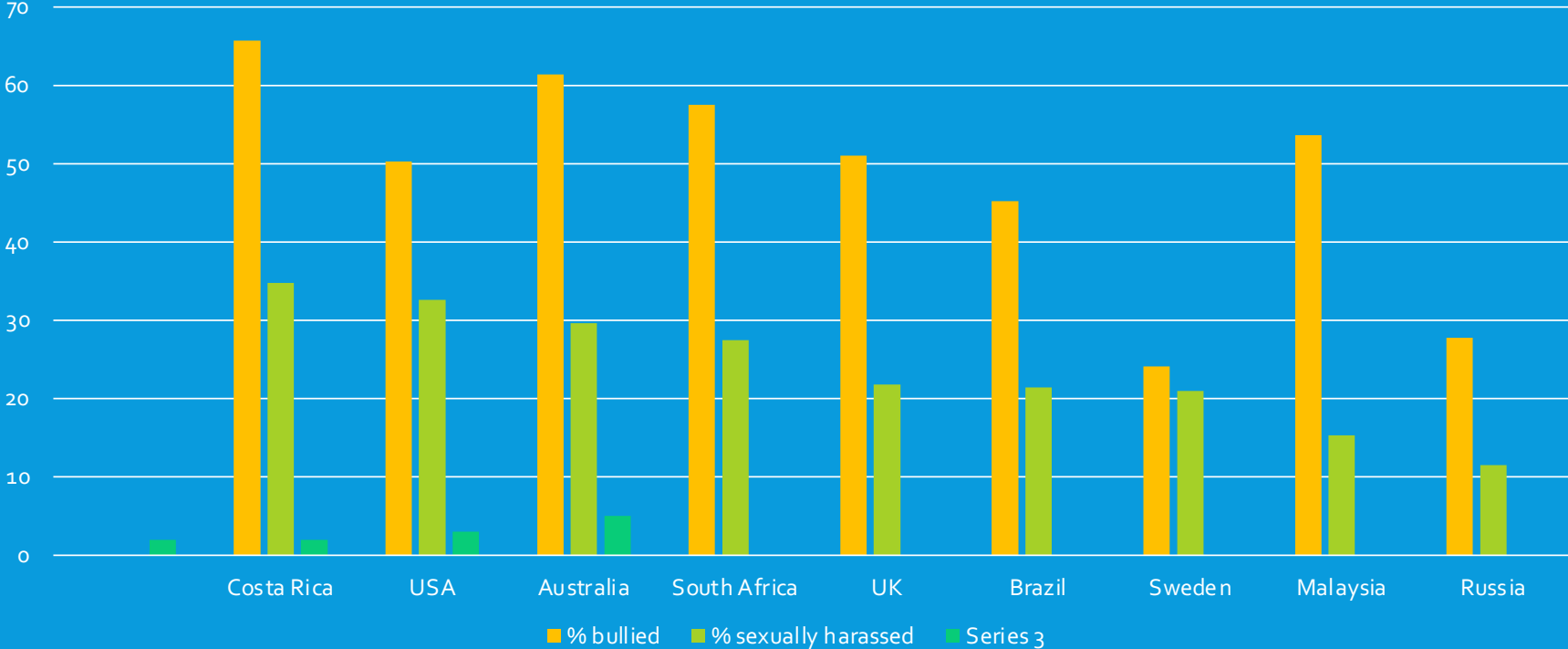
- The International Bar Association recently completed a comprehensive global survey on sexual harassment in the legal profession.
- **47%** of Australian female respondents reported experiencing sexual harassment at work.
- Both the 2017-2018 NSW and Victoria Quality of Working Life Surveys revealed high rates of sexual harassment.
- Women Lawyers Association Submission into the National Inquiry into Sexual Harassment in the Australian Workplace: 71% of 242 respondents reported being sexually harassed but only 18% made a complaint to their employer.

IBA REPORT: US TOO? BULLYING AND SEXUAL HARASSMENT IN THE LEGAL PROFESSION

▪ **WORLDWIDE FIGURES**

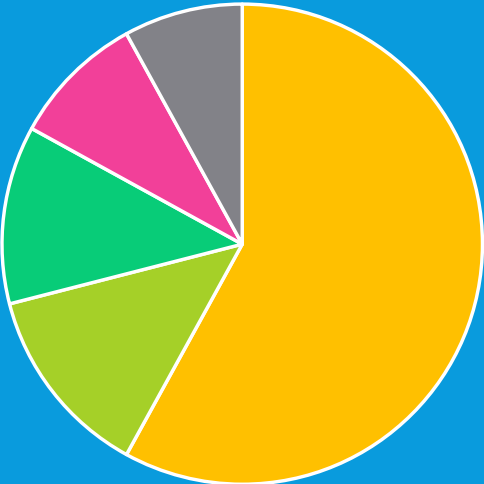
- 5,000 lawyers from 120 jurisdictions (including Australia)
- 43% per cent of victims said they had experienced bullying in the last year.
- 25% have been sexually harassed (both women and men)
- About 1/3 said had been sexually harassed within the last year.
- 57% of the bullying cases, the behaviour was never reported.
- 78% of sexual harassment events were not reported.

ACROSS JURISDICTIONS



AUSTRALIA

Respondents to the survey

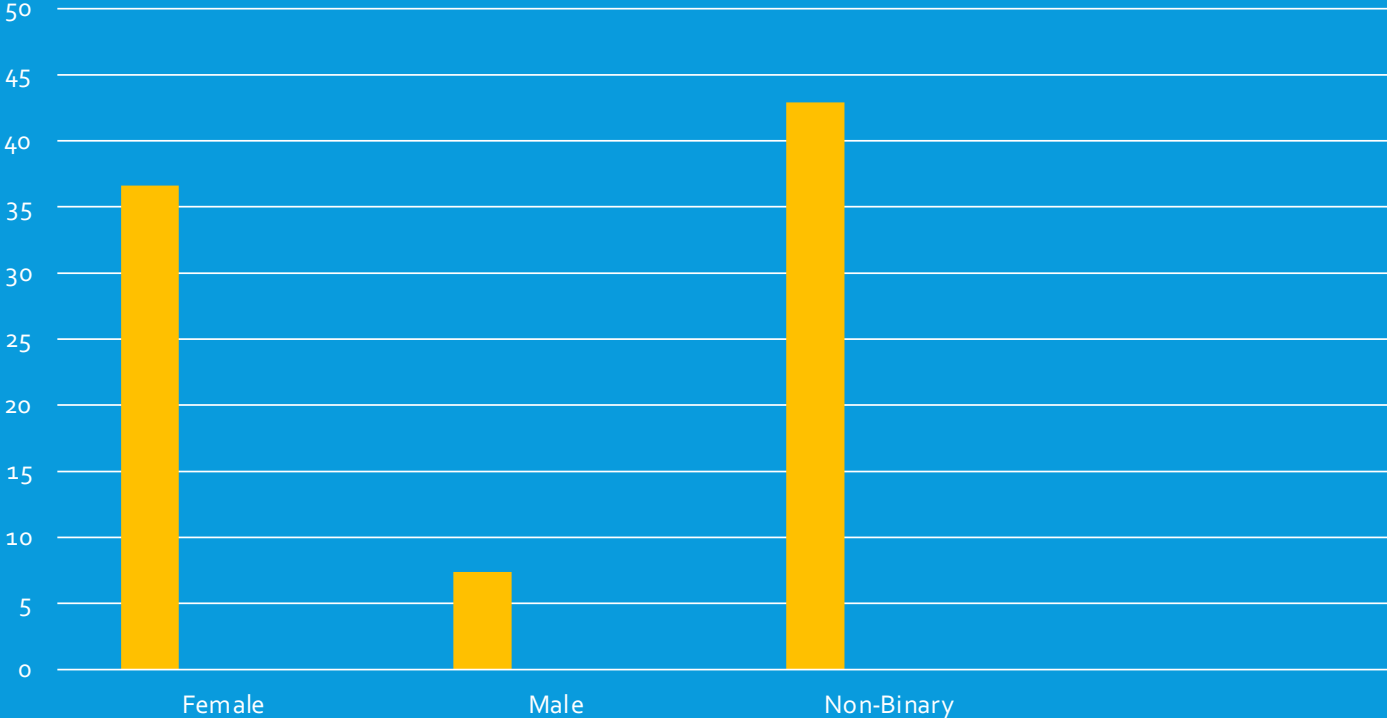


■ Law Firms ■ Government ■ Barristers ■ In-house ■ Judiciary

73% of women reported being bullied in the workplace

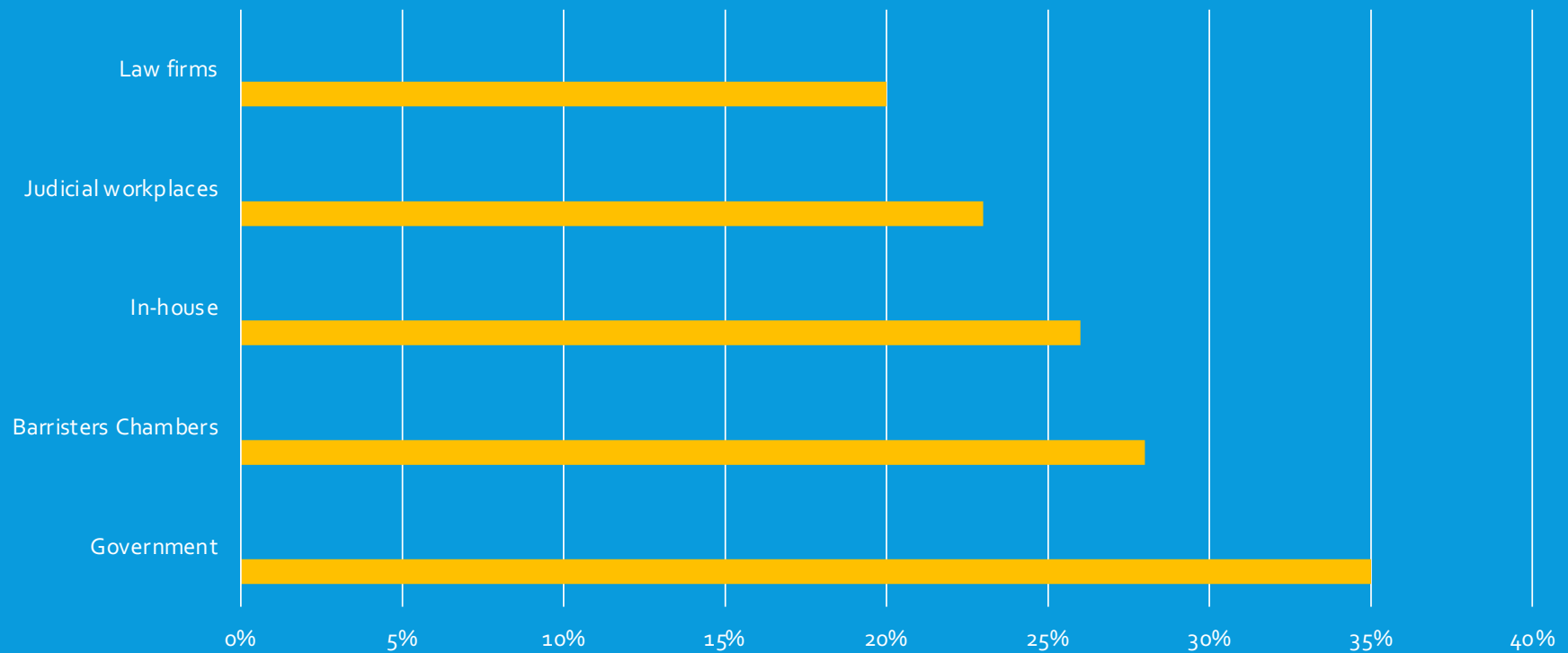
50% of men reported being bullied.

AUSTRALIA: SEXUAL HARASSMENT



- *The managing partner left me alone with a senior lawyer the firm was courting. He ran his hands up my legs and tried to kiss me. I bumped into the managing partner as I was running from the restaurant, and the partner suggested I should consider a relationship with that man."*

SEXUAL HARASSMENT BY WORKPLACE



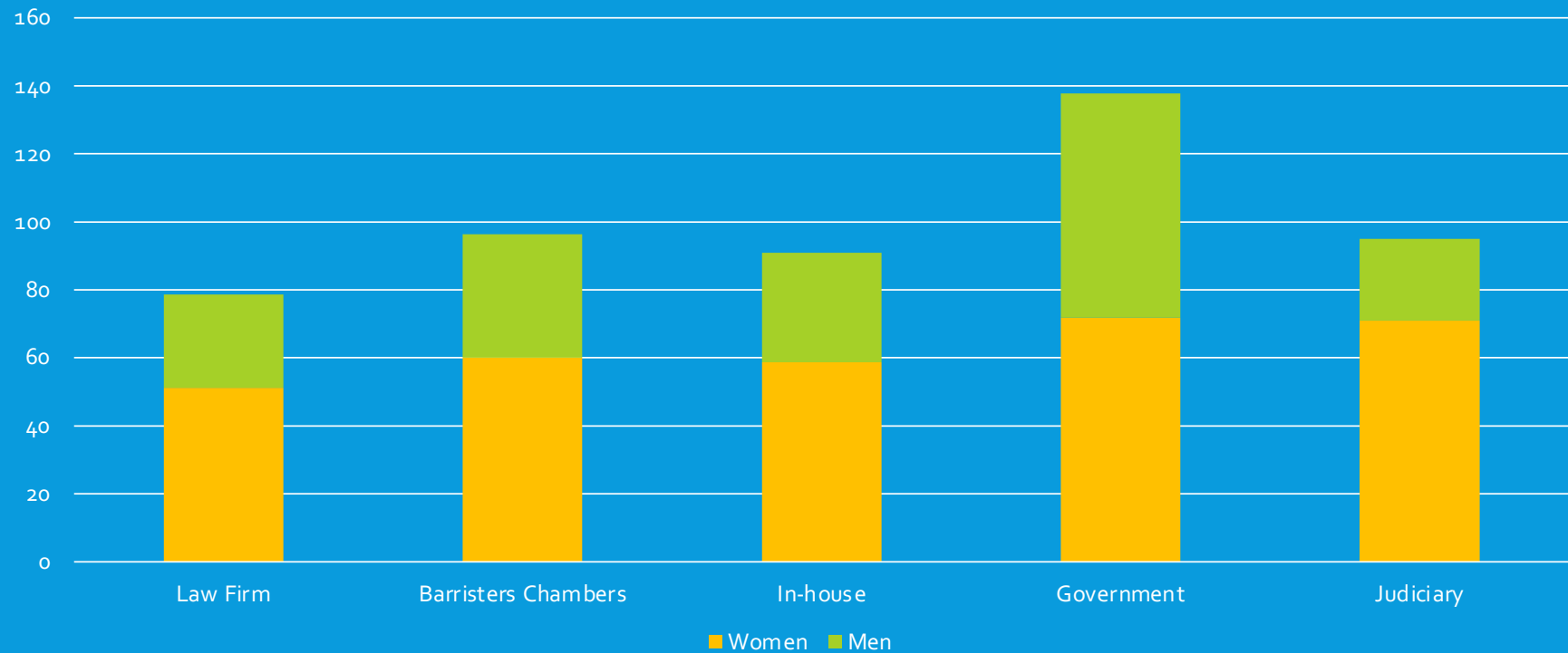
BULLYING

- *" I felt sick every day I went to work under this manager. He would have fits of rage – screaming at me, violently kicking filing cabinets while I cowered in the corner of my tiny office. I was frightened of him in those moments. He would go to lunch with the rest of the office and I was never invited."*

BULLYING

- *" I was systematically bullied to the extent I considered, for the first time, taking my life. My confidence was shattered. I began to doubt myself in every aspect of my life, work and personal. The advice I received from the Law Society was appalling. It was, 'just get on with it!'*

BULLYING – GENDER & WORKPLACE



HISTORY: JUDICIAL BULLYING

The war stories

“If you can’t stand the heat,
get out of the kitchen”

Hon. Justice Michael Kirby
wrote ‘*Judicial Stress and
Judicial Bullying*’ describing
judicial stress and bullying as the

“unmentionable subject”
within the legal profession.

QUALITY OF WORKING LIFE SURVEY BY NSW BAR ASSOCIATION

- 34% of barristers dissatisfied with the quality of their work life
- Female barristers significantly lower level of satisfaction than male barristers
- 67% experience stress at work

- 66% of barristers reported being the subject of judicial bullying
- 20% also reported bullying by peers
- 2018 Victorian survey found that 59% experienced judicial bullying

POSSIBLE CAUSES

- Inapt judicial temperament
- Vicarious trauma
- Isolation
- Timetable pressures
- Incompetency of advocates

CULTURAL CHANGE AND JUDICIAL BULLYING

- In recent years, through committed advocacy and education, the topic of judicial bullying has received growing attention.
- Victoria's Chief Justice of the Supreme Court, Anne Ferguson - "courts were no different to other workplaces....[they] should be safe and respectful."
- Arthur Moses SC, former president of the NSW Bar Association, "judicial bullying cannot be tolerated"
- "Judicial bullying: the view from the Bar," Kylie Nomchong SC, Judicial Officers Bulletin, Volume 30, Issue 10 (November 2018)
- Judicial Protocols