

**PROCEDURE TO DEAL WITH GRIEVANCES CONCERNING
DISCRIMINATION, SEXUAL HARASSMENT AND WORKPLACE BULLYING**

July 2022

- 1 The Western Australian Bar is committed to providing a working environment where barristers and those engaging with barristers can conduct themselves free from discrimination, sexual harassment and workplace bullying. Members join The WA Bar with a commitment to, among other things, the highest standards of competence and ethical practice, the support and nurturing of younger barristers, and respect for the rule of law, including equality before the law. This commitment demands respectful behaviour by the members of the Bar.
- 2 Rule 123 of the *Legal Profession Uniform Conduct (Barristers) Rules 2015* provides:
 - (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.*
- 3 Given the commitment to the highest standards of competence and ethical practice, members of The WA Bar should be proactive in addressing discrimination, sexual harassment or bullying when they arise. Members do not have to wait until a person affected by such conduct reports or complains about that conduct before acting (although, discussing the matter with the person affected by the conduct is a recommended first step).
- 4 Where:
 - 4.1 a person witnesses or experiences a barrister engaging in discriminatory, sexually harassing or workplace bullying behaviour; or
 - 4.2 a barrister experiences a person engaging in discriminatory, sexually harassing or workplace bullying behaviour,

this Procedure sets out ways of reporting that behaviour or making a complaint about that behaviour. The purpose of this Procedure is to assist with the resolution of any such grievance, whether by way of complaint or other report, of discriminatory, sexually harassing or workplace bullying behaviour.

- 5 This Procedure does not cover the field – there are other ways that a person may wish to report or complain about discriminatory, sexually harassing or workplace bullying behaviour. For example, a person may wish to report or complain directly to:
 - 5.1 the Legal Services and Complaints Committee;
 - 5.2 the Australian Human Rights Commission;
 - 5.3 the WA Equal Opportunity Commission; or
 - 5.4 WorkSafe WA.
- 6 The Procedure is divided into 2 parts – the first suggests a grievance handling procedure for grievances raised with The WA Bar. This Procedure is also available for Chambers to adopt or modify as they see fit. The second part sets out the role of grievance stewards.
- 7 It is important to note that although any grievance will be dealt with confidentially and impartially, neither Chambers nor The WA Bar can guarantee that the anonymity of a person reporting a matter, or of a person the subject of a report can be protected. It should go without saying that subjecting a person to detriment because they have raised, or they propose to raise, a grievance may, of itself, constitute workplace bullying.

Part 1 – The WA Bar's Grievance Handling Procedure

In Western Australia there are a number of sets of barristers' Chambers providing accommodation and services appropriate to a variety of modes of practice. Members of The WA Bar generally work from, or are affiliated with, a set of barristers' Chambers. Some Chambers have their own grievance handling procedure – other Chambers may adopt The WA Bar's Procedure. Where Chambers adopt this Procedure, the names of those Chambers, and the contact details for Chamber's grievance steward/s will be recorded here and on The WA Bar's website.

Where Chambers relevant to a proposed grievance has adopted this Procedure, a person with a grievance can contact the nominated grievance steward to discuss the grievance with them and this Procedure will apply.

Whether or not the relevant set of Chambers has adopted The WA Bar's grievance handling Procedure, a person with a grievance can contact any of the grievance stewards listed on The WA Bar's website and this Procedure will apply. The WA Bar's list of grievance stewards will be reviewed on behalf of Bar Council every two years.

Alternatively, a person with a grievance can contact the relevant set of Chambers by telephone or through their website in order to find out how to report or complain about discriminatory, sexually harassing or workplace bullying behaviour.

For The WA Bar and participating sets of Chambers, the Grievance Handling Procedure is as follows

8 A person who:

- 8.1 witnesses or experiences a barrister engaging in discriminatory, sexually harassing or workplace bullying behaviour; or
- 8.2 is a barrister and witnesses or experiences a person engaging in discriminatory, sexually harassing or workplace bullying behaviour,

should, if they can, attempt to sort out their grievance about the behaviour with the person or people involved. It is recommended that this occur as soon as possible after the grievance arises but The WA Bar and the Chambers recognise that, for many reasons, this is not always possible.

9 If a person with a grievance whether because they experienced or because they witnessed discriminatory, sexually harassing or workplace bullying behaviour needs or would prefer assistance:

- 9.1 they can talk to a grievance steward for the relevant set of Chambers; or
- 9.2 they can seek help from any of the grievance stewards listed on The WA Bar's website.

10 The action taken in response to a grievance will depend on the type of action that the person raising the grievance wants to take, and the nature and gravity of the conduct complained of.

- 11 If the person with a grievance wants to report their grievance but not make a complaint, the report will be recorded as set out at paragraphs 15 to 17 below but not be investigated.
- 12 If the person with a grievance wants to make a complaint to Chambers or The WA Bar, Chambers or The WA Bar (as appropriate) will:
 - 12.1 take full details of the complaint from the complainant and make a record of it as set out in paragraphs 15 to 17 below;
 - 12.2 where the complainant is a bystander, make confidential enquiries with the person or people who were the subject of the discriminatory, sexually harassing or workplace bullying behaviour to find out whether they want to participate in the complaint, not participate in the complaint, or whether they want to veto the complaint being progressed;
 - 12.3 if the subject of the discriminatory, sexually harassing or workplace bullying behaviour vetos the complaint being progressed, or where more than one person was the subject of the behaviour, all those people veto the complaint being progressed, the complaint will be treated as a report under paragraph 11 and recorded as set out in paragraphs 15 to 17 below.
- 13 Otherwise, the steps to be taken to progress the complaint, including the timing of what steps will be taken, are to be determined by the grievance steward (as appropriate) in consultation with the person who makes the complaint. None of the following steps is compulsory, but steps to progress the complaint may include:
 - 13.1 a grievance steward supporting the complainant in action by them to discuss the conduct complained about with the people involved;
 - 13.2 a grievance steward making confidential enquiries of those alleged to be involved in, or witness to, the conduct complained of;
 - 13.3 a grievance steward and / or a member of the relevant Chamber's governing body and / or a member of Bar Council informally approaching the person or people complained about and making clear that conduct of the sort complained of is not acceptable;
 - 13.4 mediation / conciliation;
 - 13.5 referring the complaint to Bar Council to consider whether the complaint should be referred for disciplinary action by Bar Council;
 - 13.6 referring the complaint to Bar Council to consider whether the complaint should be referred by Bar Council to the LSCC or other relevant organisation.
- 14 At any time after investigating the complaint, with the agreement of the complainant or the President (or if the President has a conflict of interest, the next most senior unconflicted member of Bar Council) grievance steward may decide to take no further action.
- 15 Where a report or complaint is made of discriminatory, sexually harassing or workplace bullying behaviour, Chambers or The WA Bar (depending on who receives the complaint) will record:
 - 15.1 how many people have reported or complained of the discriminatory, sexually harassing or workplace bullying behaviour, including how many of those people are members or employees of Chambers or The WA Bar (as the case may be);

- 15.2 how many people are said to have taken part in the discriminatory, sexually harassing or workplace bullying behaviour, including how many of those people are members or employees of Chambers or The WA Bar (as the case may be); and
 - 15.3 whether the grievance concerns bullying, harassment (sexual or otherwise) and / or discrimination (and if so, on what basis).
- 16 Where the grievance is by way of report, rather than complaint, Chambers and The WA Bar will not record the names of:
- 16.1 the people reporting the discriminatory, sexually harassing or workplace bullying behaviour; or
 - 16.2 the people reported to have taken part in the discriminatory, sexually harassing or workplace bullying behaviour, or identify them in any other way.
- 17 Chambers and The WA Bar may use the information above for their own reporting, and to better inform training and awareness needs and other initiatives of Chambers and The WA Bar.

Part 2 – The role of grievance stewards

18 Grievance stewards are the people nominated by Chambers or by The WA Bar to be the contact point for any person with a grievance. So, where:

- 18.1 a person witnesses or experiences a barrister engaging in discriminatory, sexually harassing or workplace bullying behaviour; or
- 18.2 a barrister experiences a person engaging in discriminatory, sexually harassing or workplace bullying behaviour,

and wants to report it or make a complaint about it, they raise that grievance with a grievance steward nominated by the relevant set of Chambers, or by The WA Bar.

19 Grievance stewards receive the initial grievance and work with the person or people raising the grievance about how to progress it. For example, the grievance steward:

- 19.1 will meet with the person or people raising the grievance to obtain information about the grievance and their views on what will resolve the grievance, and what potential outcomes might be available or achievable;
- 19.2 may meet with the person or people raising the grievance to explain this Grievance Handling Procedure;
- 19.3 may consider whether they are the best person to help the person or people with the grievance – issues such as the gravity of the matters the subject of the grievance, and conflicts of interest are relevant here;
- 19.4 if requested to do so, may meet with the person or people complained about (with or without the person or people with the grievance) to discuss the conduct complained about and, as appropriate:

19.4.1 get those parties' side of the story; and / or

19.4.2 make clear that conduct of the sort complained of is not acceptable or is in breach of the Barristers' Rules;

- 19.5 may discuss mediation and conciliation with the person or people with the grievance and other parties, and identify suitable mediators or conciliators;
- 19.6 if requested to do so, may refer the matter to Bar Council in relation to meeting with the person or people complained about, disciplinary action, or a reference to the LSCC or other relevant organisation;
- 19.7 report to Chambers or The WA Bar's chief executive, as appropriate about the progress of the grievance, including whether it has been resolved or should otherwise be brought to an end.

20 The grievance steward is also responsible for giving The WA Bar's chief executive, or Chambers (as appropriate) information for Chambers or The WA Bar's records that a report or complaint has been made, and setting out:

- 20.1 how many have made the report or complaint, including how many are members or employees of Chambers or The WA Bar, and how many are not;
- 20.2 how many people the report or complaint is made about, including how many are members or employees of The WA Bar and how many are not;

20.3 whether the complaint concerns bullying, harassment (sexual or otherwise) and / or discrimination (and if so, on what basis),

making sure that this information is deidentified as appropriate.

21 The grievance steward may also, if they think appropriate, suggest other support for a person making a grievance, such as counselling, or having a carer, guardian or other form of next friend or support person available as the grievance progresses.