MEMBERSHIP CONSULTATION

February 2022

Proposed Amendment to Continuing Professional Development Scheme in response to Bullying, Discrimination and Sexual Harassment within the Legal Profession.

Telephone: (08) 8981 5104
Email: lawsoc@lawsocietynt.asn.au
GPO Box 2388, Darwin NT, 0801
3/6 Lindsay Street, Darwin NT, 0800
ABN 62 208 314 893
www.lawsocietynt.asn.au

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About the Law Society Northern Territory

The Law Society Northern Territory (LSNT) is the peak professional body for legal practitioners in the Northern Territory.

It is a statutory body constituted under the *Legal Profession Act (NT)* and controls and regulates the affairs of the legal profession in the Northern Territory and advocates on behalf of the profession on both local and national policy issues.

Call for Submissions

The LSNT invites comments and submissions from members as to whether the Continuing Professional Development Scheme (CPD Scheme) should be amended to incorporate an additional core competency for 'bullying, discrimination and harassment'. Alternately, comments and submissions on other potential responses and/or approaches are invited.

Submissions can be sent to LSNT on or before **Friday 11 March 2022** by email to: ea@lawsocietynt.asn.au

Context

It is a condition of all practising certificates issued in the Northern Territory by LSNT that legal practitioners must comply with the CPD Scheme as set out in Schedule 2 of the *Legal Profession Regulations 2007*.

The CPD Scheme requires that for each CPD year a legal practitioner engages in legal practice, the practitioner must accrue 10 CPD points, of which at least 1 CPD point must be accrued in:

a) each of the 3 core competencies; and

b) a substantive law competency.

There 3 core competencies are:

1. Professional Ethics and Responsibility;
2. Practice Management and Business Skills; and
3. Professional Skills in Legal Practice.

The Issue/Background Discussion

The elimination of bullying, discrimination and harassment (including sexual harassment) in the legal profession throughout Australia has become an issue of paramount importance for the profession both locally and nationally. Sexual harassment in the legal profession and wider community is unacceptable.

As a member of the Law Council of Australia (LCA), the LSNT is supportive of the *LCA's National Action Plan to Reduce Sexual Harassment in the Australian Legal Profession* (National Action Plan). The National Action Plan proposes numerous solutions and recommendations including the development of professional development training for the legal profession.

No specific information is available for the Northern Territory, but surveys of other Australian jurisdictions show sexual harassment, bullying and discrimination are significant problems in workplaces throughout Australia, and more so in the legal sector.

Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces[1]	**Sexual Harassment in the Victorian Legal Sector**[2]	**Review of Harassment in the South Australia Legal Profession**[3]
33% or one-third of respondents advised that they had been sexually harassed in the last 5 years: ■ **39% women** ■ **29% men**[4]	**57%** of respondents personally experienced sexual harassment in the legal sector within the last 5 years: ■ **61% women** ■ **12% men**	**42.1%** of respondents had experienced sexual harassment while working in the legal profession: ■ **56.6% women** ■ **13.6% men**[5]
Workplace settings where there are a higher risk of experiencing sexual harassment are professions where there is an over-representation of men in senior leadership roles, masculine workplace culture, highly competitive or organised by hierarchical structures (including legal, medical, police and defence).[6]	Notably, there is a gross disparity between employers' and employees' perception on whether sexual harassment was common or very common in their workplaces: ■ **Employees – 23%** ■ **Employers – 1%** or whether it occurred sometimes: ■ **Employees – 41%** ■ **Employers – 5%**[7]	**42.1%** of respondents had experienced discriminatory harassment at least once. Sex (including pregnancy) was most common for experiencing of unfavourable treatment and offensive jokes. Other attributes includes age, caring responsibilities, marital status, race, gender identity, sexual orientation and disability.[8]

1 Australian Human Rights Commission, 'Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces' (2020) (Link) (**AHCR**, **Respect@Work**).

2 Victorian Legal Services Board and Commissioner, 'Sexual Harassment in the Victorian Legal Sector - 2019 study of legal professionals and legal entities' (2019) (Link) (**VLSBC, Victoria Legal Sector Report**).

3 Equal Opportunity Commission of South Australia, 'Review of Harassment in the South Australian Legal Profession', (2021) (Link) (**EOCSA, SA Legal Profession Review**).

4 AHCR, Respect@Work, 95-97.

5 EOCSA, SA Legal Profession Review, 56.

6 AHCR, Respect@Work, 20-21.

7 VLSBC, Victoria Legal Sector Report, vii.

8 EOCSA, SA Legal Profession Review, 67.

There have been a number of different responses to this issue both in Australia and New Zealand.

In 2020 the South Australian Legal Practitioners Education and Admission Committee, led by the Honourable Chief Justice Chris Kourakis made bullying, discrimination and harassment training mandatory as part of lawyer's annual CPD obligations in that state.

The Law Society of Tasmania has made the completion of the 'Law Society of Tasmania's Sexual Harassment, Changing Workplace Culture workshop' a condition of holding a practising certificate for Principal Practitioners and Barristers for the 2022 year.[9]

Options

The LSNT seeks commentary and submissions from members on the options set out below:

Option 1 – ***Introduction of additional core competency for 'bullying, discrimination and harassment' as part of the CPD Scheme.***

The introduction of a new core competency will not impact on the number of CPD points to be accrued in each CPD year which will remain at 10 CPD points each year. This option would however require members to accrue one CPD point each year in this new core competency.

This is the approach taken in South Australia.

The LSNT has recently licensed a Sexual Harassment and Workplace Culture Training Program developed by the Queensland Law Society which it will be providing free of charge to members from early 2022. This will be a 60 minute workshop and represent 1 CPD point in the proposed new core competency category.

There are also other industry specific training options available provided by CPD providers such as Legalwise or online provider LawCPD.

Option 2 – ***Impose a one off requirement that all members undertake the QLS Sexual Harassment and Workplace Culture Training Program as a condition of practice in 2022/23 only.***

As an alternative to an ongoing annual requirement, practitioners could be required to complete the QLS Training Program in 2022/23 as a condition of their practising certificate.

Standard conditions can be imposed by the LSNT Council on all practising certificates or only practising certificates in a particular category.

This is the approach taken in Tasmania with anyone holding a principal practitioner or barrister practising certificate in the 2021/22 year being required to complete the Law Society of Tasmania's Sexual Harassment, Changing Workplace Culture workshop by 30 April 2022.

9 The Law Society of Tasmania, Practising Certificate Conditions https://www.lst.org.au/in-practice/pii-insurance-and-practising-certificates/regulation-of-the-profession/practising-certificate-conditions/

Under this option, it is proposed that the condition be imposed on all practising certificates issued by LSNT in 2022/23 and not just to practitioners applying for Unrestricted Practising Certificates or Barrister Certificate categories.

Option 3 – *Impose a requirement that all members undertake 'bullying, discrimination and harassment' training every 3 years commencing in 2022/23.*

As an alternative to an ongoing annual requirement, practitioners could be required to complete a CPD related to bullying, discrimination and harassment once every 3 years.

This would be implemented by imposing a standard condition on all practising certificates in 2022/23 and every 3 years thereafter.

In 2022/23, this could be achieved by practitioners undertaking the QLS Sexual Harassment and Workplace Culture Training Program which will be rolled out by LSNT in 2022.

Option 4 – *Do Nothing.*

The LSNT also invites submissions on other potential options/approaches.

Acknowledgement

This Consultation Paper has been driven in large part by a submission received by the LSNT from Northern Territory Young Lawyers advocating for the introduction of a core competency for 'bullying, discrimination and harassment' as set out in Option 1 of this paper.

The LSNT acknowledges the work of Northern Territory Young Lawyers in bringing this issue to its attention.