



Inappropriate Personal Conduct in a Law Practice

The Office of the NSW Legal Services Commissioner (OLSC) strongly believes that everyone involved in the provision or receipt of legal services is entitled to an environment free from sexual harassment, discrimination, workplace bullying or other inappropriate conduct. Rule 42 of the [Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015](#) and Rule 123 of the [Legal Profession Uniform Conduct \(Barristers\) Rules 2015](#) prohibit conduct that constitutes discrimination, sexual harassment or workplace bullying. We are committed to eradicating such behavior from the legal profession.

The Law Council of Australia has called for an end to the “culture of silence” around sexual harassment. The Commissioner’s view is that such personal conduct by a lawyer is capable of amounting to professional misconduct. Professional misconduct includes conduct of a lawyer, whether it occurs in connection with the practice of law or otherwise, that would, if established, justify a finding that the lawyer is not a fit and proper person to engage in legal practice.

We encourage anyone who has been subjected to, has witnessed or has knowledge of discrimination, sexual harassment or workplace bullying by someone in a law practice to notify us, so that we can take appropriate action. If the harasser is not a lawyer, we still want any relevant information because the principal(s) of any law practice has a responsibility to prevent such conduct occurring. We have a highly dedicated and specially trained team to assist persons who notify us about such conduct, committed to holding the harassers to account.

Notifying the OLSC

Anyone can notify us about a lawyer’s (or other worker’s) inappropriate personal conduct, including persons who were the subject of it and persons who witnessed or have knowledge of it. You are not required to obtain permission from any other individual, or to have attempted addressing the lawyer’s (or other worker’s) conduct yourself, prior to lodging your notification with us.

You may request that your name and contact details are not disclosed to the lawyer or any other party, or you may provide your notification to us anonymously.

A notification can be made by accessing the relevant form (subject, witness or anonymous) on our [website](#). You may also contact us by telephone for assistance or further information on (02) 9377 1865.

What we will do with a notification

We will carefully and sensitively assess every notification of discrimination, sexual harassment or workplace bullying made by anyone.

If you have no objection to your identity being disclosed to the lawyer, we will act to the full extent of our powers to investigate allegations and, where appropriate, discipline any lawyer harasser. Your notification may be treated as a disciplinary complaint and handled as set out below under the heading “How we deal with disciplinary complaints”.

If you provide us with your name and contact details but request that they not be disclosed to the lawyer, or you notify us anonymously, we may be limited in the action we can take. If there is independent evidence of the inappropriate personal conduct by the lawyer (or other person) available, that does not directly or indirectly disclose your identity, the Commissioner may initiate a complaint and take investigative or disciplinary action without your further involvement. In circumstances where no independent evidence is available, it is unlikely we can take further action. However, the information you provide will assist us in monitoring and gathering data regarding inappropriate personal conduct by lawyers (and others), which may form reasonable grounds for compliance audits of law practices.

Please be aware that, even where you have requested that your identity is not disclosed or where you have made a notification anonymously, we may be called on to disclose the information you have provided to other state and Commonwealth agencies, or as otherwise required by legislation, a Court or Tribunal. For example, we have a duty to report serious criminal or other offences to Police or other authorities where there are reasonable grounds. There is a possibility this may result in the lawyer or another person becoming aware of your identity based on the information you have provided. However, we are determined to do everything in our power to safeguard the confidentiality of any information you are willing to provide to us, including contesting any such applications for disclosure in a Tribunal or Court to seek immunity from disclosure on public interest grounds.

How we deal with disciplinary complaints

These are the usual steps in dealing with a disciplinary complaint (where the person who has notified us does not object to their identity being disclosed):

1. Following receipt of a written notification or complaint, the OLSC conducts a preliminary assessment. The aim of preliminary assessment is to identify the allegations being made, assess whether the conduct complained of would, if established, amount to unsatisfactory professional conduct or professional misconduct and assess whether the available material provides a factual basis for the allegations made. The OLSC is not bound by rules of evidence and may inform itself of any matter in any manner as it thinks fit. We may request further information from the complainant, the respondent lawyer or any other person who may have relevant information.
2. After preliminary assessment the complaint may be closed without further consideration of its merits, or an investigation may be commenced. If an investigation is commenced, the lawyer is notified of the complaint and must, as soon as practicable, be given a summary or details of the complaint and a notice informing them of their right to make submissions. It is OLSC's usual practice to give the lawyer a complete copy of the complaint however there may be good reasons in a particular matter to provide only an edited summary.

When the submissions from the lawyer are received they are ordinarily forwarded to the complainant for comment. Information may also be sought from persons other than the lawyer. The Commissioner has coercive powers to compel the provision of written information and the production of documents, by the lawyer and other persons.

3. On completion of an investigation, there are a number of options depending on the nature of the conduct complained of and the available evidence.
 - i. The file may be closed, if the complaint is found not to have reached the threshold for disciplinary action.
 - ii. If the Commissioner finds the lawyer has engaged in unsatisfactory professional conduct, he may make various orders cautioning or reprimanding the lawyer, an order requiring an apology from the lawyer, an order requiring the lawyer to undertake training or counselling or be supervised, an order requiring the lawyer to pay a fine (not exceeding \$25,000.00) or an order recommending the imposition of specified conditions on the lawyer's practising certificate.
 - iii. If the Commissioner is of the opinion that the conduct may amount to unsatisfactory professional conduct that would be more appropriately dealt with by the Occupational Division of the NSW Civil and Administrative Tribunal (the disciplinary Tribunal), he may initiate and prosecute disciplinary proceedings in the Tribunal. A complainant may be required to give evidence in the proceedings.
 - iv. If the Commissioner is of the opinion that the alleged conduct may amount to professional misconduct, he may initiate and prosecute proceedings in disciplinary Tribunal. As noted above, a complainant may be required to give evidence in the proceedings.

In addition to the orders available to the Commissioner (outlined in (ii) above), the Tribunal may make orders restricting the lawyer's entitlement to practise.

The complainant and the lawyer will be given written notification of the Commissioner's decision, and a statement of reasons for the decision.

4. Disciplinary action taken against a lawyer may be published on the Register of Disciplinary Action maintained by the OLSC, which is accessible to members of the public.

Possible outcomes

Notifying the OLSC about inappropriate personal conduct in a law practice may have many positive outcomes, including:

- empowering you to talk about your experience and how the conduct made you feel
- preventing similar conduct happening to you or someone else
- obtaining an outcome that may be personally significant, such as an apology, a change in the law practice's policies, or disciplinary action against the harasser
- financial compensation, in limited circumstances

You may also wish to think about the following, if you notify us:

- you will have to discuss what happened to you which some people find upsetting
- the harasser may deny your side of the story and say things you don't like
- it may further damage your relationship with the harasser
- you may not get everything you want, for example, in financial terms
- it can be time-consuming

Law practices and barristers' chambers

Beyond individual lawyers who engage in inappropriate personal conduct, it is the OLSC's view that law practices and barristers who practice together from chambers have an obligation to prevent a culture of workplace harassment, bullying or sexual harassment. Practices or chambers that fail to address a culture of harassment and bullying will also be held to account. The OLSC may conduct compliance audits of law practices and issue management system directions to ensure that proper policies and processes are in place to discourage harassing or bullying behaviour and to encourage early reporting.

While the legislation does not provide for audits of barristers' chambers, the OLSC aims to proactively work with clerks and Heads of Chambers to assist in developing and reviewing appropriate policies and procedures to address harassment and bullying.

In circumstances where an individual who has been the subject of harassment or bullying ceases employment at a practice or departs from chambers, it is the OLSC's view that a non-disclosure agreement does not preclude OLSC from dealing with a complaint about the conduct. However, individuals should seek their own legal advice as to whether making a complaint may breach the terms of any particular non-disclosure agreement, and possible consequences.