

Statement from the Chief Justice of the Supreme Court of Victoria and Chair of Courts Council, Anne Ferguson, on behalf of the Victorian courts and the Victorian Civil and Administrative Tribunal (VCAT)
18 October 2022

Preventing sexual harassment in Victoria's courts and tribunals is an absolute priority.

Sexual harassment will not be tolerated under any circumstances.

To ensure our workplaces are safe, respectful and fair, we continue to examine the risks that exist and introduce measures to address them. The report released today concerns the arrangements for staff working directly with the judiciary and marks an important further step in that process.

We know the great harm that has been caused when judicial officers have abused their position and sexually harassed staff. We know staff have felt they could not disclose this or make a complaint for fear of adverse repercussions. We know the responsibility lies with us as leaders of the Courts and VCAT to prevent it, to take action if we see or hear about it, and to ensure that staff know they can report it without fear and that they will be supported. This responsibility extends to all judicial officers.

This latest report stems from the Review into Sexual Harassment in the Victorian Courts and VCAT completed by Dr Helen Szoke AO in 2021. That Review was commissioned by the then Attorney-General and I in July 2020.

Dr Szoke's Report set out recommendations to prevent sexual harassment, improve reporting and support for those who experience it, and increase awareness and accountability.

Of Dr Szoke's 16 recommendations directed to Court Services Victoria (CSV), Heads of Jurisdiction, Courts Council, the Judicial College and Judicial Commission, 12 are now complete and 4 are underway. We also release today a [Report Card](#) on what we have done and still have to do.

Recommendation 4 from Dr Szoke's Report was for CSV to commission an independent expert to review and make recommendations on the recruitment processes and working arrangements for CSV staff who work in a primary relationship with judicial officers.

The Hon Julie Dodds-Streton KC, assisted by Jack O'Connor of Counsel, was engaged to undertake this work. Ms Dodds-Streton is a former Judge of the Supreme Court of Victoria and the Federal Court of Australia and has undertaken investigations into judicial conduct including alleged sexual harassment.

Ms Dodds-Streton's Report contains 27 recommendations (attached). Courts Council has endorsed them and has begun working through how they will be implemented.

A number of the recommendations align with or expand on key recommendations from the earlier Szoke Report that have already been implemented, including:

- Regular statements from judicial leadership that sexual harassment will not be tolerated and promoting a culture of respect;
- Induction and training for judicial officers and staff, including bystander training to enable and encourage intervention; and
- Victim-centred policies and complaint processes and strong support frameworks.

The Report notes some of the unique aspects of the working relationship between judicial officers and staff. It highlights the great opportunities the roles provide for early career lawyers in particular, the value they bring to the administration of justice in the courts and VCAT and the importance of maintaining those benefits.

The Report does not suggest that sexual harassment of staff working with judicial officers is widespread, but identifies risk factors which exist and the great harm caused when it has occurred. The recommendations focus on specific actions for this particular group of staff to reduce their isolation and reliance on a single judicial officer by:

- Designating 'staff judges' as an additional, authoritative and trusted point of connection for staff from their induction onwards;
- Broadening their connections across the organisation with other judiciary and staff;
- Providing clear channels of communication to raise issues; and
- Establishing policies that encourage reporting by providing reassurance that employment will not be adversely impacted.

I thank the Hon Julie Dodds-Streeton KC and Mr O'Connor for their work on the Report (available at <https://www.courts.vic.gov.au/review-recruitment-and-working-arrangements>). I also thank the many people who contributed to it, sharing their insights and experiences through the interviews and forums that were conducted which helped to shape the recommendations.

History has shown that sexual harassment is not a simple problem to solve and the Courts, VCAT and CSV are not alone in addressing it. Our commitment remains unwavering.

We remain focused on doing all we can to build cultures of respect, fairness, and inclusion.

Recommendations

Recommendation 1

The Supreme Court and County Court should implement measures to diversify the demographic composition of, and include some longer-term appointees in, the associates' workforce. It should, to the extent feasible, encourage the recruitment of some more professionally experienced associates, including from a variety of cultural and social backgrounds. It should also attempt to retain a modest proportion of associates in continuing positions or on long-term contracts.

Recommendation 2

We recommend that the induction of associates and court staff who work in a primary relationship with judicial officers include instruction and training (preferably from a reputable external provider). The instruction and training should:

- 2.1. acknowledge that there have been incidents of sexual harassment or inappropriate sexualised conduct by judicial officers towards court staff and other junior legal staff and explain the risk factors (including the particular vulnerabilities of chambers staff);
- 2.2. include instruction and guidance on the behaviours that constitute sexual harassment or inappropriate sexualised conduct and acknowledge grey areas, including overlaps with bullying;
- 2.3. outline legislation, court policies and codes of conduct that mandate a safe and respectful workplace and prohibit sexual harassment and other misconduct, including by judicial officers;
- 2.4 include realistic hypotheticals and scenarios specifically tailored to the court workplace and the employees' interactions with judicial officers and others;
- 2.5 include specific reference to any applicable policies, guidelines for attending circuit and hypotheticals based on working on circuit (or otherwise away from the court);
- 2.6 outline the policies, and provide written materials, on the reporting options available to employees (including anonymous, informal communications) who consider that they (or others) have been subjected to inappropriate sexualised or improper conduct in the workplace, including by a judicial officer;
- 2.7 acknowledge that judicial officers and other senior court officers also receive similar instructions and training on sexual harassment and other inappropriate conduct in the court as a workplace;
- 2.8 refer to the possible processes and potential outcomes of the different reporting or informal communication options, for both the employee and a judicial officer the subject of a complaint. The information should refer to possible reassignment to a different judicial officer and options for obtaining references. The information should also refer to the relevant policy on reassignment (if Recommendation 15 is adopted); and

2.9 include guidance on how to navigate the power disparity to decline any inappropriate or sexualised requests and unwanted social or personal invitations from a judicial officer.

Recommendation 3

We recommend that the induction of judicial officers include instruction and training (preferably by a reputable external provider) that should:

3.1 acknowledge that there have been incidents of sexual harassment or inappropriate sexualised conduct by judicial officers towards court staff and other junior legal staff and explain the risk factors (including the particular vulnerabilities of chambers staff);

3.2 include instruction and guidance on the behaviours that constitute sexual harassment or inappropriate sexualised conduct and acknowledge grey areas, including overlaps with bullying;

3.3 outline legislation, court policies and codes of conduct that mandate a safe and respectful workplace and prohibit sexual harassment and other misconduct, including by judicial officers;

3.4 include realistic hypotheticals and scenarios specifically tailored to the court workplace and the employees' interactions with judicial officers and others;

3.5 provide guidance on navigating the power disparity with chambers staff, including on how to avoid inappropriate sexualised or personal requests, how to provide staff with an opportunity to decline unwanted social or personal invitations and how to address the tendency of junior staff to interpret the requests of judicial officers as commands;

3.6 include specific reference to any applicable policies, guidelines for attending circuit and hypotheticals based on working on circuit (or otherwise away from the court);

3.7 refer to the policies, and provide written materials on, reporting options available to employees (including anonymous informal communications) who consider that they (or others) have been subjected to inappropriate sexualised or improper conduct, in the workplace, including by a judicial officer;

3.8 refer to the possible processes and potential outcomes of the different reporting or informal communication options, for both the employee and a judicial officer the subject of a complaint; and

3.9 include basic instruction on legislative requirements for a safe workplace, judicial officers' legal responsibilities to staff, practices regarding hours, chambers workloads, professional boundaries and standard practice for managing and supervising their chambers staff.

Recommendation 4

We recommend that the Courts and VCAT appoint several “staff judges” to welcome and speak, on induction, with new judicial officers, new associates and other CSV employees who will work closely with judicial officer about judicial conduct, to check on wellbeing at intervals and to be available to advise.

Recommendation 5

We recommend that where staff judges are appointed, the courts and VCAT should appropriately recognise their additional responsibilities and recognise their additional responsibilities and role.

Recommendation 6

We recommend, consistently with Rec 1 of the Szoke Report, that the heads of jurisdiction and other leaders in Victorian courts and VCAT publicly communicate at regular intervals a clear message to judicial officers and court staff that the court prioritises a safe workplace, and will not tolerate sexual harassment or bullying.

Recommendation 7

We recommend that heads of jurisdiction (and/or senior judges) should, on the induction of new judicial officers, explicitly and clearly message that sexual harassment and bullying will not be tolerated.

Recommendation 8

We recommend that the courts and VCAT, on induction and regularly thereafter, encourage (through education, training and reinforcement by the heads of jurisdiction and senior judges) greater involvement and commitment by the entire body of judges to eliminating sexual harassment as consistently sought by CSV staff. This, in concert with the implementation of other recommendations, will facilitate lasting cultural change.

Recommendation 9

We recommend that appropriate lines of communication be established between staff judges and CSV.

Recommendation 10

We recommend that in appropriate cases the heads of jurisdiction should consider whether to exercise their discretion to:

- proactively direct or require a judicial officer to engage in further training or education,
- work with CSV to ensure that chambers staff are not assigned to a judge, or are assigned only on specified conditions; and
- give, to the extent consistent with any applicable limitations, directions in relation to the judicial officer’s sittings or case allocations.

Recommendation 11

We recommend that the courts should, to the extent possible, introduce flexible short-term staff exchanges or rotations, to ensure that chambers staff are known to several judges.

Recommendation 12

Each court and tribunal seek to reduce segregation and foster a sense of collegiality among judicial staff, particularly associates and short-term chambers staff. We suggest that this may be done by:

- providing a room or space for the use of judicial staff to meet during breaks throughout the workday, stocked with tea and coffee facilities;
- arranging optional events for judicial staff to create opportunities for staff to meet one another and socialise; and
- arranging events, lectures or classes (open to all working in the court) to provide opportunities for staff and judges at all levels to become mutually acquainted (for example, lunch time addresses on topics of interest, musical events, or well-being classes).

Recommendation 13

We recommend that a CSV representative, as standard practice, attend recruitment interviews of associates and other chambers staff.

Recommendation 14

We recommend that judges retain the final decision on appointment of associates and similar chambers staff.

Recommendation 15

We recommend that the courts publish a clear policy outlining how, and in what circumstances, chambers staff may be reassigned to work with another judge in the event of relationship difficulties.

Recommendation 16

We recommend that in the Supreme Court and County Court, CSV should clearly articulate and explain to new associates and similar chambers staff, on induction, the applicable reporting lines and the limits of their role.

Recommendation 17

We recommend that CSV should arrange for regular meetings between judicial services coordinators and associates to check on the wellbeing of associates.

Recommendation 18

We recommend that during induction, an appropriate CSV staff member meet with incoming staff members to describe the relevant CSV policies on sexual harassment and avenues of reporting.

Recommendation 19

We recommend that peer support mechanisms / buddy systems should be introduced where not yet in place, and social interactions for chambers staff, particularly associates, facilitated.

Recommendation 20

We recommend that all courts consider the feasibility of introducing very brief, but regular “town hall meetings” to be held electronically, attended by the head of jurisdiction, the CEO and some senior judges, at which news and announcements can be made and questions raised (anonymously if preferred) and to which all court workers, including judges, are invited.

Recommendation 21

We recommend, consistently with Rec 9 of the Szoke report, that CSV, the courts and VCAT provide multiple and varied means for making a complaint or raising a concern about inappropriate judicial conduct, including sexual harassment.

Recommendation 22

We recommend that:

- (a) surveys of judicial staff be conducted; and
- (b) CSV, together with the heads of jurisdiction, consider the feasibility of implementing a system whereby CSV keeps records of staff complaints and expressions of concern (falling short of complaint) about inappropriate judicial conduct.

Recommendation 23

We recommend that the courts and the legal profession should, consistently with legislative, privacy or related limitations, and the needs and wishes of complainants, promote and facilitate publication of reports (redacted where appropriate) of investigations of allegations of significant judicial misconduct in cases where those allegations have been found to be substantiated. Appropriate measures to preserve the anonymity of complainants and other potentially affected persons should be adopted. We recognise that the competing interests must be balanced, which may require consultation and legislative amendment. The identity of the judge should be disclosed save where this would identify the complainant or others, or in otherwise exceptional circumstances.

Recommendation 24

We recommend that each jurisdiction adopt a practice of encouraging participation in an exit interview when court staff leave their position with a judicial officer (including associates, researchers, trainee court registrars, lawyers and registrars in the Coroners Court, and member support officers). The exit interview should provide an opportunity to express concerns about the employee’s interactions with other persons in the workplace,

including judicial officers and about any sexual harassment, bullying or other inappropriate conduct.

Recommendation 25

Tackle “Open Secrets”

We recommend that CSV take steps to ensure that:

(a) it is in a position to identify those judicial officers who are known or suspected by staff to engage in misconduct; and

(b) it is proactive in taking steps to protect the health and safety of its employees once it becomes aware of a potential risk to staff presented by alleged misconduct.

Recommendation 26

We recommend that the courts should devise and adopt appropriate arrangements for travel and accommodation on circuit, and should promulgate guidelines for circuit to ensure wellbeing of judges and staff.

Recommendation 27

We recommend that the operation of each of the recommendations in this Report adopted by CSV (whether across each jurisdiction or only in select jurisdictions) be reviewed by CSV within three years of the implementation of those recommendations.