



**Invitation to submit as to the *Judges' Pensions Amendment (Pension Not Payable for Misconduct) Bill 2020***

Thank you for the opportunity to provide feedback on the *Judge's Pensions Amendment (Pension Not Payable for Misconduct) Bill 2020* ('the Bill'). These opportunities are an essential backbone to the advancement of women in the legal profession.

As one of the main bodies advancing the interests of female lawyers within the state of Queensland, the Women Lawyers Association of Queensland ('WLAQ') supports the introduction of the Bill.

**The intention of the Bill**

The WLAQ agrees with, and commends, the sentiments expressed by Senator Patrick in his Second Reading Speech on 6 October 2020.

The legal profession, at least in regard to the number of admitted solicitors, comprises more women than men<sup>1</sup>. As such, representation of women and the impact upon their continued advancement is an integral area of interest for WLAQ.

Women barristers, on the other hand, in Queensland, comprise a much smaller group. As at the time of writing, there were 280 female barristers in the State of Queensland who were registered as members, in various capacities, of the Bar Association of Queensland (compared to 850 registered male barristers)<sup>2</sup>.

One of the aims of WLAQ and other diversity bodies across the country is to achieve a legal profession that is truly representative of the community at large by, *inter alia*, raising awareness and proposing changes on issues facing women in law.

With that in mind, WLAQ's historical focus has also been upon the advancement of women into judicial positions on merit. WLAQ is a current member of the Judicial Appointments Advisory Panel which provides advice on the suitable appointment of candidates for state jurisdictions. This Panel is an important component of a more transparent process of judicial appointment.

These subject matters all align with the governing principle of WLAQ, which focuses on diversity and inclusion of women into all facets of legal decision making. WLAQ also actively encourages women through mentoring programs, educational advice, diversity forums and other mediums available to it. Its committee members are diverse women from the legal profession who also sit on other committees representing those values.

In 2019, with the commencement of a criminal sub-committee as part of WLAQ, the committee surveyed women in the criminal field, in order to better appreciate the matters that women, in those roles, have had to confront. They ranged from prison visits to judicial bullying. Whilst sexual harassment specific to the judicial perspective was not a matter that was queried in the survey, sexual

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<sup>1</sup> See 3.2 of "National Profile of Solicitors", Australian Law Society Final at [https://www.lawsociety.com.au/sites/default/files/2019-07/2018%20National%20Profile%20of%20Solicitors\\_final%20report\\_190619.pdf](https://www.lawsociety.com.au/sites/default/files/2019-07/2018%20National%20Profile%20of%20Solicitors_final%20report_190619.pdf)

<sup>2</sup> See [www.qldbar.asn.au](http://www.qldbar.asn.au).

harassment within the legal profession generally was a well-known topic amongst our surveyed members.

Although no data exist as to the prevalence of sexual harassment by judicial officers, crime data generally suggests that women are five times more likely to be victims of sexual assault than men<sup>3</sup>. The 2018 National Survey showed that 33% of people who had been at their workforce had indeed experienced sexual harassment. Women (39%) were more likely than men (26%) to have so experienced sexual harassment within that time frame<sup>4</sup>.

Indeed, the Queensland legal profession, following the result of the inquiry by the Chief Justice of Australia, has tried to implement processes or policies that not only rebuke sexual harassment in the legal industry but also allow for a process facilitating informal and formal complaint. The Queensland Law Society has issued a Sexual Harassment Policy<sup>5</sup>. The Queensland Bar Association has a Sexual Harassment Policy and specific committees that deal with informal and formal complaint processes<sup>6</sup>.

WLAQ has a designated support person, that role being performed by one of the most experienced legal members of its committee, who acts as a support and sounding-board to persons who wish to discuss bullying or harassment issues<sup>7</sup>. This is yet another example of not only the reach of WLAQ but the enthusiasm for this very important topic that affects female lawyers.

Having reviewed the material that you have provided with respect to the proposed legislation as it pertains to judicial pensions, we are highly supportive of the concept underpinning the proposed legislation. WLAQ supports the proposition that demonstrated serious misconduct ought to result in the rejection of any claim by retired judicial officers to continued receipt of a judicial pension upon their retirement.

This parallels neatly with the general community expectation of conduct of those in high office.

### **'Serious misconduct'**

We note that 'serious misconduct' is not expressly defined in the Bill.

According to the Explanatory Memorandum, the phrase 'serious misconduct' is adopted from the Governor-General Amendment (Cessation of Allowances in the Public Interest) Bill 2019 and the *Fair Work Act 2009* and that it *'...is intended to provide the Parliament with maximum discretion to determine the scope, pervasiveness and impact of a Judge's behaviour when determining what serious misconduct is.'*

For the purposes of the *Fair Work Act 2009*, 'serious misconduct' is defined by the *Fair Work Regulations 2009*<sup>8</sup>. In short, it is defined there as including:

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<sup>3</sup> See "Gender Indicators, Australia", released 15<sup>th</sup> December 2020, at <https://www.abs.gov.au/statistics/people/people-and-communities/gender-indicators-australia/2020>

<sup>4</sup> Australian Human Rights Commission, *Everyone's Business: Fourth National Survey on Sexual Harassment in Australian Workplaces* (2018) 26.

<sup>5</sup>

[https://www.qls.com.au/About\\_QLS/Queensland\\_Law\\_Society/Resources\\_publications/Corporate\\_documents/Right\\_to\\_information\\_information\\_privacy/Publication\\_scheme/Our\\_policies/Sexual\\_Harassment\\_Policy](https://www.qls.com.au/About_QLS/Queensland_Law_Society/Resources_publications/Corporate_documents/Right_to_information_information_privacy/Publication_scheme/Our_policies/Sexual_Harassment_Policy)

<sup>6</sup> <https://qldbar.asn.au/baq-cms/sexual-harassment-policy>

<sup>7</sup> <https://wlaq.com.au/wlaqsupportperson/>

<sup>8</sup> See regulation 1.07.

- Wilful or deliberate behaviour that is inconsistent with the continuation of the contract of employment; and
- Conduct that causes serious and imminent risk to the health or safety of a person, or the reputation, viability or profitability of the employer's business.

Specific examples of theft, fraud, assault, and intoxication are then given. Interestingly, sexual harassment is not provided as an example in that legislation.

Although sexual harassment is undoubtedly intended to be covered by the concept of "serious misconduct", we consider that there is value in having the phrase expressly defined so as to avoid any ambiguity. In that regard, WLAQ would specifically support sexual harassment being included as a specific example of "serious misconduct".

### **Proposed retrospectivity**

We do not express any legal opinion as to the retrospectivity that has been raised by virtue of the anticipated legislation, however we hereby acknowledge the difficulties that women face in the experience of sexual harassment and the possible further traumatisation that can occur with a complaint of the same. A historical complaint could be important in the determination of the appropriateness of a pension allocation.

### **Concluding remarks**

The experience of female lawyers is a vitally important issue for an organisation such as WLAQ. This experience affects not only those women who have been directly impacted by this conduct in the past, but also those women who are choosing law as a career today.

One of the objectives of WLAQ's 2021 strategic plan, is to focus upon sexual harassment in the legal industry. To that end, and as an aside, WLAQ would certainly encourage a working group that would focus upon sexual harassment in the legal industry.

Against that vital backdrop, your invitation to comment upon an issue that has clearly arisen from these crucial conversations is an opportunity for an organisation such as ours that has a dynamic role within the legal sector, make submissions to the government.

Legislation such as the one suggested will be another important stepping stone towards creating what should be the epitome of the legal profession: an atmosphere where such conduct simply is not allowed to occur.

We thank you again for the opportunity to provide some submissions that we hope will assist you in your final determinations as to this important issue.

### **Women Lawyers Association of Queensland**

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