

# "Girlfriends of the Court"

## Amicae Curiae

discrimination, human rights, lawyers, Women

The legal profession's treatment of women lawyers is a barometer of its ethics

In Career, Employment, law, women on **December 10, 2012 at 2:13 pm**

The release of the VEOHRC Report ([http://www.humanrightscommission.vic.gov.au/index.php?option=com\\_k2&view=item&id=1811:changing-the-rules-the-experiences-of-female-lawyers-in-victoria&Itemid=690](http://www.humanrightscommission.vic.gov.au/index.php?option=com_k2&view=item&id=1811:changing-the-rules-the-experiences-of-female-lawyers-in-victoria&Itemid=690)) into women in the legal profession raises a number of

important issues. We have already highlighted (<http://amicaecuriae.com/2012/12/05/numbers/>) the concerning lack of progress in terms of women's retention and progression in the profession. In this post, we explore the implications of these findings in terms of the health of the justice system.

The VEOHRC Report acknowledges that:

lawyers are in privileged positions, with practitioners being educated, empowered and not necessarily a group that is considered disadvantaged... As with all professions, gender inequality in the law, and the power structures that continue to support it, need to be addressed proactively at a systemic and organisational level, rather than solely being left to women making individual complaints.

This is true but we contend that the case for exploring sex discrimination in the legal profession goes further.

Lawyers are officers of the court. They are admitted to practise by the court in their relevant jurisdiction. As such, they are part of the justice system. Their behaviour and activities even outside their professional lives is open to scrutiny where it may impact upon the standing of the profession.

What the Report reveals however is that within the profession itself, women practitioners are treated not only unjustly, but in terms of respondents' experiences of discrimination and harassment, unlawfully. This does not accord with a profession that puts itself forward as maintaining high standards of integrity.

This reflects not only on law associations, but on the very legal system itself. It calls for an examination of the culture and practices that are normalised within the profession in its broadest sense. While the Report makes a range of sensible recommendations, many are targeted at individual practitioners and private firms. This may not be sufficient to generate the transformational cultural shift that is required.

Following a spate of tax avoidance cases featuring high profile barristers, not only the legislature (<http://www.bankruptcylawyers.com.au/legal-news/2001/2/27/crackdown-on-lawyer-tax-dodgers/>) but also the law associations (<http://www.nswbar.asn.au/docs/resources/media/show-mediarelease.php?id=94>) and most importantly, the courts (<http://www.theaustralian.com.au/business/legal-affairs/bankruptcy-isnt-the-end-for-barristers/story-e6frg986-111114360269>), stepped up and clarified the type of conduct that was expected of practitioners. Consequently, a practitioner's conviction for a tax offence has been expressly incorporated in considerations of professional misconduct. (See eg [here](http://www.austlii.edu.au/au/legis/qld/consol_act/lpa2007179/s424.html) ([http://www.austlii.edu.au/au/legis/qld/consol\\_act/lpa2007179/s424.html](http://www.austlii.edu.au/au/legis/qld/consol_act/lpa2007179/s424.html))).

In another example of expanding the notion of what it means to be a fit and proper person for practice, an applicant for admission to the court must now disclose academic misconduct during their studies and demonstrate insight into the unethical nature of this behaviour (see eg [here](http://library.liv.asn.au/fullRecord.jsp?recnoListAttr=recnoList&recno=27152) (<http://library.liv.asn.au/fullRecord.jsp?recnoListAttr=recnoList&recno=27152>) and [here](http://www.austlii.edu.au/au/cases/qld/QCA/2006/152.html) (<http://www.austlii.edu.au/au/cases/qld/QCA/2006/152.html>)).

Queensland Legal Services Commissioner John Briton wrote ([www.lsc.qld.gov.au/\\_\\_data/assets/pdf\\_file/0006/106197/lawyers-emotional-distress-and-regulation.pdf](http://www.lsc.qld.gov.au/__data/assets/pdf_file/0006/106197/lawyers-emotional-distress-and-regulation.pdf)) in 2009 that bullying and harassment are an important part of ethics in the profession. In spite of this, he has been unable to:

persuade the professional bodies that lawyers should be under an obligation even to cooperate with properly constituted investigations into suspected misconduct by their peers, let alone an obligation to pro-actively report suspected professional misconduct as is the case in England and Wales, for example, and as the *Legal Profession Act* already requires in relation to suspected irregularities in the handling of trust monies.

There are two aspects to this unwillingness to address these issues at the level of professional ethics. First, ethics in law has traditionally taken a regulatory rule-based approach rather than a much broader code of ethics approach. The former can lead to a compliance mentality rather than a reflective approach to behaviours and culture and its effect on those around us.

Secondly, and in the context of women practitioners, importantly, is that the profession remains made up primarily of men. This includes those in high office who are in a position to effect change. While women in these positions may have experienced discrimination and harassment, it is unlikely that many of the men have. Additionally, based on the findings of the Report (and others like it) many women do not speak out about their experiences of discrimination and harassment. Until the men in power gain an understanding of the reality of women lawyers' experiences, it is unlikely that they will be equipped to instigate change.

We observe as an aside, with the greatest respect, that attitudes in the courts themselves have sometimes represented bullying and sexist behaviours. We have written on this before. (See eg [here \(http://amicaecuriae.com/2012/02/22/the-law-and-tights/\)](http://amicaecuriae.com/2012/02/22/the-law-and-tights/) and [here \(http://amicaecuriae.com/2012/10/24/in-the-legal-profession-the-gender-card-comes-up-trumps/#more-1259\)](http://amicaecuriae.com/2012/10/24/in-the-legal-profession-the-gender-card-comes-up-trumps/#more-1259).)

The VEOHRC report contains valuable testimony of the experiences of women lawyers. The profession at large needs to listen carefully to this testimony and generate a cohesive response that is embraced at all levels. This issue requires leadership from the whole profession, including the courts, as a matter of justice and ethical practice.

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*\*Image courtesy of <http://www.howarddavidjohnson.com/myth&.htm>*

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