

Issues paper – Sexual harassment by judicial officers

The Commission will consider whether the sexual harassment prohibitions should extend to judicial officers. Recently, some judges have been accused of sexually harassing staff in their workplace. However, the elements of the sexual harassment provisions may be very difficult to make out because of the lack of an employment relationship between judges and their staff and other employees in a court. This may change if the requirement for the victim to prove disadvantage was removed.

The national association for judges has stated there is 'no reason' to treat judges differently from other members of the community. The Commonwealth's proposed changes to the *Sex Discrimination Act 1983* (Cth) (SDA) would purport to apply to a 'State judicial office', including State magistrates and judges. These changes raise the issue as to whether the Act should contain similar provisions.

An argument could be made that there is a more appropriate authority within each court that could deal with any complaints (for example, the Chief Justice).

The South Australian Act's recent reforms also extended to judicial officers so as to prohibit a judicial officer from subjecting to sexual harassment 'a judicial or non-judicial officer, or a member of the staff, of a court of which the judicial officer is a member'. The section does not apply, however, 'in relation to anything said or done by a judicial officer in court or in chambers in the exercise, or purported exercise, of judicial powers or functions or in the discharge, or purported discharge, of judicial duties. Conduct occurring in such circumstances may be the subject of a complaint under the *Judicial Conduct Commissioner Act 2015* (SA). There is no Judicial Conduct Commissioner in Western Australia.

The Commission invites submissions on whether the sexual harassment prohibitions should be extended to judicial officers and, if so, whether there should be any applicable conditions or exceptions. Without limiting the scope of submissions, they may detail whether there are other complaint mechanisms for victims of sexual harassment that are more appropriate.

A full discussion of these issues is in the Discussion Paper at page 142 [6.4.4].