

# Construction of a mandatory reporting requirement for lawyers

Submission to Office of the General Counsel, Victorian  
Department of Justice and Community Safety

**8 September 2021**



## Contents

Who we are.....	4
Construction of a mandatory reporting requirement for lawyers.....	5
Conclusion.....	7

## Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.<sup>1</sup>

The ALA office is located on the land of the Gadigal of the Eora Nation.

---

<sup>1</sup> [www.lawyersalliance.com.au](http://www.lawyersalliance.com.au).

## Construction of a mandatory reporting requirement for lawyers

1. The ALA welcomes the opportunity to respond to the consultation paper from the Office of General Counsel, Department of Justice and Community Safety ('DCJS') regarding the Construction of a mandatory reporting requirement for lawyers.
2. The ALA is opposed to the introduction of a mandatory reporting requirement as recommended by the Victorian Royal Commission into the Management of Police Informants proposal (Recommendation 86, Final Report).
3. The ALA Criminal Law Special Interest Group has expressed opposition to the introduction of a mandatory reporting requirement as recommended by the Royal Commission on the basis that any member of the legal profession who had evidence, as opposed to rumour, that a colleague was improperly discussing their client's instructions with police or any law enforcement agency, or who was acting contrary to their client's instructions, would be required to report this knowledge to the regulator under the current Uniform law Framework.
4. The ALA notes that in the high-profile case of Victorian barrister Nicola Gobbo that was considered by the Royal Commission, it is highly doubtful that a mandatory reporting regime would have resulted in Ms Gobbo being reported in the absence of actual knowledge, belief on reasonable grounds, or reasonable suspicion that she had engaged in the conduct.
5. In addition, the ALA notes that a mandatory reporting framework may result in unjust outcomes in relation to alleged conduct that is in breach of Rule 42 in the Uniform Solicitors' Conducts Rules 2015, which states:
  - 42.1 A solicitor must not in the course of practice, engage in conduct which constitutes:
    - 42.1.1 discrimination,
    - 42.1.2 sexual harassment, or
    - 42.1.3 workplace bullying.
6. The ALA strongly supports Rule 42 and is committed to the eradication of conduct that constitutes discrimination, sexual harassment or bullying in the legal profession. However, the ALA notes that in many situations involving such conduct the victim does not wish the matter to be reported. The ALA is concerned that a mandatory reporting framework

involving such conduct removes the agency and authority of the victim in these circumstances.

7. The ALA notes further that in cases where the victim of conduct that constitutes discrimination, sexual harassment or bullying is a legal practitioner and does not wish to report the matter, that victim may be the subject of sanction under the mandatory reporting framework. The ALA considers such a situation to be unacceptable and would be strongly opposed to a framework under which such a situation could occur.
8. The ALA is concerned that lawyers would no longer seek ethical guidance from colleagues or the LIV for fear it will lead to a mandatory report to the regulator. This would clearly be a perverse outcome because it will mean lawyers will not seek guidance or advice where appropriate. In our experience, when legal or ethical advice is sought, client outcomes are improved and potential issues can be remedied.
9. The ALA is concerned that a mandatory reporting framework could be used as a basis for making a complaint against a lawyer for malicious purposes. Unfounded reports are likely to be damaging to individual practitioners and will put pressure on the regulator's resources to otherwise deal with serious reports.
10. In the event Government introduces mandatory reporting legislation despite these concerns, the ALA raises the following issues that must be considered in the design of that legislation:
  - a. Mandatory reporting should be limited to reporting material breaches of only conduct rules that are fundamental to public confidence in the administration of justice.
  - b. Mandatory reporting must require absolute knowledge that the conduct has occurred, rather than suspicion.
  - c. The reportable conduct must be so serious that a miscarriage of justice may occur if not reported.
  - d. Lawyers who provide ethics advice and guidance should be exempt from reporting obligations.
  - e. Lawyers who report conduct in accordance with mandatory reporting obligations can elect to have their identity protected.

11. The ALA supports measures that help to maintain public trust and confidence in the legal profession. However, rather than mandatory reporting, the ALA recommends an approach that focusses on educating law students and lawyers about the ethical issues that were the subject of the Royal Commission and ensuring there remains a focus on education about ethical obligation and professional conduct rules through ongoing CPD.

## Conclusion

12. The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input into the consultation by the Office of General Counsel, Department of Justice and Community Safety regarding the Construction of a mandatory reporting requirement for lawyers. The ALA is willing to speak directly with and further assist the Office of General Counsel in its consideration of this issue.

A handwritten signature in black ink, appearing to be 'LF', written in a cursive style.

**Lachlan Fitch**  
**Victorian President, Australian Lawyers Alliance**