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THE PRACTITIONER'S OUT OF THE BAG: *LEGAL PROFESSION CONDUCT COMMISSIONER V BELPERIO (NO 2)* [2024] SASCA 133

I Introduction

The legal profession stands as the gatekeeper and protector of justice. Despite this responsibility, the high rate of sexual harassment in the profession[1] reveals a cultural complicity in protecting the very misconduct it is meant to regulate. Following a charge of professional misconduct in the form of sexual harassment, a practitioner, Mr Enzo Belperio, sought to maintain a confidentiality regime through a range of orders including the anonymisation of his name, restricted access to court documents and a suppression order. In *Legal Profession Conduct Commissioner v Belperio (No 2)* ('*Belperio (No 2)*'),[2] the Court of Appeal unanimously dismissed each of Mr Belperio's applications.

Belperio (No 2) makes clear that the open justice principle is alive and well, and that allegations of professional misconduct and the protection of personal and professional reputation are not privileged exceptions. The decision firmly rejects the outdated traditional rule that a practitioner's name be suppressed until an adverse finding be made,[3] standing as a culmination of changing societal and judicial attitudes towards sexual harassment, professional misconduct, and transparency of disciplinary proceedings.[4] The decision is a step towards deconstructing the power imbalances that thrive on a culture of secrecy and impunity which pervade the legal profession, shining a light on what has, for so long, been shrouded.

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1 See: Equal Opportunity SA, *2024 Review of Harassment in the South Australian Legal Profession* (Report, 4 December 2024) ('*2024 Review*'); Equal Opportunity SA, *Review of Harassment in the South Australian Legal Profession* (Report, 9 April 2021) ('*2021 Report*'); Kieran Pender, *Us Too? Bullying and Sexual Harassment in the Legal Profession* (Report, International Bar Association, 2019) ('*Us Too?*'); Law Council of Australia, *National Action Plan to Reduce Sexual Harassment in the Australian Legal Profession* (Report, 23 December 2020); Helen Szoke, *Review of Sexual Harassment in Victorian Courts and VCAT: Report and Recommendations* (Report, Victorian Equal Opportunity and Human Rights Commission, March 2021) 31.

2 [2024] SASCA 133 ('*Belperio (No 2)*').

3 Ibid [68]; *Re (Attorney)* (1860) 2 LT Rep (NS) 432 (Erle CJ) ('*Re (Attorney)*').

4 *Belperio (No 2)* (n 2) [66]–[72].

In Part II, this case note considers the procedural background of *Belperio (No 2)* and the grounds for Mr Belperio's applications for confidentiality. Part III then outlines the decision of the Court of Appeal on each of the confidentiality applications. Part IV comments on the broader implications of *Belperio (No 2)*, including how the decision addresses power imbalances, the pattern of silence and transparency within the legal profession.

II Background

Belperio (No 2) arose out of a complaint of professional misconduct in July 2020[5] against Mr Belperio in relation to 'alleged inappropriate and uninvited physical and sexual contact with, or advances to, a female solicitor colleague, junior in age and position'.[6] In October 2022, a charge was laid alleging professional misconduct pursuant to s 82(2) of the *Legal Practitioners Act 1981* (SA).[7]

A *Tribunal Decision*

In March 2024, the Legal Practitioners Disciplinary Tribunal ('Tribunal') dismissed the charge laid by the Legal Profession Conduct Commissioner ('LPCC') against Mr Belperio, on grounds that the LPCC did not have jurisdiction to lay the charge.[8]

B *Appeal*

The LPCC appealed that decision. In August 2024, the Court of Appeal upheld the appeal of the LPCC, setting aside the orders and remitting the matter to the Tribunal.[9] That judgment anonymised Mr Belperio's name as 'A Practitioner'.[10]

C *Confidentiality Applications*

Following the successful appeal, Mr Belperio sought a range of orders from the Court in order to maintain his anonymity. In summary, Mr Belperio sought:

1) A suppression order pursuant to s 69A of the *Evidence Act 1929* (SA) ('*Evidence Act*') ('Suppression Application');
2) In the event a suppression order was not granted, that certain materials filed or to be filed be treated as having been filed on a party-access basis only pursuant

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5 *Legal Profession Conduct Commissioner v Belperio* [2024] SASCA 102, [11] ('*Belperio (No 1)*').

6 Ibid [17].

7 Ibid [17]–[18].

8 *Belperio (No 2)* (n 2) [1]; *Belperio (No 1)* (n 5) [22].

9 *Belperio (No 1)* (n 5).

10 Ibid; *Legal Profession Conduct Commissioner v Belperio (No 3)* [2025] SASCA 28 ('*Belperio (No 3)*').

to r 32.2 of the *Uniform Civil Rules 2020* (SA) ('*UCR*') ('Restricted Access Application');

3) In the alternative, a range of orders pursuant to s 131 of the *Supreme Court Act 1935* (SA) ('*Supreme Court Act*'), restricting access to records which would otherwise be available to the public ('s 131 Application').

The Court stated that the Suppression Application would 'largely be determinative' of the other applications.[11]

The Court summarised the grounds upon which Mr Belperio (and his wife) sought to rely on to maintain their anonymity:

> 1. expected damage to Mr Belperio's personal and professional reputation;
> 2. injury to Mr Belperio's mental health, which will compromise his capacity to earn a livelihood;
> 3. Mr Belperio's mental health will be so affected by publication of the allegations against him that he is unlikely to have the psychological and mental capacity to defend them before the Tribunal properly;
> 4. undue hardship to the couple's daughter; and
> 5. undue hardship to his [sic] Mrs Belperio, who might be a witness in any disciplinary proceedings before the Tribunal.[12]

III Decision

The Court of Appeal unanimously dismissed Mr Belperio's applications for confidentiality, including the Suppression Application, the Restricted Access Application and the s 131 Application.

A *Suppression Application*

The Court traversed the common law history of the open justice principle, as well as the legislative history of s 69A of the *Evidence Act.* While acknowledging the traditional rule — that a practitioner subject to disciplinary proceedings have their name suppressed until an adverse finding was made[13] — Kourakis CJ concluded that this rule was 'of doubtful authority' and 'formulated at a time when the public interest in the regulation of the legal profession was little recognised'.[14] While the traditional rule was applied in 1970 in South Australia in *Re a Practitioner of the*

11 *Belperio (No 2)* (n 2) [15].

12 Ibid [120].

13 See *Re (Attorney)* (n 3) 432. The traditional rule was rejected in New South Wales in *Re Readett* (1888) 5 WN (NSW) 20, 20 (Darley CJ, Windeyer and Stephen JJ) and *Ex parte Pratt; Re M'Culloch* (1889) 6 WN (NSW) 31, 31 (Darley CJ), but restored in *Re a Gentleman, One* (1897) 13 WN (NSW) 229, 229 (Darley CJ, Stephen and Owen JJ).

14 *Belperio (No 2)* (n 2) [68] (Kourakis CJ).

Supreme Court,[15] Kourakis CJ emphasised that the decision 'pre-dates by nearly three decades the amendments to the *Evidence Act* which strengthened and extended the scope of the open justice principle'.[16] His Honour gave weight to the articulation of open justice as expounded in *Scott v Scott*,[17] which provided 'a mere desire to consider feelings of delicacy' alone was not sufficient to depart from the principle.[18] His Honour concluded that the legislative history of the *Evidence Act* '[maintained] a clear intention to restrict the power of courts to make suppression orders in order to maintain and extend the principle of open justice'.[19]

The Court ultimately held that pure social embarrassment or reputational damage before a charge of professional misconduct is determined is not enough to override the principle of open justice, and does not amount to an interest of justice generally.[20] Chief Justice Kourakis adopted the reasoning of the Victorian Court of Appeal in *WEQ (a Pseudonym) v Medical Board of Australia* ('*WEQ*'),[21] which set aside a wide suppression order and affirmed that protecting professionals from embarrassment was not an interest of justice.[22] His Honour further held that preservation of reputation 'is a consideration exogenous' to determining whether the granting of a suppression order is appropriate.[23] The Court maintained that '[p]ublicity before adjudication is necessarily an ordinary incident of the open justice principle',[24] comparing that '[t]he law does not protect the personal and professional reputations of persons charged with criminal offences'.[25]

The Court held that Mr Belperio's Suppression Application '[served] a personal interest, not a public interest in the administration of justice'.[26] Ultimately, the exercise of the power pursuant to s 69A of the *Evidence Act* 'must be based on an evaluative judgment' and that any departure from the open justice principle must be 'justified in order to preserve another object of the administration of justice'.[27]

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15 [1970] SASR 199. Chief Justice Bray, Mitchell and Zelling JJ stated that '[t]here is no doubt … that it is proper to make a suppression order in matters such as this until the matter has been finally disposed of': at [202].

16 *Belperio (No 2)* (n 2) [70] (Kourakis CJ).

17 [1913] AC 417.

18 Ibid 438–40 (Viscount Haldane LC).

19 *Belperio (No 2)* (n 2) [119].

20 Ibid [80].

21 (2021) 69 VR 1 ('*WEQ*').

22 Ibid, cited in *Belperio (No 2)* (n 2) [73]–[79].

23 *Belperio (No 2)* (n 2) [81] (Kourakis CJ).

24 Ibid [59].

25 Ibid [285].

26 Ibid [295] (Bleby JA and Stein AJA).

27 Ibid [39].

The Court further rejected grounds four and five relied on by Mr Belperio, that his daughter and wife would face undue hardship should the orders not be granted. The Court held the evidence did not establish that 'any hardship over and above that which is a necessary and common incident of the open justice principle' would be suffered.[28] Indeed, the Court similarly commented in *WEQ* that in the case of disciplinary proceedings against health practitioners, suppression orders were only granted in exceptional circumstances where 'publicity would imperil the health and safety of the professional or their family'.[29]

Further, the Court was not satisfied that Mrs Belperio's ability to testify as a potential witness would be compromised, thus prejudicing the administration of justice.[30] Chief Justice Kourakis commented that the hardship that would be suffered by Mrs Belperio was 'an inherent consequence of the charging of a person with allegations of criminal or professional misconduct'.[31] On the fifth ground, his Honour warned that closing the Court pursuant to s 69(1) of the *Evidence Act* 'should not be used for a collateral purpose'.[32]

In addition, the Court rejected grounds two and three, finding that the evidence did not establish that Mr Belperio's capacity to earn a livelihood would be impacted,[33] nor that his mental health would be compromised such that he could not defend the charge should the information be made public.[34]

B *Restricted Access Application*

The Court dismissed Mr Belperio's application and revoked interim orders made pursuant to r 32.2 of the *UCR*.[35] Chief Justice Kourakis commented that r 32.2(2), which allows the Court to order documents to be filed (or if already filed, to be treated as filed) on a restricted access basis, must be read down to conform with s 131 of the *Supreme Court Act*.[36]

C *Section 131 Application*

The Court also dismissed the s 131 Application. Following the outline of the legislative history, the Court found that documents including the Notice of Appeal,

28 Ibid [121]. See also *Channel Nine SA Pty Ltd v Police* (2014) 119 SASR 447, 458–9 [64]–[67] (Blue J).

29 *WEQ* (n 21) [69]–[72].

30 Ibid [164].

31 *Belperio (No 2)* (n 2) [60] (Kourakis CJ). See also *Packer v Police* [2007] SASC 98, [23], [25] (Doyle CJ).

32 *Belperio (No 2)* (n 2) [102] (Kourakis CJ).

33 Ibid [136].

34 Ibid [121], [136], [147].

35 Ibid [286]. Chief Justice Kourakis further held that there was no material before the Tribunal to warrant such an order, even if it were empowered to do so: at [5].

36 Ibid [245].

Statement of Facts and Contentions, and interlocutory applications fell within the meaning of 'process' pursuant to s 131(1)(aa) of the *Supreme Court Act*.[37] The Court held that 'the mandate' of the section was 'clear': 'the public must be given access, on application, to the documents and materials falling within the ambit of pars (aa)–(f) of s 131(1)'.[38]

Chief Justice Kourakis described the approach put by Mr Belperio's counsel as 'fictive' and 'fundamentally at odds with the plain text and context of, and the statutory purpose underpinning, s 131 of the *Supreme Court Act*'.[39] The application to uplift court documents and substitute a redacted copy was refused on its merits, with his Honour highlighting that: (1) Mr Belperio filed the document willingly;[40] and (2) redacting 'the name of an essential party to the controversy' in a document over which s 131(1) of the *Supreme Court Act* did not grant a right of access would be 'an exceptional course'.[41]

IV Comment

Belperio (No 2) affirms the importance of open justice in the context of professional misconduct (and particularly sexual misconduct) in maintaining the integrity of, and addressing power imbalances within, the legal profession. The decision of the Court of Appeal draws a line in the sand with respect to open justice and disciplinary proceedings, judicially affirming contemporary societal and jurisprudential attitudes towards the transparency of disciplinary proceedings.

A *Power Imbalances in the Legal Profession*

There are evident power imbalances within the legal profession, which contribute to the prevalence of sexual harassment. In 2021, Equal Opportunity SA released the *Review of Harassment in the South Australian Legal Profession* ('*2021 Report*').[42] The report found that cultural features of legal workplaces include

> a patriarchal and hierarchical culture characterised by intense competition and widespread incivility; a lack of cultural diversity; a deeply entrenched gender bias; and a culture of silence in which instances of harassment were minimised, normalised and kept quiet.[43]

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37 Ibid [220]. See further Kourakis CJ's reasoning as to the correct construction of 'process' pursuant to s 131(1)(aa) of the *Supreme Court Act*: at [195]–[232].

38 Ibid [241].

39 Ibid [241] (Kourakis CJ).

40 Ibid [235].

41 Ibid [237].

42 *2021 Report* (n 1).

43 Ibid 88–96.

In 2019, the International Bar Association conducted the largest-ever survey on bullying and sexual harassment in the legal profession,[44] concluding that the profession 'is rife with bullying and sexual harassment'.[45] Sexual harassment disproportionately impacts female members of the profession, with 37% of female respondents having experienced sexual harassment during their career.[46] Younger members of the profession are also disproportionately impacted.[47] Amongst younger members, sexual harassment was more likely to be perpetrated by a senior colleague than by someone equal in position.[48] The *2021 Report* similarly found that two out of every five respondents 'reported that they had experienced sexual or discriminatory harassment in the legal profession',[49] with '[f]our out of every five incidents … perpetrated by a person in the workplace *more senior* than the victim'.[50] The report found that power imbalances such as the 'patriarchal and hierarchical culture' caused and drove sexual harassment in the legal profession.[51]

Sexual harassment is also 'chronically underreported',[52] reflecting a culture of silence around workplace sexual harassment generally, and in the legal profession specifically. In 2018, 75% of sexual harassment cases globally were not reported.[53] In 2022, the Australian Human Rights Commission found that only 18% of sexual harassment incidents were reported.[54] Of those that were reported, 25% said the harasser faced no consequences.[55] In the legal profession, the *2024 Review of Harassment in the Legal Profession* ('*2024 Review*') found that only 1% of respondents reported sexual harassment to a complaint body.[56] The *2021 Report* found that

> cultural features were also a barrier to reporting, with almost 70% of survey participants who had experienced sexual harassment — more than two in every three — electing not to report it because they did not understand or trust the reporting process; were afraid of experiencing repercussions on their career and work life; or were inhibited by a workplace culture where it was considered best not to 'rock the boat'.[57]

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44 *Us Too?* (n 1).

45 Ibid 112.

46 Ibid 49.

47 Ibid 53.

48 Ibid 60.

49 *2024 Review* (n 1) 36, citing *2021 Report* (n 1) 55–72.

50 *2024 Review* (n 1) 36, citing *2021 Report* (n 1) 61 (emphasis added).

51 *2021 Report* (n 1) 4–5; *2024 Review* (n 1) 86.

52 Ibid 62.

53 *Us Too?* (n 1) 11.

54 Australian Human Rights Commission, *Time for Respect: Fifth National Survey on Sexual Harassment in Australian Workplaces* (Report, November 2022) 8.

55 Ibid.

56 *2024 Review* (n 1) 81.

57 Ibid, citing *2021 Report* (n 1) 74–85.

Such issues are not unique to the legal profession. In 2018, the Australian Human Rights Commission published the *Respect@Work* report, situated in the broader context of increasing transparency around sexual harassment, the costs of sexual harassment, and the global response to sexual harassment.[58] The inquiry found that 20% of Australian workers had experienced sexual harassment in the workplace within the previous 12 months.[59] Indeed, 'societal and structural causes' clearly underlie the prevalence of such conduct.[60] Such conduct is, however, persistent and pervasive, with the legal profession being no exception. The subsequent *2024 Review* revealed that despite the recommendations of the *2021 Report*, these power imbalances remained, concluding that 'harassment, in all its forms persists' and that 'senior members of the profession … continue to offend'.[61]

These power imbalances were acknowledged in the judgment, with Bleby JA and Stein AJA highlighting that unsatisfactory professional conduct and professional misconduct can extend to social settings, reflecting 'contemporary understandings' which 'recognise … abuses of imbalanced power relationships within the profession'.[62] Likewise, Kourakis CJ commented that the specific circumstances of the alleged misconduct involved 'imbalances of power, founded in the hierarchy of the legal profession'.[63]

B *A Broader Pattern of Silence*

Mr Belperio's application and submissions to keep his identity a secret reflect a broader pattern of silence in the profession, not just one individual's legal strategy. While the 'court is not concerned with the character of proved allegations',[64] it is indeed the very character of the allegations — their sexual character — which gave rise to Mr Belperio's extensive and convoluted applications to prevent his identity from becoming tied to such charges. The embarrassment, shame, and reputational damage that will arise from publicity relating to allegedly perpetrating sexual misconduct is arguably more intense than that which would arise from other forms of professional misconduct. Indeed, Bleby JA and Stein AJA commented that sexual allegations, particularly involving the behaviour of a practitioner toward a junior practitioner, should be especially open to public scrutiny.[65] Chief Justice

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58 Australian Human Rights Commission, *Respect@Work: National Inquiry Into Sexual Harassment in Australian Workplaces* (Report, 29 January 2020) 78–82 ('*Respect@Work*').

59 Australian Human Rights Commission, *Everyone's Business: Fourth National Survey on Sexual Harassment in Australian Workplaces* (Report, 2020) 25 ('*Everyone's Business*').

60 Ibid 19.

61 *2024 Review* (n 1) 7.

62 *Belperio (No 2)* (n 2) [294] (Bleby JA and Stein AJA).

63 Ibid [62] (Kourakis CJ).

64 Ibid [294].

65 Ibid [296].

Kourakis noted that s 69A of the *Evidence Act* is a 'significant change from the section's predecessors' reflecting a 'policy choice to give greater weight to the open justice principle' than to the hardship incidental to the publicity of litigation.[66] As the Court ultimately decided, such applications to withhold the allegations from public scrutiny 'to avoid "the potential prejudgment of the practitioner"', as phrased by counsel, serves a personal, not public, interest.[67]

Power imbalances and the pattern of silence in the legal profession are further reflected in Mr Belperio's self-serving applications in *Belperio (No 2)*. The Court expressed clear displeasure with the motivation behind the applications, with Kourakis CJ commenting that the orders sought in the alternative to a suppression order attempted to 'circumvent',[68] obstruct[69] and 'obviate'[70] the legislation which upholds the open justice principle.[71] These applications were made 'in aid of his personal interest in his reputation and not to prevent prejudice to the administration of justice'[72] as required by s 69A(1)(a) of the *Evidence Act*. Chief Justice Kourakis commented that seeking an order 'for the collateral purpose of outflanking s 69A of the *Evidence Act*'[73] would 'generally be an abuse of process'.[74]

The sentiment reflects an attitude of impunity characteristic of many senior legal practitioners. A sense of entitlement, a lack of accountability, and general incivility by those who hold powerful positions are drivers of sexual harassment in the legal profession.[75] University of South Australia law lecturer, Associate Professor Joe McIntyre, commented that '[m]en in positions of power are operating with a sense of practical immunity, because if the women speak out, they know their career is dust'.[76] Indeed, in the *2024 Review*, a respondent cited that 'a few senior practitioners in the legal profession … hold the misguided belief that they are entitled and can act with impunity when it comes to sexually harassing junior practitioners and staff'.[77] The enduring prevalence of sexual harassment in the profession supports this hypothesis, with a further respondent suggesting that certain members of the

66 Ibid [108] (Kourakis CJ).

67 Ibid [295].

68 Ibid [191].

69 Ibid [238].

70 Ibid.

71 See *Evidence Act 1929* (SA) ss 69, 69A.

72 *Belperio (No 2)* (n 2) [238].

73 Ibid (Kourakis CJ).

74 Ibid.

75 See: *2024 Review* (n 1) 12; Szoke (n 1) 31.

76 @Dr_Joe_McIntyre (X, 23 June 2020, 1:05pm ACST) <https://x.com/Dr_Joe_McIntyre/status/1275271193323376640>, quoted in 'Sexual Harassment and the Legal Profession', *Sexual Harassment Australia* (Web Page, 2020) <https://sexualharassmentaustralia.com.au/sexual-harassment-and-the-legal-profession-why/>. See also Szoke (n 1) 32.

77 *2024 Review* (n 1) 78.

profession believe they 'have a right to feel entitled because they have been getting away with this behaviour for years'.[78] As noted by Fiona McLeay, the sense of impunity strengthened by existing power imbalances means that such behaviour 'becomes entrenched'.[79]

This attitude was acknowledged and criticised in the judgment. Chief Justice Kourakis drew attention to comments made by counsel for Mr Belperio during the course of the substantive proceedings. During an oral application to exclude certain persons from the Court, Mr Dick Whitington KC addressed members of the profession sitting in the open court, 'in effect warning them against making any disclosure to any persons about the hearing' by '[seeking] to impose consequences' and by '[announcing] why they think they should be here'.[80] The Chief Justice starkly warned that '[c]onduct of that kind should never be repeated'.[81] His Honour emphasised that those who attend open court hearings 'do not owe anyone, including those seeking to warn them "in terrorem", any explanation for their presence'.[82] As the *2024 Review* observed, a 'culture of denial, threat, intimidation and incivility … remains'.[83] His Honour's remarks serve as a critical affirmation of the open justice principle while simultaneously calling out the entitlement and authority that senior, male legal professionals have historically wielded, contributing to the culture of silence.

C *Transparency and the Legal Profession*

Belperio (No 2) sets a precedent for increasing public accountability in the legal profession with respect to sexual misconduct, asserting that the bar for granting suppression, anonymity, and restriction of documents in professional misconduct cases is high. This brings the legal profession in line with other disciplines, where a 'move toward the recognition of the public's interest' in knowing whether a professional is the subject of disciplinary proceedings is being recognised more broadly.[84] As aptly stated by the Federal Sex Discrimination Commissioner, 'the legal profession is not any other profession. It administers the law and knows it well and should rightly be held to a higher standard'.[85] Further, Bleby JA and Stein AJA noted that open justice

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78 Ibid.

79 'Balancing Power: Sexual Harassment in Australia's Legal Profession', *Melbourne Law School* (Web Page, 31 August 2020) <https://law.unimelb.edu.au/news/MLS/balancing-power-sexual-harassment-in-australias-legal-profession>.

80 *Belperio (No 2)* (n 2) [226].

81 Ibid [227] (Kourakis CJ).

82 Ibid.

83 *2024 Review* (n 1) 7.

84 *Belperio (No 2)* (n 2) [72] (Kourakis CJ), citing *Craig v Medical Board of South Australia* (2001) 79 SASR 545, 554 [41] (Doyle CJ, Williams and Martin JJ agreeing); *Zollo v Commissioner for Consumer Affairs* [2020] SASCFC 118, [46] (Peek, Blue and Stanely JJ); *Marin v Chiropractic Board of Australia* [2020] SASCFC 74, [2] (Kourakis CJ, Peek and Nicholson JJ agreeing).

85 *2024 Review* (n 1) 8.

and transparency surrounding 'allegations against members of a relatively small and privileged profession are extremely important in promoting public confidence in the profession'.[86] Chief Justice Kourakis similarly asserted that public interest in transparency of such proceedings is 'strong' and 'countervailing'.[87] The LPCC commented that the

> [*Belperio (No 2)*] decision is an important step in ensuring that the public can be properly apprised of matters of interest to them in their dealings with the legal profession and in lifting the veil of suspicion which might otherwise fall on members of the profession where proceedings occur out of the public gaze.[88]

The Court found it relevant that not only was the suppression of information contrary to the open justice principle, but that 'it is also a paternalistic denial of the personal autonomy of those legal practitioners and of members of the public who may have dealings with Mr Belperio in his professional capacity'.[89]

D *Practical Implications*

Belperio (No 2) is a step towards addressing and breaking the cycle of power imbalances that enable sexual misconduct within the legal profession.[90] The cycle begins with these power imbalances, which enable misconduct; practitioners with power feel emboldened or enabled to act inappropriately, knowing the victim may not feel safe or able to speak up. The culture of silence in the profession further contributes to victims not reporting the misconduct, fearing incredulity, damage to their careers, retaliation, or a potential lack of consequences for the perpetrator.[91] The power imbalances make reporting feel risky and intimidating.[92] This creates a cycle — when conduct isn't reported, the perpetrator faces no consequences — power imbalances not only remain intact, but are reinforced, and future misconduct feels safe to commit.[93] The anonymisation of an alleged perpetrator's identity through a suppression order, or through restricting public access to court processes, shields perpetrators from reputational consequences. Power imbalances are reinforced, and the cycle continues.

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86 *Belperio (No 2)* (n 2) [296] (Bleby JA and Stein AJA).

87 Ibid [61] (Kourakis CJ).

88 Legal Profession Conduct Commissioner, 'Further Update in Disciplinary Matter' (Web Page, 25 November 2024) <https://lpcc.sa.gov.au/posts/2024/11/25/further-update-in-disciplinary-matter>.

89 *Belperio (No 2)* (n 2) [65].

90 See generally *2024 Review* (n 1) 86.

91 See: *2024 Review* (n 1) 78–85; *Everyone's Business* (n 59) 73; *Us Too?* (n 1) 63–5.

92 See *2024 Review* (n 1). Respondents cite 'power imbalances' as a key barrier to reporting: at 77.

93 See *Us Too?* (n 1). For example, a female respondent from a law firm in the United Kingdom responded that '[t]he partner closed ranks around the perpetrator … [t]he firm did nothing to sanction him and later promoted him into a more senior, but marginally less public position': at 67.

Belperio (No 2) disturbs this cycle. The Court of Appeal has made clear that statutory protections of the open justice principle function only to protect the interests of justice, and that mere preservation of reputation, or personal interests, will not attract these protections.

In light of this, two outcomes may practically result from the decision: (1) perpetrators know that there is a real risk they will be publicly named; and (2) victims may feel more empowered to speak up, knowing that the complaint itself will be taken seriously, and *be seen* to be taken seriously. As found by the *Us Too?* report, when incidents are reported, perpetrators are infrequently sanctioned;[94] numerous respondents 'indicated concern for the proportionality of a perpetrator's punishment'.[95] Having even *alleged* perpetrators face sanctions may encourage the reporting of incidents and the further discouragement of the misconduct itself. Notably, the *2024 Review* reported that almost half of respondents said if they witnessed or experienced sexual harassment in future, they would report the conduct; in part, due to greater public awareness and discussion of the issue.[96] This suggests that the decision itself — and the increased transparency that may result — could encourage future reporting of sexual harassment incidents. Future reporting intent optimistically reflects a cultural shift and may be the first step to breaking down the culture of silence that enables misconduct. This decision emphasises that public accountability at the complaints stage matters; Mr Belperio's submissions that a suppression order was justified because the charges were not yet proven[97] reflects a key aspect of the cycle of power imbalances. Misconduct complaints should reflect the open justice principle in this respect: not only having justice be done, but having justice *be seen* to be done.[98]

V Conclusion

The orders sought by Mr Belperio in *Belperio (No 2)* are representative of archaic power structures and expectations in the legal profession surrounding professional misconduct and secrecy. The dismissal of the applications and the reasoning of the Court of Appeal give credence to changing attitudes towards sexual misconduct in the legal profession, as well as asserting the ongoing relevance of the open justice principle in the 21st century. This decision declares that personal interests will no longer prevail over public interests in the legal profession, and that disciplinary proceedings occurring in the public eye is more imperative than ever. However, the decision must not allow progress to become stagnant. Affirming the open justice principle is not a cure-all, and the judiciary alone cannot drive cultural change.

94 Ibid 49.

95 Ibid 64.

96 *2024 Review* (n 1) 81–2.

97 *Belperio (No 2)* (n 2) [17], [295].

98 See: *R v Sussex Justices; Ex parte McCarthy* [1923] EWHC KB 1, 259 (Hewart LCJ); JJ Spigelman, 'The Principle of Open Justice: A Comparative Perspective' (2006) 29(2) *UNSW Law Journal* 147.

Individual and collective action is needed to address professional misconduct at the root, before it reaches the Tribunal and television screens. To borrow the words of the Commissioner for Equal Opportunity: 'I urge all who work in the profession and who care about its state to champion change'.[99]

99 *2024 Review* (n 1) 8.