

Sex Discrimination Commissioner
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Australian Human Rights Commission

Re: Submission to the National Inquiry into Sexual Harassment in Australian Workplaces

28 February 2019

Background

This submission is made by **Professor Santina Bertone and Associate Professor Linda Colley** of CQUniversity, Australia. We are senior academics and experienced researchers who have specialized in teaching and research related to women, gender equality, cultural minorities and employment.

Recently, we have been nominated to lead a research group in the School of Business and Law called Work, Employment and Society (WES). With a strong focus on diversity and inclusion and creating social impact through our teaching, research and engagement, CQUniversity is supportive of endeavours by staff to contribute to public debates and make an impact on policy development.

When Professor Bertone was invited to make a submission to this very important inquiry, we were pleased to work together on a joint submission. Accordingly, we offer a brief overview of the Australian literature on sexual harassment in workplaces, together with some policy observations.

We found that the business and employment literature in Australia on this topic is relatively scant, although some important studies have been conducted by a handful of dedicated researchers. It may be that a wider literature search may have identified studies in psychology, sociology, women's studies and so forth. However, as a phenomenon that is located in employment relations and workplaces, it seems significant that the business literature and human resource management literature in particular has little to say about sexual harassment in the workplace.

One of our key observations would therefore be the need to support more and rigorous research into the diverse situations facing targets of sexual harassment in employment and ways that it can be addressed. Such research should be focused on specific groups the workforce such as culturally diverse women and men, young people, older people, indigenous Australians, LGBTQ and people with disability. It should engage business leaders and HRM professionals, drawing on organizational behavior, employment relations, human resource management theory and practices. It should also seek to engage advocacy groups and community groups that are familiar with the diverse challenge and circumstances of women and men of diverse social identities.

Levels of sexual harassment in the workplace

*“Recent Australian research suggests that contrary to community expectations, the prevalence of sexual harassment has not changed significantly over the past 30 years, with estimates of incidence being that 25 per cent of female employees and 16 per cent of male employees have experienced workplace sexual harassment during the previous five years.*¹

The “me too” movement brought to light the extent of sexual harassment and sexual assault in the entertainment industry, and social media element of the movement provided the opportunity for countless women to confirm that it is widespread and not isolated to a few incidents.

There are also indications that sexual harassment by customers is a significant part of a broader and insidious problem. Studies in the service sector across a range of economies have reported levels of sexual harassment ranging from 24 per cent of hospitality workers in a New Zealand study², to 40 per cent of female retail employees in a US study³, and as high as 67 per cent of female retail workers in a Canadian study⁴. The power exerted by customers over employees makes many reluctant to complain or to take any formal action. Employees are more likely to respond informally, such as speaking to a co-worker or line manager, rather than making a written complaint or utilizing company grievance processes. When they do complain, employers may refrain from confronting customers, for fear of losing business.⁵

With many retail workers being part-time and temporary, there was a tendency for interviewees to diminish the significance of sexual harassment at work or to consider the effort of lodging a complaint to be unnecessary⁶. Students in particular had internalized the notion that the job was ‘not real’ as there was no career, so there was no point in raising issues⁷.

Other studies have provided similar findings. Korczynski (2003) found that employees tended to respond individually or through ‘collective communities of coping’, to self-manage the harassment they experienced, drawing on coping or contestation by ignoring it or laughing with colleagues about it, or confronting the offending customers individually⁸. In doing so, these actions fall into the patterns of responses to sexual harassment highlighted by Fitzgerald et al. (1995)⁹. These factors suggest a worrying shift in the management of responses to sexual harassment, placing responsibility away from managers and onto employees themselves, reflecting broader trends of self-management¹⁰.

In the media and marketing industry, the statistics are particularly alarming: “Half of all women and a quarter of men report they’ve personally experienced workplace harassment that encompasses both physical or verbal actions. Two in five women and one in five men also

¹ (AHRC, 2012, p. 12)

² Poulston, 2008, in Good et al 2016:447

³ Gettman and Gelfand, 2007, cited in Good et al 2016:447

⁴ Hughes and Tadic, 1998, cited in Good et al 2016:447

⁵ Good et al 2016: 453-454

⁶ Good et al 2016:453

⁷ Good et al 2016:453

⁸ Korczynski (2003), cited in Good et al 2016:465

⁹ Fitzgerald et al (1995), cited in Good et al 2016

¹⁰ Brunner and Dever, 2014, cited in Good et al 2016:465

observed it happening to others. In short, 53 percent of women and 30 percent of men have seen or experienced this behaviour – it is in plain sight”¹¹.

Just this week, claims were tabled in the Queensland Parliament that a senior doctor harassed staff in hospitals, and will be referred for investigation¹², highlighting that this does not just happen to vulnerable women in precarious jobs but also in public sector workplaces with strong policy frameworks.

Under-reporting and associated factors

In spite of high prevalence rates reported in the research literature, the problem of under-reporting of sexual harassment has been known for at least thirty years¹³. This problem is abating, with the AHRC 2008 and 2012 surveys showing a significant increase in the number of respondents who reported or make a complaint, up from 16% to 20%¹⁴. However, nearly four out of every five cases of sexual harassment went unreported. At the same time, a significant proportion (29%) reported negative or adverse outcomes as a result of reporting, such as re-victimisation and/or demotion (*ibid*, 2012). On the other hand, 74% reported being satisfied with the outcome of their complaint and 45% said the harassment had stopped after the complaint (*bid*).

These findings are consistent with other literature¹⁵. Rather than reporting the sexual harassment, targets often deal with it in isolation or by confiding in friends or co-workers. Several studies have noted that reporting harassment often results in no improvement and sometimes worsens the situation for the target¹⁶.

It is therefore not surprising that research participants cite negative consequences as reasons for not reporting, including fear of victimisation, fear of losing their job, and subjection to investigations¹⁷. Others have noted that women will sometimes tolerate sexually offensive behaviour in order to relate with their colleagues at work¹⁸. For example, women in male-dominated occupations and working environments ignored unwelcome sexual advances or other sexually offensive behaviour to avoid seeming weak and incapable¹⁹. This approach also promoted non-reporting of sexual harassment.

The data shows the vast majority of alleged harassers are male²⁰. Of the 45 male complainants, the majority (69%) alleged they were harassed by another man, with 31% alleging harassment by a woman²¹. This is consistent with previous research²² showing that men were more likely to be alleged harassers and experience same-sex SH than women. Research also indicates that men alleging SH by women were far less likely to report serious

¹¹ Rayner 2018:1

¹² Horn and Stevenson 2019

¹³ McDonald 2012

¹⁴ AHRC, 2008, 2012

¹⁵ see for example, Firestone and Harris, 2003; cited in McDonald et al 2015

¹⁶ Bergman et al., cited in Birinxhikaj and Guggisberg 2017; 2002; Lee et al., 2004; McDonald, 2012: 9

¹⁷ Charlesworth, 2013

¹⁸ Somvadee & Morash, 2008, cited in Birinxhikaj and Guggisberg 2017

¹⁹ *ibid*

²⁰ AHRC 2012

²¹ *ibid*

²² Dubois et al., 1998; Stockdale et al., 1999; McDonald and Charlesworth, 2016

impacts on their non-work relationships²³. However, negative work-related outcomes were at least as frequent in the female-to-male groups as in other groups²⁴.

Sexual harassment as a career limiting issue, especially for vulnerable workers

Sexual harassment occurs in all types of workplaces, but can be especially problematic for those who are more vulnerable in the workplace – those in insecure jobs, migrant women with insecure jobs and insecure immigration status, and those in the emerging gig economy.

The #metoo movement has highlighted the effects of sexual harassment in the entertainment sector, with numerous stories about women forced to exchange sexual favours for career opportunities or conversely their refusal of sexual favours resulting in career-limiting effects.

Across all industries, there are stories of women who are sexually harassed and see no alternative but to remove themselves from their workplace. This often requires a quick departure, potentially without a referee and economic necessity may require them to make a quick decision on an alternative position. The lack of continuity and potential transfer to an inferior position in terms of income, benefits and career prospects will have economic impact on both current earnings (and the gender pay gap) and on their contribution to superannuation and their retirement income.

This said, changing workplace realities has resulted in complex shifts in the power dynamics surrounding sexual harassment. Sexual harassment is often still portrayed as an abuse of power in the workplace where the male supervisor harasses their powerless female subordinate. As such, the unequal distribution of formal power is believed to be a necessary pre-condition for sexual harassment, suggesting that those in positions of authority are immune from sexual harassment²⁵. However, there is an increasing body of literature showing that females with formal authority are in fact more often the target of sexual harassment compared to their counterparts without similar authority²⁶. These harassers, paradoxically, are often men who occupy less powerful positions within an organization²⁷. The recent example of a senior male surgeon harassing others in his professional team confirm that it is also occurring in workplaces with ostensibly strong policy frameworks, high levels of awareness about gender equality, and skilled and empowered women employees.

However, there is no question that it is more prevalent amongst more vulnerable workers. In the gig economy, it is often difficult to identify an employer, a workplace, or somebody responsible for the range of HR and WHS issues that occur. Migrant workers are also often in less secure jobs and less secure migration status, and are at greater risk.

Sexual harassment as a workplace health and safety issue

Extensive research from a range of disciplines has established the damaging effects of sexual harassment, showing that it can cause psychological and physical harm to those targeted,

²³ McDonald and Charlesworth, 2016

²⁴ McDonald and Charlesworth, 2016:129

²⁵ Grauerholz 1989, cited in Wynen 2016

²⁶ e.g. McKinney 1992; Wilson and Thompson 2001; Chamberlain et al. 2008; Stainback et al. 2011; McLaughlin et al. 2012, all cited in Wynen 2016

²⁷ Benson 1984, cited in Wynen 2016

reduce job satisfaction, wellbeing in the workplace and work performance²⁸. This has negative and potentially costly repercussions for organisations, including absenteeism, higher levels of turnover and reduced labour productivity”²⁹.

The effects on individuals’ health and wellbeing can be severe³⁰. Physical health problems associated with sexual harassment in the workplace include chronic headaches, weight changes, exhaustion, sleep problems, gastric problems, respiratory problems, nausea, musculoskeletal pain and cardiovascular problems³¹. Mental health problems have also been reported. For example, in a meta-analysis of 21 journal articles published between 2000 and 2011, Hills and Joyce (2013) found that sexual harassment can lead to a multitude of psychological consequences including anxiety, stress, frustration, anger and self-blame³².

Together with the high incidence levels reported earlier, it can be surmised that sexual harassment in the workplace is potentially very expensive for organisations and individuals. However, because of the low reporting levels, the costs can go relatively unnoticed and uncounted.

The Way Forward

The range of issues above point to the failure of current systems, the limitations of framing it as an individual issue requiring redress of individual complaints, and as an anti-discrimination issue. The ACTU criticises the current process, which puts individuals in a position of having to take court action against a corporate respondent, which is not only expensive but can ‘revictimise’ a person who has experienced sexual harassment. Scholars agree that the individual reporting system is flawed and leads to perpetuation rather than resolution of the problem³³

In our view, sexual harassment must be approached differently, not as an individual discrimination issue but as a systemic issue and a workplace health and safety issue.

When complaints occur, they must be dealt with differently. It is recommended that hearing of complaints be brought under the Fair Work Act or relevant state Acts, to put cases into the jurisdiction of workplace umpires more expert in dealing with the power differential, and also in a less formal, and potentially less expensive setting where it is more feasible to be unrepresented.

More importantly, it is critical that new approaches are taken to preventing those complaints from occurring, with a greater focus on proactive preventative action rather than turning a blind eye and waiting for and responding to complaints. There need to be stronger legal duties, similar to those of the WHS legislative obligations, where a PCBU (person conducting a business unit) has responsibilities to make their workplaces safe, taking proactive steps to prevent harassment, and with more accessible tools.

In our view, much of the scholarly literature supports the type of approach being recommended by the ACTU.

²⁸ Gettman and Gelfand, 2007, Morganson, 2008; Nielsen and Einarsen, 2012; cited in Good et al 2016:447-8

²⁹ Gettman and Gelfand, 2007, cited in Good et al 2016:447-448

³⁰ Cortina & Berdahl, 2008; Glicken and Robinson, 2013; Hills and Joyce, 2013, cited in Birinxhikaj and Guggisberg 2017

³¹ Birinxhikaj et al., 2017:9

³² Hills and Joyce 2013 cited in Birinxhikaj and Guggisberg 2017:9

³³ McDonald, Charlesworth, and Graham (2015)

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