

# Commerce case study report

Education



The following report looks at the increase of Sexual Harassment claims within Corporate Australia that have been lodged with the Australian Human Rights Commission over the last decade. David Jones Pty Ltd and Pricewaterhouse Cooper are two prevalent cases which have attracted negative media with regard to Sexual Harassment, and this report utilises both Risk Management and Egoism Theories to scrutinise various impacts, responsibilities and recommendations for Individuals, Organisations and Society.

Organisational and Societal culture is identified as the primary contributing factor of workplace Sexual Harassment, and it is identified within the report that further Legislation and workplace risk management approaches need to be enacted if the increase is to be addressed.

Methods of workplace mechanisms to curtail the increase have been listed as induction, training, and facilitation of workplace change. Prompt and decisive action is also necessary to address issues when raised. Societal culture also is identified as requiring change through Legislation, and the requirement for male persons of political, social and organisational power to lead the cultural change management process.

It is this reports' recommendation that further review of Legislation and workplace practices be urgently undertaken with a view to reduce the steadily rising number of reported workplace Sexual Harassment claims within Corporate Australia.

Figure [ 1 ]: Australian Human Rights Commission Statistics Over the past decade there has been a continual increase in the prevalence of sexual

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harassment in the workplace. The Australian Human Rights Commission (2010) statistics (Figure 1) demonstrate a steady increase in reported cases of sexual harassment from 2000 to 2009. In 2007 a former executive of Pricewaterhouse Coopers filed legal suit against her previous employer alleging she was sexually harassed by an executive, Mr Edwards. She sought \$11 million compensation for damages, loss of earnings and other compensation (Australian Associated Press, 2008).

When Ms Rich raised the issue of her sexual harassment with senior management, senior executives responded by placing her on access restrictions, banning her from the office, allocating clients to other partners, and reducing her salary (Clifton, 2007). A settlement between \$5 and \$6 million was reached on 20 March 2008. Pricewaterhouse Coopers continue to deny the claims, however, each party has accepted that the opposing party had their own perspectives, but would not accept the other as completely accurate (Moran, 2008).

More recent evidence of Sexual Harassment in Corporate Australia attracting negative media attention is the case of Kristy Fraser-Kirk vs. David Jones Pty Ltd initiated earlier this year claiming compensation of \$37 million for alleged incidences of sexual harassment by former CEO Mark McInnes. The key difference between the two cases highlighted within this report is, in response to Fraser-Kirks' allegations and intense media scrutiny, McInnes resigned. He claims his resignation was for the benefit of the company and hisfamily.

Harrison (2005) argues that many will view this approach to ethical decision making as the antithesis of “ethical”. This legal case is still before the courts. Notably, in both highlighted cases above, organisational culture is demonstrated to largely consist of sexual harassment and discrimination. Alarming, statistics and media attention have highlighted these allegations are not isolated. Corporate Australia requires immediate attention to stem the steady increase of sexual harassment.

Alexander and Lewer (1998) state there is “significant interaction between industrial relations practices and the economy” demonstrating linkages between individuals, organisations and society that must be addressed. Impact on Individuals, Organisations and Society Individuals - the key impact is often emotional. A victim of sexual harassment may lose the ability to attain premium quality of life, when compared to Maslow’s Hierarchy of Needs as described by Turner (1995): \* Physiological - increased stress levels, mental health, decreased sense of self worth, as well as creating many other health issues. Safety - Career focus can be destroyed, income reduced through absenteeism or loss of employment, affecting the level of security one may have.

\* Belonging - feelings of violation and isolation and decreased sense of value. This view is noted by Weisberg (1996, pg 725) quoting Lin Farley “the abuse also impacts destructively [by] disrupting female job attachment, promoting female unemployment and inhibiting female solidarity.” \* Esteem - as a result of a lack of belonging and lack of reliable income, the self worth and the value placed by colleagues and employer is decreased.

Lengthy legal battles impact on an individual's financial stability whilst media scrutiny impacts on individual esteem and adds pressure on family and other relationships. \* Self Actualization – states that to achieve self-actualization, all other needs must be met first. Therefore, by limiting the ability to meet all other needs of the Hierarchy, sexual harassment limits one's ability to become self actualized. Sexual harassment impacts both the victim and the perpetrator. The credibility and seniority of many of the perpetrators can be decreased.

The accusations can lead to loss of integrity in the workplace and subsequent decreases to job opportunities and future earning capability. Organisations – costs to organisations can be both internal and external. Some primary issues are listed below. \* Loss of revenue. Due to media and public scrutiny and disapproval of conduct, sales may decrease. \* Increases in operating expenditures. There is a range of causal factors for increases in operating expenses. Staff absenteeism and lack of productivity of staff due to ongoing internal and media investigations into the allegations.

Increased expenses for insurances. Public relations campaigns to negate media damage to company branding and sales. Increases in recruitment costs due to staff movements to more favourable work cultures and other organisations. \* Impacts to other organisations such as Insurance Industry, Government and their resultant use of resources such as Hospitals, Police Services, Court systems, and Mediation services. \* Corporate Australia as a whole is impacted with each allegation, as financial measures are taken to minimise the risks of occurrence within their own businesses.

Financial costs such as Insurance levies rise, as do taxes to support the Government in its efforts to minimise occurrences, assist the victims, and finalise the claims through Court systems. Status or power differentials occur due to employee composition and sex ratios. \* Expense is incurred as internal review committees are formed to critically analyse company Harassment, Anti-Discrimination, Risk Management and Critical Incident Policies and review and implement all recommended measures.

Society – Impacts upon society are the changes to societal culture, awareness and drainage of public resources. Medical resources are accessed due to the impact on individuals, as are legal systems due to litigation instigated by the victims. Media outlets and organisational public relations campaigns attempt to influence societal responses and opinions. At the present stage of sexual harassment in Australia, there is a Spotlight focused on Australian Corporate culture making society consider their own workplace experiences and explore their rights.

This exploration inevitably leads to questioning of our legal system and its support for worker's rights and anti-discrimination legislation which currently underpins society. The Occupational Health and Safety Act 2000 states, in Section 8, that “ an employer must ensure the health, safety and welfare at work of all the employees of the employer”. Society then becomes disconnected and disbelieving of the Government's ability to uphold societal law and value systems. Where many Corporate Australian businesses have global operations, society suffers further through both reduced global economic trade and a stigma of cultural discrimination.

Whilst our pursuit of equality in all forms is held tenaciously in the balance by which side the Media will back, in many cases - forcing public viewpoints from the rational to the superficial. Societal views of the inherent subordinate role of women within the workforce, and the disproportionate power and dominance of a male role is perpetuated and enforced. Risk Management Theoretical Perspective Risk is an unavoidable element of life. It is a perceived or real possibility that an unfavourable outcome (such as loss or harm) could result from taking a particular action (Rescher, 1983).

There are three stages in determining a risk, and it's worth (Rescher, 1983):

- \* Choice of action – what action is to be undertaken.
- \* Negativity of outcome – what risk is inherent to the action. What other options are available to pursue.
- \* Chance of realisation – the probability of risk actually occurring.

Risk can be managed in a variety of ways, depending on the risk at hand, and the expense which is willing to be incurred. When a company implements a risk management process, they follow three basic rules – “The Cardinal Rules of Risk Taking”: (Rescher, 1983)

- \* Maximise expected values (see graphs) Avoid catastrophes
- \* Dismiss extremely unrealistic possibilities

When applied within the context of Sexual Harassment in the Workplace the two organisational viewpoints for the management of risk will be:

- \* Take out Insurance
- \* Create a Sexual Harassment Policy

Insurance will not prevent the possibility of the occurrence of sexual harassment, it will only cushion economic implications (Rescher, 1983). This is designed to enable the organisation to continue operating in the event of an allegation occurring.

The creation of an Organisational Sexual Harassment Policy however, will have a far greater impact on prevention of such behaviour if enforced and promulgated throughout the company. It should also provide guidance in resolution of issues and denote penalties or risks to perpetrators as well as support mechanisms for victims. Absence of a policy could be used as evidence that an employee has authority to engage in misconduct, and make the employer liable (Pearson, 1997). When defining a sexual harassment policy, Warfel and Query (2004) state that the organisation must:

- \* Define their meaning of sexual harassment Provide examples of what they consider sexual harassment
- \* An explicit statement that sexual harassment will not be tolerated.
- \* Explanation on how claims will be dealt with
- \* A statement that retaliatory action will not be tolerated
- \* A statement that corrective action will be taken

After creating a Sexual Harassment policy it is vital that the policy be communicated, understood and upheld at all levels of the organisation on a regular basis through training, induction and displayed within organisational culture (Pearson, 1997).

If claims are made, it is crucial they are investigated and appropriate action taken under the policy. All members of an organisation should be compliant under the policy. Egoism Theoretical Perspective Gibson (2007) comments that “ an egoist would say that one should put one’s own interests and concerns above those of others, regardless of external ethical standards”. This statement is critical if we are to understand Egoism. The concept that we all operate within a sense of self interested morality explains at some levels the complex nature of perpetrators of sexual harassment.

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It provides a level of understanding along the lines of “ only the strong survive” which is highlighted by Catherine Mackinnon in Weisburg (2010, p726) where “ every incidence of sexual harassment reproduces the inequitable social structure of male supremacy and female subordination which [anti-discrimination legislation] seeks to eliminate. ” This level of thinking is the crux of the societal damage caused by the increasing trend towards incidences of sexual harassment within Corporate Australia, where it is perceived only the strong and ruthless survives.

The David Jones Pty Ltd’s recent case can be compared with Machiavelli’s (1515) observation that “ a bold leader should acquire and use power to his personal advantage by whatever means possible”. Applying Egoism Theory to the perpetrators of sexual harassment, it can be found that the basic human temptation to take what is wanted or is a perceived “ right”, overrides any awareness or application of Risk Management Theory. It appears that their status or power will effectively protect them, or that the victim inherently will wish to increase their status by accepting these advances.

This is ratified by Shaw et al (2009, pg 59) regarding Firestone Tyres where it is stated by a company spokesperson “.... policy was to ask for corrections only when it was beneficial to the company to do so”. The action of Pricewaterhouse Cooper, and David Jones, is reflective of Egoism theory as stated by the Firestone Tyres spokesperson. When incidences of harassment occurred, they appear to have negated their own internal policies and risk management mechanisms, and responded in an Egoist manner.

Responsibilities of Individuals, Organisations and Society Victims have a responsibility to report and demand action against illegal activity. This in turn empowers others to feel supported and understood which is demonstrated by the other women who most likely wouldn't have spoken out about their experience had Fraser-Kirk not done so herself. It also enables change within the workplace, legal systems and ultimately society at large. It is understood that most sexual harassment cases go unreported with the victim instead simply leaving the workplace.

This creates an opportunity for perpetrators, as silence is regarded as complicity and acceptance of the behavior. Victims also have a responsibility to act appropriately within their employment contracts and honestly report all incidences of workplace sexual harassment. Individuals must adhere to company policy as well as acknowledge and respect colleague's rights with regard to relevant workplace policies and legislation. This action will contribute to a positive work culture. Perpetrators are often in a position of power and have an inherent responsibility to lead by example.

In the case of Mr McInnes and Mr Edwards, neither man behaved in this manner, thus perpetuating a workplace culture of acceptance, and a perception of "do as I say, not as I do". Organisations have a legal responsibility to act in the best interest of all staff and executives, however organizations have a duty of care to ensure that relevant workplace legislation pertaining to the welfare of employees is effectively communicated and enshrined within workplace practices. The best way to do this is to lead by example and ensure that breaches are swiftly and efficiently dealt with.

Society itself has many responsibilities to uphold regarding sexual harassment. Society has the power to support ethical and responsible acts to uphold integrity within Corporate Australia. They have the power to influence organizations, legislation and Government to adopt risk management practices rather than egoism in order to maintain a positive brand image. Society can influence good corporate citizenship by enforcing individual, and organisational, accountabilities and responsibilities.

Recommendation to Individuals, Organisations and Society It is strongly recommended that individuals continue to pursue their individual and workplace rights in order to work towards actual realisation as according to Maslow. Reporting, and supporting those who do, is an integral component of a workplace free from harassment. They additionally have a responsibility contribute to a workplace free from discrimination by participating in, and adhering to, workplace training programs and policies.

Within organisations, it is recommended that the sexual harassment policy be maintained as separate to any anti-discrimination policies with a built in grievance procedure and validation process. Any complaints should be dealt with swiftly and supportively with real consequences for perpetrators, such as probation, demotion or termination. These processes should be communicated to staff on induction to the organisation and throughout their careers by mandatory training and awareness programs, with employees and executives having to sign on receipt of training and policy documents.

It is imperative that risk management practices be applied in favour of egoistic approaches if the organisational culture is to support a change

within the organisational culture. Organisational change can only be accomplished if it is championed from those with the ultimate power. It is the responsibility of the executive board to drive this change for the benefit of all, the reduction or elimination of sexual harassment practices will ultimately decrease absenteeism and staff turnover due to harassment, and increase morale and productivity.

Society too, has a responsibility to ensure equality in every aspect of their lives by teaching our children that gender does not determine worth. We further have a responsibility to petition for change in legislation, and hold Corporate Australia responsible for its actions. As consumers we hold great power and this can be used to influence and support company responsibilities. Conclusion It is this reports finding that an egoist societal and organisational culture is directly linked with the increase in sexual harassment cases lodged with the Australian Human Rights Commission.

It further finds that adoption of a risk management perspective for the protection of individual, organisational and societal well being is necessary to ensure fundamental rights, responsibilities and legislation is upheld. Whilst it is understood that organisational culture needs to be specifically targeted to reduce incidences of sexual harassment in the workplace, the significance of a male driven response to the prevalence of sexual harassment within Corporate Australia cannot be overlooked.

This is highlighted by Elizabeth Broderick, Sex Discrimination Commissioner where she states “ we should recognise the importance of men’s role in promoting gender equality in workplaces. I firmly believe that we will only see

significant gains when men start working with men to solve this problem. After all it is men who dominate nearly every institution in this country, particularly in our workplaces. If there is to be change, male CEOs and business leaders must champion it. We need men taking up the advocacy mantle and leading by example. ”