



# Working Women's Information Service

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## SEXUAL HARASSMENT - AN INDUSTRIAL RESPONSIBILITY

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Women have been subjected to sexual harassment through the ages and it would seem that every woman has experienced some form of it. The objective results of this harassment make a woman afraid and vulnerable in the face of her harasser, guilty and shameful in a society which suggests that she must have invited the harassment and inferior and helpless in a situation which allows her to act defensively. When sexual harassment takes place at the workplace it evokes all these feelings and naturally such feelings adversely affect a woman's attitudes to her work and contribute to her oppression and inferiority in the workforce.

Sexual harassment effects women on two levels. Firstly, sexual harassment at work places extra strain and tension on women from which men are free. It forces them to develop certain styles of behaviour especially to deal with it. This behaviour is usually seen critically by other workers and reinforces attitudes that women are not serious members of the workforce. Most harassment at work is presented in the guise of joviality and if women respond to it as such they are smeared as immoral. If they reject it outright they are condemned as "pruders". They are supposed to play some clever game of cat and mouse where they don't actually reject unwanted attentions but at the same time neither do they accept them, although even this play is not guaranteed to work. One woman reported to the Working Women's Centre that one of her supervisors in a large office constantly made remarks with sexual undertones which were usually in the form of jokes. Although these events made her feel uncomfortable she thought it would be unwise to respond negatively and so she laughed at them. Whilst working back at night the man concerned virtually accused her of taking initiatives with him, calling her an "easy lay" and saying "we know about types like you".

Secondly, sexual harassment communicates to a woman that she is seen merely as a sexual object and not taken seriously as a worker or accredited with the personal respect that male workers command from their workmates or supervisors. Thus, her confidence in her own value as a worker is undermined. This depletion in self-confidence makes it doubly difficult for women to fight for their rights as workers for if they undervalue their own work they are less likely to demand increased pay rates, to apply for promotion or to fight for improvements in their own work conditions such as child care facilities or paid maternity leave.

The Working Women's Centre has received many reports from women who have suffered, or are suffering, sexual harassment at work. They range from the case of a woman being raped at gunpoint after overtime to cases of continued demoralizing remarks by sexually rejected males.



## A DEFINITION

When the question of sexual harassment is raised it is often laughed-off as "just a bit of fun" but that is to miss the point. Any sexual activity which is enjoyable to all parties concerned is obviously not harassment. It is to be expected that where people work closely together sexual relationships will develop between co-workers. However, sexual harassment is often shrugged-off and deliberately confused with mutual sexual activity to disguise the fact that it exists at all. To prevent this form of denial from confusing the issue and undermining its importance to women's rights we require a clear and precise definition of what constitutes sexual harassment in the workforce.

Harassment may be constituted by a wide variety of behaviour ranging from rape to verbal innuendos or leering. It may be used as a condition of employment or employment opportunities or it may be used to demoralise women to keep them "in their place". The difficulty with any definition is that it stands the risk of being interpreted too narrowly thus leaving many cases uncovered - on the other hand it may be too broad and thus ineffective. Any definition must be broad enough to cover all kinds of harassment but at the same time tight enough to provide clear guidelines which will enable all incidents to be established within its framework.

Since most sexual harassment is "unwanted" and "unsolicited" the words must be used, but since society has made it "normal" for males to take sexual initiatives with females it must be clear that any well-meaning initiatives are not misconstrued. This would be covered by including "repeated".

A definition, however, must also cover a situation where a woman's employment opportunities are determined on the basis of her sexual activity. In these cases sexual attention may be wanted or even solicited but it becomes harassment when the responses to this attention influence decisions concerning her employment in any way.

Any verbal or physical conduct of a sexual nature constitutes sexual harassment when:

- (1) It is unsolicited, repeated and unwelcome, OR
- (2) when submission to such conduct is implicitly or explicitly a term of condition of an individual's employment, OR

- (3) when submission to such conduct is implicitly or explicitly a term of condition for decisions which would effect promotion, salary or any other job condition, OR
- (4) when such behaviour creates an intimidating, hostile or offensive work environment for one or more employees.



## THE ODDS AGAINST WOMEN COMPLAINING

With rising unemployment women are more and more vulnerable to sexual harassment at work. Employers are able to vet female staff to see if they are likely to be sexually co-operative before appointing them to the job. A case was recently reported in the *Mildura Midweek*(1) of a young woman who was asked in a job interview by her prospective employer if she lived alone and if she slept with her boyfriend. Desperate for jobs, many women are compromised by such questions and have no recourse to recriminations. Others are asked explicitly if they will wear "plunging necklines" or "no bras" or if they would be willing to "entertain" prospective clients. A tight job market becomes tighter in these circumstances and women are often left little choice but to comply with these requests for not only are there few jobs available but each unsuccessful interview increases the demoralization felt by all unemployed persons.

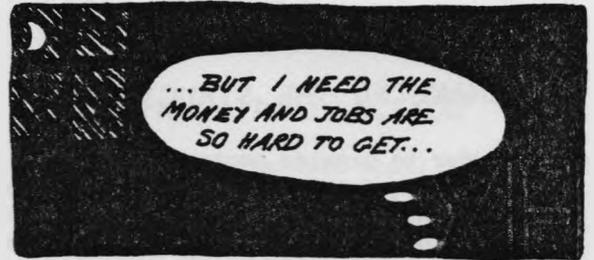
When women are faced with sexual harassment at work their only recourse is either to leave the job, to report the incident to management on a higher level than the offender or to lay criminal charges of assault.

If women leave their job they do so without any "visible" reason, thus damaging their employment record and thus decreasing their chances of re-employment. Even if a woman tells her prospective employer of the reason for quitting her previous job she is more than likely to be considered in a bad light. These days when there are scores of applicants for each job any query raised in an employer's mind will cause him to pass an applicant over. This situation is especially difficult for young school leavers forced to quit a job after a very short time. Unsure of their grounds, they are unlikely to relate the incident which caused them to resign to future employers and seem to have a job record which suggests restlessness and inconsistency.



Since most women in the workforce are unskilled workers their harassers are often males who are more skilled or in a position of authority. Therefore, if a woman reports an incident to management she risks her job, for even if management believe her it is often easier for them to replace an unskilled female than a highly skilled or authority-holding male. In a case reported to the Working Women's Centre, top level management had repeated complaints from young women about one of their supervisors. Eventually they agreed to take some action but the action which they took was to stop putting young women in the particular area effected. Hence job opportunities for women were decreased whilst the offender remained in his position. Management are usually male and will therefore tend to view the situation with sympathy for the male. Even if they don't, they may find it embarrassing to raise the matter with a male and it is often much easier to dispense with the woman who is complaining.

The only other avenue open to women faced with sexual harassment is to lay criminal charges of assault. This recourse is available only when a crime has been committed and most harassment at work is not covered by a criminal definition of assault. High unemployment rates have meant that leaving a job is no longer a viable



solution to minor incidents of sexual harassment so many women faced daily by an offender try to put a smile onto an intolerable situation and are seen therefore to be encouraging it. If behaviour then ensues which is covered by criminal law she has little chance of winning her case.

However the assault takes place. Once it is reported to the police, women are subjected to a whole new area of harassment as their case moves through the clumsy legal structures. This recourse will often lead to a verdict of not guilty, leaving the plaintiff feeling personally cheated and socially foolish. Recently *The Age* reported a case in which the offender was acquitted because the Magistrate:

*"Was not satisfied beyond reasonable doubt that the man had formed the necessary intention to be convicted of the offences".(2)*

The man in question had returned drunk to his office after attending a party,

*"...forced Ms. Bruce back against a desk, leant against her and attempted to kiss her neck."(3)*

The Magistrate said, as he dismissed the charges of assault,

*"To prove intent, the prosecution would have had to prove that Mr. Ellis was aware of what he was doing and that he was aware that Ms. Bruce did not consent."(4)*

This example clearly shows just how biased and inadequate the current legal structure is and what little protection it offers even from cases of harassment which fall into the "assault" category.



## CAMPAIGN AGAINST SEXUAL HARASSMENT

### CHANGING THE STRUCTURES

In order to provide protection against sexual harassment in the workforce we need to campaign for structures to be established which will provide a recourse outside the criminal law and which will include all cases.

The first step in such a campaign would be to have clauses included in awards between unions and management which would state clearly that sexual harassment will not be tolerated in the workplace and that the victim will not be discriminated against in any way for lodging any complaint and that punitive measures will be taken against the offender.

Opposition to any formal protection of cases of sexual harassment are often based on a fear that women will use the protection unjustly to get themselves out of a "sticky situation". False burglaries are reported to recoup insurance, but that is never seen as a reason to have no legislation covering theft. This excuse is as baseless as its counterpart (that it is all harmless fun), and has no more validity.

The University of Boston in the U.S.A. has signed a union contract which includes the following clause:

*"The university recognizes that no employee shall be subject to sexual harassment. In this spirit it agrees to post in all work areas a statement of its commitment to this principle. References to sexual harassment includes any sexual attention that is unwanted. In the case of such harassment, an employee may pursue the grievance procedure for redress. Grievances under this article will be processed in an expedited manner. If after the grievance is settled, the employee feels unable to return to his/her job, the employee shall be entitled to transfer to an equivalent position at the same salary and grade if a vacancy then exists for which he/she is qualified."(5)*

The clause is important because it recognizes that the problem infringes on work conditions and is therefore an industrial matter to be dealt with through industrial structures. Secondly it holds management responsible for the conduct of their staff. Similar clauses could be inserted into awards in Australia and indeed some unions are already moving toward that goal. We

would urge all unions to submit similar clauses in their next conditions case.

On a broader front we also propose:

- (1) That a clause is inserted into the A.C.T.U. Working Women's Charter stating clearly that sexual harassment discriminates against women in the workforce and therefore steps should be taken to prevent its occurrence.
- (2) That all Federal legislation which deals with conditions of work must cover cases of sexual harassment and provide protection against it. The relevant Act would be the Commonwealth Conciliation and Arbitration Act. This Act already contains grievance procedures which allow grievances of an industrial nature to be dealt with. In order for those procedures to be used for cases of sexual harassment the Act would need to state clearly that sexual harassment was considered an industrial matter and one for which grievances could be lodged.
- (3) In Victoria the Equal Opportunity Act states in Division 2, Section 18(6) that:

*"It is unlawful for an employer to discriminate against a person on the ground of sex or marital status ... by dismissing the employee or subjecting the employee to any other detriment"*.

If the words "including sexual pressure" were added it would be clear that cases involving sexual harassment could be dealt with by the Equal Opportunity Board on that basis. The present legislation could possibly be interpreted to include sexual harassment but its wording is such that an interpretation could equally be unfavourable.

- (4) The second piece of Victorian legislation which would need to carry a clause on sexual harassment is the Labour and Industry Act. A definition of sexual harassment should appear in the definitions in Part I. Section 30, which deals with the powers of the Wages Board, should include a clause allowing the Wages Board to deal with cases of sexual harassment which do not explicitly lead to discrimination. Section 204 stipulates that complaints to the Wages Board cannot be dismissed and would therefore protect women who appealed to the Board with cases of sexual harassment.

The above are suggested proposals for some concrete alterations in existing documents which deal with industrial matters and equal opportunity for women. They are suggested primarily at this stage to engender discussion and to provide a basis around which campaigns against sexual harassment can ensue.

However their implementation will not only take time and concerted action, but will not be effective deterrents unless they arise in a social climate which understands the issues clearly, thus whilst campaigning for these changes it is vital that social awareness is raised.



## CHANGING ATTITUDES

While there are no recourses of action available to women who are sexually harassed it will continue, for they are very likely to become the victims in one way or another if they raise the matter. However harassment will continue until incidents are raised and publicized and offenders are made to feel compromised - not the offended.

It is time that sexual harassment was brought out into the open - for too long it has been "hidden" and ignored. Everybody knows it happens but nobody raises it as a serious problem. In the end, however, it must be women themselves who take the initiatives in this area and the first step is to become vocal and to actively participate on every possible level to alleviate the problem. In the short term there are ways that this can be accomplished simultaneously with a general campaign to raise awareness throughout society.

## INDUSTRIAL ACTION

Women who are harassed should immediately report the incident to their co-workers. If incidents are repeated groups inside the workplace can be formed to combat them in the most relevant way. Simply publicizing the name of the offender and making it clear in a united way that it will not be tolerated may sometimes be enough of a deterrent on its own. However any further action needed is best done by a group or a committee especially set up for the purpose of protecting the victimization of any one complainant.

Posters and notices should be used to forewarn offenders that harassment will not be tolerated and will be reported.

## WHAT UNIONS CAN DO

Although the issues will inevitably be raised by women, unions can help support and give leadership to them in their struggle in the following ways:

- \*\* Insert Grievance Clause in the next log of claims.
- \*\* Support campaign for legislative changes.
- \*\* Support campaign for amendment of the A.C.T.U. Working Women's Charter.
- \*\* Distribute posters and notices.
- \*\* Accompany women with complaints to management.
- \*\* Support the Working Women's Centre campaign.

The Working Women's Centre is available for resources, support or help.

