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Sexual harassment in the legal industry: are we improving?

Besides taking the typical risk-mitigation steps to manage sexual harassment complaints in the workplace, law firm managers need to take a series of actionable steps to stamp out such troubling incidents, writes Leonie Green.

We are told that **one in four** women experience sexual harassment at work, while working within the Australian legal industry.

That sounds like a statistic we need to respond to as an industry. And yet it's not a new one. It comes from a study in 2013. What have we done since then?

At best, we have rolled out training, we have regularly reviewed our policies and procedures, and acted when complaints are made. We did that pre-2013, too.

That is the minimum required to adequately defend the vicarious liability portion of a sexual harassment claim. The minimum. It's a risk-minimisation approach that enables you to sleep okay at night. It does not address the systemic issues and, unless approached holistically from an ongoing cultural change perspective, such actions will not make much difference between training sessions and policy rollouts.

Partnership inequity

In the recent ALPMA 2021 HR Issues and Salary Survey, 68 per cent of all positions at participating law firms were held by women, with 59 per cent of legal roles held by women. However, when it comes to partner statistics that changes significantly, with only one in five equity partner positions being held by women.

Generationally, this will change no doubt, slowly but surely, but the one in four women experiencing sexual harassment shouldn't have to wait for generational change.

When we read about the allegations made against Justice Dyson Heydon it was easy to see (hopefully) how difficult it may have felt for an associate to feel able to speak up, to the High Court judge directly, or to someone else in the workplace who may have been able to assist in addressing the unwelcome sexual behaviour.

The power imbalance and lack of structural support was hard to miss. And yet it was missed, at best. At worst, it was understood, or known, but ignored because no one knew how to address the behaviour in an impactful, fair and appropriate way. No one knew how to have the necessary conversations, or who to address the conversation to (besides the obvious person, Justice Dyson Heydon). No one felt able to take appropriate action.

Structural flaws

The statistics in relation to female participation at equity partner levels within our firms suggest there may be a similar inherently risky structural concern that may be just as obvious if we step back and take a look at it.

Who in your firm is brave enough to raise issues with an equity partner (whether male or female)? Who in your firm has the skills to broker a difficult conversation; for example, by giving feedback to an equity partner about their behaviour, or raise concerns about the behaviour of a peer? Who in your firm feels safe in speaking with a P&C/HR/Talent or a manager about an issue, trusting that it will be dealt with discretely and with no impact on their future career prospects?

Importantly, then consider who in your firm does *not* feel safe, does *not* have the skills, or might *not* feel brave enough to speak with someone in power who may be able to assist them? What other options do they have? How big a number might you have in this category? What might help them feel more able to speak up and get assistance where needed?

The economic cost of workplace sexual harassment was considered by Deloitte Access Economics in 2018 (as referenced in the Respect@work: Sexual Harassment National Inquiry Report 2020) and found to be \$2.6 billion in lost productivity and \$0.9 billion in other financial costs. Employers bore 70 per cent of the financial costs.

Deloitte Access Economics indicated that this cost estimate was a global first: we had not previously quantified the economic cost of sexual harassment. Let's hope that it is a measure we keep assessing and improving on; the question being: how do we improve on this?

Potential immediate actionable suggestions:

- review your policy and procedures;
- train your leadership team on their rights and responsibilities;
- train your employees on their rights and responsibilities, and make sure they know how-to and who-to raise concerns with;

- take the lead on conversations about your firm's approach to sexual harassment (in case someone else doesn't);
- measure and track how your firm is improving its approach;
- review and consider whether there are any allegations you have missed or not addressed and take appropriate action;
- address systemic barriers – to help bring these to the surface, ask the questions in this article about who may not feel safe to raise concerns and then find an appropriate solution;
- ask your employees (anonymously if needed) for their views and suggestions on how to make your workplace a safe space.

Consider: how safe is your workplace for someone experiencing sexual harassment? Where do they go? Who do they speak to? Is it safe to do so? How do you know?

And (if needed – and for many this is needed, including for our Prime Minister), ask yourself how you would manage the topic of sexual harassment if your daughter (or sister, or niece etc) was in your workplace and experienced sexual harassment. How would you want it handled? By whom? And are you confident she would feel safe to raise the concern? What else needs to change?

Finally, this is not just about women. Men also experience sexual harassment. So re-read this article and consider exactly the same questions for your male colleagues: in many ways the stigma for males raising sexual harassment allegations is an additional societal challenge we need to address and work towards improving: conversation by conversation, action by action.

Action you take today may just mean that in your workplace there are zero incidents of sexual harassment. Surely any action that works towards that aim is action worth taking.

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