

## ++#Me Too -- What Next?

### Acknowledgment of country

I'd like to acknowledge the traditional custodians of the land on which we are gathering today, the Yugambeh and Kombumerri peoples, to pay my respects to Elders, past and present, and extend that respect to other Aboriginal and Torres Strait Islander peoples.

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- Speak on employment aspects with specific reference to women
  - Women's experience in the workplace – recent studies
  - The #Me Too movement and sexual harassment
  - Where to from here? Strategies to influence a change
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Sheryl Sandberg's manifesto for today's working woman, *Lean In: Women, Work and the Will to Lead*, published in 2013, quickly became the guidebook for mid-career women hoping to succeed.

Lean in, we were told. Don't sit back and wait for things to come to you. Seek out mentors. Break through the glass ceiling. Overcome your reluctance to lead and put yourself forward for all sorts of roles. We have seen men do it for years, we should do the same. Stop being so hesitant at work. Carpe diem, ladies; it's there for the taking with a bit of gumption!

But five years later, as we celebrate International Women's Day this month, there has been a decided shift in the narrative.

Instead of blaming themselves for their failure to ascend the career ladder, a growing chorus of women are speaking out about the barriers they confront when they try to lean in.

Increasingly, studies are revealing the futility women face in trying to get ahead in the male dominant workplace structure. Despite studies showing that workplaces where women are advanced perform better than male dominated workplaces, women rarely achieve the heights scaled by male co-workers.

Most fall by the wayside, disillusioned or pushed out with descriptions of their demeanour such as “pushy”, “nasty”, “psycho” and similar, traits which are vastly admired in the male sex but described differently as “determined”, “no nonsense style” and “driven to succeed”.

Others find it impossible to progress because of commitments to family, such as child rearing. It is rare for questions to be asked of men as to “How do you manage your job when you have children?” The answer of course is that it is the woman who shoulders the extra shift at home and garners criticism at work such as “she won’t get ahead because she’s away so much because ... her kids are sick, she does the school run, she is off having a baby”.

According to the RMIT study by economic researcher, Leonora Risse, there is not much benefit for women in displaying more confidence at work.

Research data about the confidence levels and promotions pathways of 7,500 working men and women shows that more confident men get a 3.3% boost to their job promotion prospects. But there is no such boost for highly confident women.

Leonora Risse found that this signal of potential bias in how women are treated in the workplace is consistent with other research showing that women receive a lower benefit – or even suffer backlash – for demonstrating ambition, confidence, assertiveness and leadership qualities in the workplace.

The findings challenge Sheryl Sandberg’s view that women can improve their chances of career progression simply by changing their behaviour. The analysis shows it’s not that simple. Greater confidence does not translate into career gains, on the whole, for women.

Catherine Fox in her book *Stop Fixing Women*, took aim at the tendency to blame women’s inadequacies for their failure to progress.

“Telling women it’s mostly their own fault for being marginalised in workplaces designed by and for male breadwinners – and failing to crack through the glass ceiling and scale the ranks of business – reinforces ridiculously outdated gender stereotypes,” she says. “We used to call this the ‘deficit model’, because it rests on the belief that women are naturally deficient in risk taking, assertiveness and courage, while being

over-endowed with emotions and caring skills. Many of us had thought this idea had started to disappear, but I think we were wrong.”

It is a sad state of affairs when more than half the working women surveyed recently by the University of Sydney, nominated “respect’ as the most important requirement in their jobs. The men surveyed chose job security as the most important requirement.

Working women everywhere seem to be waking up to the failures of modern workplaces and questioning the status quo. Instead of getting women to change, they are demanding that the gender bias that permeates Australian workplaces needs to change.

### **The #METoo Movement**

A clear sign of the new thinking, the #MeToo movement has unleashed a storm of revelations about the sexual harassment and abuse women suffer in the context of their working lives, whether they are media and arts personalities, professional women or simply workers across the whole spectrum of employment.

Every week seems to bring to light some fresh example of sexual harassment in Australia, from investigations of rape and sexual intimidation at university colleges to revelations of sexual harassment in several of our top-tier legal and accounting firms.

The reaction of the public to the #MeToo movement reflects what is wrong with the workplace. Many of the women who have stood up to speak of past abuses in their workplaces are being vilified, as evidenced by President Trump’s dismissive comment regarding the myriad of women who have stood up to confront him, that they are all liars and should not be believed. Also, his admission that he could grab beautiful women by the pussy because of his celebrity status, did not affect his reputation.

“Boys will be boys” and women lack a sense of humour or are too sensitive, are common themes in response to #Me Too.

There has been a concerted campaign to criticise and “slut shame” many of the so called “nasty” complaining women. Look at the final result of complaints made at the Channel 7 and David Jones workplaces. The men have moved forward in their stellar careers while the women were shown the door and marginalised. This is a common outcome.

Speaking from the legal perspective, a possible criticism of the #MeToo campaign is that the rule of law has been missing in action in the process. It is easy to make allegations and many of them have damaged or destroyed careers with little more than vague allegations being made. This is not to diminish the seriousness of the issue, as many of the complaints are serious and inexcusable if they are true.

How does anyone defend an accusation made about alleged conduct many years ago if they are innocent? Or if someone is guilty of misconduct, how does the accuser prove it to the proper legal standard? It often boils down to the dilemma of choosing who to believe with often life and career shattering consequences.

A case in point is the tragic case of Dylan Farrow, who, encouraged by #MeToo movement, recently participated in a television interview raising yet again her allegations of sexual abuse by Woody Allen when she was seven. The original complaints were originally investigated and dismissed by the courts and child protection authorities and her brother, Moses, has stated in interviews that Dylan was coached in her allegations during a brutal marriage breakdown to the extent that she actually believes them. Who do you believe? Whoever is telling the truth here is being punished in “trial by media”.

As local examples of the attitude towards women, consider the line of questioning in the 60 Minutes' interview of New Zealand's Prime Minister Jacinda Ardern which focussed on her sex life and when her baby was conceived, instead of her political achievements. Consider also Employment Minister Michaelia Cash's threat to slut shame female staff members working for the Leader of the Opposition, and the shameful campaign against our first female Prime Minister, Julia Gillard that led to her stunning misogyny speech that resounded worldwide on social media.

At university, in business, in politics and in the arts, examples of gender discrimination continue to surface and cannot be contained any more. Women are fed up of leaning into workplaces that staunchly resist their efforts to succeed. Women are fed up with inappropriate conduct where a complaint will damage their career prospects while the abuser continues onwards and upwards in their career.

Increasingly, women are realising it's not they who need to change, but the deeply gendered and often unsafe working environments in which they work.

For young women who grew up being told they could be anything, only to be sabotaged by the deeply entrenched sexual bias in today's workplaces, there is a huge relief that comes with this realisation.

### **Where to next? Strategies for the future**

Remember that the first step to solving a problem is admitting there is one. Viewed this way, today's myriad examples of sex discrimination and abuse, as depressing as they are, could also be the first real steps on the path towards true gender equality.

It's time for proper systems to be put into place so that allegations of misconduct can be effectively dealt with. It's time for women (and men) to be able to speak up and call out poor behaviour in the workplace. It is time for both men and women to collaborate in bringing about the changes we need to have for a future of equality and safety in the workplace.

It is no coincidence that men with daughters are more supportive of women in the workplace. Also, women are joining together more and more to support and encourage each other by mentoring, networking and helping each other.

What is the long term solution to preventing sexual harassment in the workplace? Where do we go next?

It is important to remember that employers can be held vicariously liable for acts of sexual harassment committed in the workplace. In light of this, employers must:

- take reasonable steps to prevent sexual harassment;
- ensure that all employees are provided with a safe workplace; and
- take steps to limit their exposure to the widespread legal, financial and reputational consequences if they get it wrong.

A no tolerance approach is reflected in the damages awarded by various courts in recent years. For example, in a 2014 case <sup>1</sup> a female employee was sexually harassed for six months by a male colleague. The Federal Court found that the employer was vicariously liable for the acts of its employee, and ordered that the employer pay the victim \$18,000 in compensation. On appeal, the Full Court of the

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<sup>1</sup> *Richardson v Oracle Corporation Australia Pty Ltd* [2014] FCAFC 82.

Federal Court found that the damages awarded were 'manifestly inadequate' and did not reflect the 'prevailing community standards' in relation to the 'higher value to compensation for pain and suffering and loss of enjoyment of life'. The Full Court ordered the employer to pay \$130,000.

In another case before the Supreme Court of Victoria in 2015 <sup>2</sup>, a female employee was subjected to bullying and sexual harassment by several colleagues. The employer was found to be vicariously liable. In that case, the employer was ordered to pay a total of over \$1.3 million, inclusive of general damages, past economic loss and loss of earning capacity.

An employer must:

1. Have a clear written policy in place;
2. Implement and embed the policy with staff by regular training, including training for women to encourage them to speak up without fear of consequences. Often the support of other women is invaluable;
3. Put accessible independent complaints procedures in place that provide confidentiality during any investigation and procedural fairness to all the parties.

Equal and respectful treatment is difficult to implement and sometimes it can take many years to reach the ultimate goal. Women in the workplace have learned this the hard way but are now learning that hard work, mutual support and getting involved in putting solutions in place is what they need to do to achieve it.

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<sup>2</sup> *Mathews v Winslow Constructors (Vic) Pty Ltd* [2015] VSC 728