

QUEENSLAND POLICE SERVICE CONFERENCE –

“SEXUAL HARASSMENT – DON’T COP IT”

BRISBANE, 18 OCTOBER 2007

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INTRODUCTION

Before I talk in detail about the report that I authored last year for the NSW Police Force, I will briefly look at the background to sexual harassment, both as a policy development and as a legislative development, to provide you with both the report details and the context within which it sits.

At the outset I note that my comments are mainly directed to acts of sexual harassment where the woman is the ‘victim’ (a word I dislike) and the perpetrator or perpetrators are males. This is not because of any prejudicial disposition on my part but because this is the reality of life. Most sexual harassment complainants are women and most sexual harassers are men.

INITIAL AUSTRALIAN DEVELOPMENTS

From the mid to late 1970s, the States enacted discrimination legislation led initially by South Australia and New South Wales and then Victoria. In those early laws there was no specific mention of sexual harassment.

The next major legislative development in the area of sexual harassment was the passage of the federal Sex Discrimination Act. This was introduced into the Parliament by Susan Ryan, Minister for the Status of Women in the then recently elected Hawke Labor Government in Canberra.

This Bill was introduced in June 1983 and it was the first major Bill introduced by the new government. It was the implementation of an election commitment and followed a private member's bill introduced by Susan Ryan in November 1981. There was hysteria following the introduction of the Bill which today is difficult to understand, particularly when by that time there was similar legislation operating in 3 States. The content of the Bill and its potential impact were consistently misrepresented in the media often under the headline "Sex Bill" which of course lead to many startling headlines.

The basis for statements such as:

This Billis ambiguous and imprecise; it is destructive of basic and fundamental rights and freedoms and itself constitutes a denial of the principles of natural justice.....In so many ways this Bill offends both the rule of law and individual rights in a parliamentary democracy. In so many ways this Bill constitutes an attack on our traditional values, the importance of the family as the fundamental unit of society, and our traditional Australian way of life. (Hodgman, Senate, *Hansard*, 5 March 1984, p.488)

It is not hysterical nonsense to be concerned for a mother who has raised a family and done a very good job in the community being forced into the paid work force. (Harradine, Senate, *Hansard*, 21 October 1983, p.1933)

I have a deep faith in the family and I have a religious conviction. This Bill, in many aspects of its interpretation and application, could cause the beliefs in my life to be altered in so many ways. (Braithwaite, Senate, *Hansard*, 2 March 1984, p.403)

were as far-fetched as they were ludicrous.

The views that the Bill would somehow undermine marriage and force women into work still requires such monumental leaps in logic that I cannot explain the basis for them.

Out of that background of acrimonious public and Parliamentary debates, including unjustifiable personal attacks on Susan Ryan, the Bill eventually was passed and became law on 1 August 1984.

And here we are – 23 years down the track and the image of the Act no longer causes the sternest traditionalist to quake for the future of civilisation. In the intervening years there have been quite dramatic changes in public awareness about the rights and remedies provided under such legislation and the mechanisms provided to protect disadvantaged groups.

Amid all the public debate, one major legislative change was largely overlooked and unacknowledged. The Sex Discrimination Act was the first legislation in the world that used the term “sexual harassment” and gave it a definition that enabled inappropriate sexual conduct and contact to be assessed within an objective framework.

The primary focus in 1984 was in employment as that was where most of the complaints had arisen and indeed continue to arise.

This legislative model with specific provisions for sexual harassment was eventually followed in all States and is the model still operating both in the Commonwealth discrimination laws and the Queensland Anti-Discrimination Act in chapter 3, where sexual harassment is specifically prohibited. Section 117 of the Queensland Act sets out the purpose of those provisions and one is to “promote equality of opportunity for everyone by protecting them from sexual harassment”. The Act further states that the purpose will be achieved by prohibiting sexual harassment, allowing a complaint to be made and using the agencies and procedures to deal with the complaint.

The definition in the Queensland Act, while at some slight variation to the federal Sex Discrimination Act, essentially covers the same major issues. Section 119 defines sexual harassment as subjecting another person to an unsolicited act of physical intimacy or making an unsolicited demand or request, whether directly or by implication for sexual favours from the other person, or making a remark with sexual connotations relating to the other person or engaging in any other conduct of an unwelcome nature in relation to the other person, and they do so with the intention of offending, humiliating or intimidating the other person or in circumstances where a reasonable person would have anticipated the possibility that the other person would be offended, humiliated or intimidated by the conduct.

The sort of conduct includes:

- physical contact,
- sexual suggestions and remarks,
- invitations to engage in sexual acts,
- showing sexual images,
- engaging in sexual banter.

It can be seen that this definition is extremely wide, but critically it applies the objective test, that is, what a reasonable person would have anticipated. As a consequence, it is not necessary to establish that the woman herself was offended, intimidated or humiliated, but that a reasonable person would have been so by the conduct.

Turning now to the judicial interpretation of the law –

During the 1980s, there were a number of important test cases exploring the ambit of the sexual harassment laws. I will highlight four of the main ones.

The first major case that caused much public controversy and furore was in Sydney in August 1983, when Sue O'Callaghan accused her boss, Bruce Loder, the then head of Department of Main Roads, of various acts of sexual harassment, including unzipping her uniform and touching her on the breasts. There was massive media coverage because it was the first time in Australia that such issues had been subjected to any form of external scrutiny. In a ground breaking decision Justice Jane Matthews, sitting as the legal member of the NSW Equal Opportunity Tribunal found that sexual harassment could be sex discrimination within the terms of the NSW sex discrimination laws.

She said:

[I]f a complainant has been subjected to unwanted and unsolicited sexual conduct by his or her employer in such circumstances that the employer knew or ought to have known that the conduct was unwelcome, then that will amount to a contravention of the *Anti-Discrimination Act* in the following additional circumstances: firstly, if the conduct was such as to create an unwelcome feature of the employment ... or to be a "detriment" ... or secondly, if the employer

secured compliance with his sexual demands by threatening adverse employment consequences ... or thirdly, if rejection of the employer's sexual demands led to retaliation in the form of loss of access to employment opportunities ... fourthly, if rejection of the employer's sexual demands led to retaliation in the form of dismissal or some other loss of tangible employment benefits ..." ¹

There then followed a series of other cases which also received salacious publicity with the victim of sexual harassment being photographed on the front page of all the daily newspapers and as a lead item in the television news. It was in many ways an unedifying spectacle.

The second major NSW case that received national media interest was Jane Hill's battle with the NSW Water Resources Commission.² When Ms Hill achieved a promotion as a supervisor into a previously totally male area of work, she was subjected to a range of completely unacceptable behaviours by her male junior colleagues in a sustained campaign waged against her over 12 months. Her mail did not turn up, telephone messages from the VD Clinic were played on her phone, cartoons and offensive material were delivered anonymously in the mail and there was a range of sexist and sexual remarks made to her. She was moved to another employer for her safety after she received a series of threats. Harassment and discrimination were found to have occurred as well as denial of promotional opportunities and other detriments.

The third test case arose from acts of sexual harassment in a cake shop in Brisbane. In 1988, the Federal Court held that the sexual harassment provisions of the federal law were Constitutionally valid.³ Importantly, the Court recognised that young women working in places with few employees

¹ *O'Callaghan v Loder* [1983] 3 NSWLR 89.

² *Hill v Water Resources Commission* (1985) EOC 92-127.

³ *Aldridge v Booth* (1988) 80 ALR 1.

and limited job prospects were entitled to work in peace and safety without being sexually harassed and assaulted by their employer. This was the first time in Australia that there were such clear statements from leading judges about these important issues.

The fourth major case was a controversial decision under the then new Sex Discrimination Act concerning a 60 year old doctor making lewd and inappropriate comments to his 3 young female receptionists including questions about each woman's sex life, physical touching and a ludicrous proposal to one that he would "wait" for her and "loved her". He even asked sexually inappropriate questions in one job interview but desperation for a job meant that the young woman accepted the offer of employment. The controversy arose as at the initial hearing, Marcus Einfeld as the Human Rights Commissioner refused to award the three women any damages as he considered that the attendant publicity had embarrassed the doctor enough. The story had graced the front pages of all the national dailies with many television reports – and repeated photographs of the doctor who was named and, I would suggest, appropriately shamed. In 1989, three judges in the Federal Court strongly disagreed with the earlier Einfeld decision. Their decision established the clear principle that damages are to put the complainant in the position she would have been without the harassment and as compensation for her pain and suffering.

Recently the Federal Magistrates Court awarded \$100,000 to a woman for extreme pain and suffering after acts of sexual harassment, one act of serious sexual assault and many acts of victimisation plus over \$300,00 for economic loss, interest and future medical costs.⁴ This is the first time that

⁴ *Lee v Smith* [2007] FMCA 59 and [2007] FMCA 1092.

this level of damages has been awarded and can finally be seen as recognition of the extreme suffering of some women.

While the intense media interest has waned somewhat in the intervening 30 odd years, there is no doubt that a particularly racy claim can still attract significant media coverage.

If I may reflect back again on the earlier days. My first involvement with a sexual harassment case was in 1977, when I was working as the first legal officer for the Anti-Discrimination Board in New South Wales. I still well remember the facts of a complaint of sexual harassment at work and the distress of the young woman involved. Her distress was palpably increased when the employer, a relatively large Australian firm, terminated her employment as a result of the complaint. Later, I learnt shortly afterwards the employer had promoted the harasser. We can be thankful that those times at least have passed – or at least we can hope they have.

In 1983, at the time of the passage of the Sex Discrimination Act, there was much debate amongst lawyers and opponents of the legislation, saying that it would be impossible to ever prove a case because essentially this was private conduct, and no-one would be silly enough to conduct it in public, and that no woman would ever be able to prove that it had happened to her. The second part of the contention was that no woman would want to put herself in the position where she had to stand up publicly and identify herself as being a person who had been harassed.

While no doubt there are many women who have been subjected to acts of sexual harassment who have elected not to pursue their rights, there are also many who have done so - both by using the agencies created under the

discrimination laws or by dealing directly with their employer to achieve an acceptable outcome. Many have shown great courage and dignity while exercising their rights under the law.

In 2007, the sexual harassment laws can be assessed. One way to do so is against the background of the working conditions for women prior to their introduction and since.

One factor is the change in the sexual segmentation of the workforce. The Australian workforce used to be one of the most divided on gender lines. Certain jobs were women's and certain jobs were for men. The contact between men and women in the labour market often occurred infrequently. By the early 1970s there were few professionally qualified women, particularly in areas such as the law and engineering. There were few women business leaders and if they were in senior management, this was be running their own businesses and not working for any of the big companies. By the early 1980s all the big companies had Boards completely controlled by men and all the senior executives were men. Has that changed much? Marginally in terms of Boards and CEOs, but the middle and senior management profiles of women in Australian industry and particularly in government service has improved.

The employment profile of women police officers in Queensland is a particularly stark example of this profile. In 1970, women were less than 1% of Queensland Police. There were 25 of them and over 3,000 males. This slowly increased to a peak in 1977 at 8% - 317 women against 3,700 men – but the numbers in the next 11 years decreased down to 258 by 1986 and then started to slowly rise again up to 373 – 7% - in 1990 and a giant leap to 514 – 9% - in 1991. Since then the number of women has steadily

increased until by 2000 there were 1,316 – 18% - and in 2007 – 2,306 – 24%. I have no idea about this peculiar pattern of rise and fall in raw numbers – but perhaps some of you do. It is against the usual trend of a steady increase without a drop back.

The increase of women in professional, technical and administrative jobs led to some other changes in the workforce. While the chicken and egg cause and effect may be difficult to determine, there is no doubt that there has been a fundamental shift in the workforce for women. The sort of behaviour and conduct I was subjected to when I was a baby lawyer in the early 70s should have been unacceptable then, but certainly would not be tolerated now.

I consider that the sexual harassment laws have been the most successful part of the sex discrimination legislation, and indeed, probably of all the parts of the discrimination legislation. For reasons that I won't trouble you with now, the race discrimination provisions have had marginal impact in areas like employment. Disability cases have been mainly in the area of education and not so much in employment, and the sort of sex discrimination cases that we imagined would come about in terms of working conditions and wages for women have not occurred either. The one consistent area of conciliated outcomes and litigated outcomes has been sexual harassment. There have been a number of cases where sexual harassment has been established as having occurred and there have been many, many more where conciliation was the preferable and sensible outcome.

As my NSW police review showed, it is still happening in pockets but the wide spread and accepted extent of it prior to the mid-1980s has fortunately diminished.

So how was it that sexual harassment provisions were able to be implemented? Legislation performs a vital role in establishing a societal norm by imposing an objective standard of behaviour and conduct into the legislative framework. The legal definitions make it easier to establish that such conduct has occurred and that it is unacceptable. The power of legislation to change conduct is aptly demonstrated by this law.

Policy makers and lawyers have long debated whether legislation should move ahead, be in tandem with or follow community standards. In my view legislation can and should play a very important role in setting and leading community standards – by appropriately reflecting the type of community that we want to live in. The sexual harassment and sex discrimination legislation has both been followers and leaders of social policy, social mores and social standards within the Australian community from the mid-1970s to now. However, as with any change in culture and social mores, it can safely be assumed that there are some who are resistant to that change and some who vehemently oppose it. One example has been the resistance by some to the involvement of women in certain areas of the labour market.

One personal example is - when I was a young lawyer, there was some stout resistance to women lawyers in a way that is unimaginable today. I couldn't get a job in the private sector because I didn't have family connections and because I was a woman. At that stage women were 1% of the graduates of law schools. Today women are over 50% of graduates of all law schools and recruiting women lawyers is no longer an issue. What continues to be an

issue in some law firms is the rights of women, including women partners, when they go on maternity leave and want to return to part-time work. This is a second issue that I consider has greatly benefited women through the sex discrimination laws. The rights of all women returning to work who want to work part-time have in many circumstances been protected and advanced by the sex discrimination laws.

While I am not Pollyanna and accept that there are still acts of sexual harassment occurring and this that is obviously lamentable - the prevalence has decreased significantly and the acceptance of it as a normal working environment for women has been eliminated.

THE INQUIRY

So against that background -

I was sitting home one Saturday morning on 5 August 2006 reading the Sydney Morning Herald, where stories about sexual harassment at the Goulburn police training academy were splashed all over the front page. This was part of a 2 week media saga about Goulburn and sexual harassment of students by lecturers. Shortly afterwards the Commissioner called me and asked me whether I would like to undertake an inquiry into sexual harassment. I willingly accepted the honour.

The terms of reference covered activities within the entire NSW Police Force, both police officers and administrative staff and also did not focus solely or even principally on past events at Goulburn. They had been investigated by others at another time and this was not a re-investigation of those complaints. The terms of reference were broad and at no stage was there any attempt to curtail my activities of interviewing whoever I liked, nor were

there any attempts to alter or an in any way change the draft report prior to its public release.

I was assisted by another barrister, Elizabeth Raper. The Commissioner sent out a state wide memo and I sent a letter at the same time published in the *Police News*. There was a general media release also. I then contacted all Area Commanders who sent out a memorandum to their staff. All of these initiatives invited people to contact me on a confidential basis to discuss any issues they wanted to. I set up a confidential email address that went through my computer server and not through the Police server. People could then contact me directly by sending me an email, or if they wanted to, there was an internal police person they could contact who would then pass on their queries. Most contact was made with me through the email, either providing telephone numbers for further contact or sending me written submissions or documents. The objective was to conduct as many face to face interviews as was feasible or telephone interviews where it wasn't. We set up an interview program that covered the main areas of the State and tried to ensure that regional people had as much opportunity as metropolitan based staff to participate. We spent a period of six weeks travelling around New South Wales interviewing people.

Interviews were conducted at venues away from the local police station and not within easy viewing of the local Police station to ensure that the confidentiality of those who spoke to us was maintained at all times. Based on my lengthy experience in sexual harassment matters, it was my view that the only way I would be able to solicit genuine reports was to be able to promise a degree of confidentiality that would not be possible if it was not able to be provided at a physical level. While I didn't fully appreciate it at the time, my instincts identified what was – in fact - a major issue in the

New South Wales Police Force arising from complaints of sexual harassment and that is appalling acts of victimisation. I'll return to that point later. We developed a pro forma interview format, which is Annexure C to the report. We followed such a format to ensure that there was a similarity of data to be better able to analyse the material.

By the end of the interview process, we completed 124 interviews. There was also a vast amount of written material that we reviewed relating to previous complaints of discrimination and harassment and any litigation involving the police force in the previous five years, as well as some of the pre-existing Goulburn investigation material. We were lucky and honoured that many people shared their experiences with us in an honest and direct manner. The common comment was that while the individual woman we were speaking to had no wish for any action to be taken on her own behalf, she was coming forward because she wanted to be part of a systemic change which she considered to be essential within the NSW Police Force. That sentiment belies the culture that exists in pockets within the NSW Police Force. Those pockets sadly allowed discrimination and harassment and bullying to continue unchecked and to be covered up. The analysis of the records of the substantial number of interviews and the other supporting material left me in no doubt that the findings were valid and that they represented a serious issue of a toxic culture in some places and some inappropriate conduct that needed to be dealt with promptly and effectively.

I had guaranteed confidentiality to all participants. In order to maintain that confidentiality I refused to include any specific case study data in the report – or go into such details today. That data obviously informed the findings and the recommendations. The reason I refused to include the case studies was because even with anonymous material - to make sense of a story, you

still have to include some details which could unintentionally expose the interviewee to a reader who knows the facts through personal involvement either as the harasser or a supporter of the harasser. One reason I was most concerned not to do that was that many people who came to speak to me had spoken to no-one about their experiences. They demonstrated great courage in deciding that they would take that step to try and produce a cultural change within their workplace and make a contribution to developing a safe working environment – with no direct personal benefit to themselves. It would have been appalling and unacceptable if I had in any way breached that trust and broken my promise to them of confidentiality.

So the management of the NSW Police Force still has no idea of the women I spoke to. Now the downside of that is that I'm aware of a few women police officers who continue to work in difficult and distressing circumstances who are not able, they consider in their circumstances, to take any pro-active steps to protect themselves. This has obviously caused me great concern and I have spoken to some of them at some length since the release of the report to encourage them to take steps to either move to another work environment or to take some active steps to raise a complaint. The reason for this concern may seem to be overly protective but one of the main findings - and the finding that caused me the most considerable concern – was the extent of victimisation. I identified acts of sexual harassment and sex discrimination within the NSW Police Force - that was disappointing and the extent of it was disappointing. What was disturbing and distressing personally was to hear some of the stories of the acts of victimisation that had occurred to women complainants. This was particularly where young probationary and junior constables had complained about sexual harassment and they had then been victimised in the most appalling way by the perpetrator, his supporters and those who covered up, condoned or ignored

the harassment. The others who were victimised were those who stood up for these young women. They included young men who were not prepared to see their fellow police officers victimised in this manner. They were then also ostracised and victimised.

I'm not saying that this occurred everywhere throughout the NSW Police. I don't suggest that for a moment. But I do say there were identifiable pockets where this sort of behaviour had been occurring for a long time and was covered up by middle management and unknown by senior management.

Is victimisation more common in a police force than in other public sector employment? It seems so – as supported by my research and also by others who have looked at similar issues in the past. Why? There are two main factors. One is that a, para-military organisation imposes a hierarchy and certain expectations of management and performance at each rank. There is “them and us” attitude – police v. the rest of the community. There must be a degree of separation in order to enforce the law and a degree of psychological separation to deal with the many horrific incidents that have to be dealt with. This breeds a necessity to present a united front and be seen as part of the “team”. There are many names, such as blue shirt bonding. Women who complain about workplace conduct are seen as having crossed the invisible line and become “outsiders” or “others”. They are not part of the “club”. They are seen as whistleblowers who are derided and as dobbers.

There is a certain perversity to the basis of this victimisation. Rationally, fellow officers should move to protect the complainant against the errant officer and not the other way around. Yet this does not happen and the ongoing hostility to any woman trying to protect herself from inappropriate

workplace conduct is contrary to any acceptable standard of conduct by work colleagues. This is a weirdly misguided sense of loyalty – but the loyalty runs in the wrong direction.

The second factor that breeds a culture of victimisation is the complex bureaucratic complaints process with respect to complaints from members of the community about police conduct and from inside the service. In NSW< there is an external review mechanism through the Ombudsman.

As a consequence, there is an exaggerated normality for making and receiving complaints and using the complaints process to protect oneself. I found that harassers on occasions used retaliatory complaints against victims, sometimes in anticipation of a sexual harassment complaint being made against them. They then turned the tables on the victim who was rendered powerless in the complaint process by having to respond to a false complaint about her performance while the real issues were disregarded or reduced in significance. The harasser then became the controller of the process and further entrenched the intimidation and demonstrated further callous indifference for the woman officer.

A summary of my findings could be put in the continuum of a career path. In relation to sexual harassment the main focus of those who were harassed are women officers under the age of 30. Given the sexualisation of our society, those findings were not extraordinary.

In relation to sex discrimination, and while I appreciate the focus of this conference is on sexual harassment, I think the culture which entrenches and permits sex discrimination reinforces the acceptability of sexual harassment or at least that sexual harassment can go unchallenged. So I

don't see them as being completely separate. They actively intersect and reinforce and exacerbate each other.

In relation to the continuum of sex discrimination, a female probationary constable may experience sex discrimination in the following ways:

- The immediate resentment by male and some female police officers against female probationary constables on their first placement: "We'd rather have none".
- Lack of willing unofficial mentors and lack of role models,
- Immediate stereotyping of lack of female abilities influencing the allocation of duties.

A female constable or senior constable may experience sex discrimination in the following ways:

- Denial of training and relief opportunities,
- Lack of promotional opportunities including limitations associated with need to work set shifts because of pregnancy/carer responsibilities,
- Inability, because of child care responsibilities, to attend residential training courses.

A female sergeant or, in rare circumstances, an inspector may experience sex discrimination in the following forms:

- Difficulty in obtaining support and respect from peers and junior officers,
- Lack of more senior role models and mentors,
- Being required to prove themselves again and again when the abilities of their male colleagues are accepted without question.

I do not intend to go through the recommendations at length you'll be pleased to know as many are NSW specific. I will address the matters that are of more general interest.

The first is a safe working environment. All employers have to provide a safe working environment and conform with discrimination and harassment laws and also occupational health and safety laws. To fail to do so can be a breach of both or either laws. Inappropriate workplace conduct of any sort provides a poor working environment. This environment can be a hostile one for some staff, especially for victims and the supporters of victims. One of my findings was that there was a lack of recognition by some police officers and other staff that they have a duty to provide a safe working environment for themselves and others. This means that in some areas errant officers were being protected rather than being reported. The cultural shift that has to occur for there to be a safe working environment is that it is necessary for an organisation to understand that errant officers must not be protected and that victims must be supported.

It is no longer acceptable for a culture that says, "Oh, that's only Bloggs – he doesn't mean any harm", "He's been doing it for years", "He only does it when he's drunk", "It's a right of passage for all the women who come to this station" – or my personal favourite – "but he's our best thief catcher so its OK really". None are acceptable or justify a failure to act promptly and effectively to ensure sexual harassment ceases.

Similarly, excusing inappropriate workplace behaviour of young men by saying "Oh, they don't know any better" or "Oh well, when they grow up it'll be OK" etc is also not appropriate.

There must be an organisational culture which provides consistent safe parameters. In my view, to do that an organisation needs to be able to do the following things at a minimum:

1. It must develop an organisational capacity to identify and address conduct that is unlawful under discrimination and harassment laws, and the way to address it must be done in a timely and effective manner.
2. Sexual harassers must be identified and brought to account and the prevailing culture in some locations that serves to protect them must be eliminated. The culture of silence and the refusal to do in a mate must be eliminated. The willingness of some officers to ignore the inappropriate conduct of one person or a small group of people must be shown to be unacceptable. They must be made responsible for their conduct in a disciplinary context. The difficulties experienced by probationary and junior constables to speak out against inappropriate treatment that they have been afforded by more senior officers must be resolved. It can only be resolved in my view, by an effective internal complaint mechanism which provides safety and security and confidentiality and speed in dealing with complaints.
3. The refusal of some managers and supervisors to properly categorise a complaint as coming within the complaints policy and calling it something like a "personality clash" must cease. Casting the responsibility on the victim to resolve the problem, rather than requiring the perpetrator to cease the conduct must stop. The pervasive but misguided view that it was not possible to make any findings of misconduct or serious misconduct when there was only the word of the complainant and the denial of the perpetrator, was a view that cannot be allowed to continue. As a matter of particular interest,

that view was quite widespread in the NSW Police Force. It arose partly because of the focus on criminal activity and partly because of a finding that I found surprising, which was the very low level of understanding and knowledge about and recognition of civil law and civil rights and civil remedies, particularly in relation to discrimination and harassment law. Those are matters that can be addressed through training but were not then widely understood.

4. The necessity that when an investigation is over that there be a critical intervention in the workplace involved. Turmoil can occur when a thorough investigation of an individual worksite occurs and many in it are subjected to detailed scrutiny. Part of any process must have a senior manager attending the workplace after the processes are complete to settle everyone down and ensure that the final outcome is fully understood and the ramifications properly dealt with.

Another critical issue is that there must be strong and clear leadership on this issue. Assuming all is well is not a defensible position. The attention given to this issue by this conference demonstrates that there is sound and strong leadership on this important issue in the Queensland Police Service and for that I congratulate you.

Where there is a perception by some - particularly middle aged and more junior - police officers that senior management is not interested in these issues or is inconsistent in their implementation, then there will be no faith held in the way the system works. That leads to staff being unable or unwilling to utilise the policies available. Linked with sound policies is the need for strong leadership from all senior managers that demonstrates an understanding of the obligations and a commitment to eradicate any inappropriate conduct within the workplace. Now none of

this can occur or can occur effectively unless there is a co-ordinated, comprehensive and ongoing training program on discrimination and harassment laws and their impact in the workplace. There must be a clear understanding of what constitutes sex discrimination and sexual harassment and there must be clearly defined objective standards on what are the components of acceptable workplace conduct and what is unacceptable workplace conduct.

Another major issue that I identified in the NSW Police review was an absence of specialist advice and assistance available within all levels of the organisation, particularly to assist both senior management and middle management making decisions. There was then no central point to contact for speedy, accurate and reliable advice or assistance.

Even once a complaint was made there was a paucity of experienced investigators with knowledge of specific issues relating to discrimination and harassment complaints. There was a real problem where it was assumed that police officers experienced in conducting criminal investigations can immediately, without a blink, start investigating sexual harassment within the workplace. The tests are different, the law is different, the conditions are different and the factors to be looked at are completely different. A failed investigation arises when someone inexperienced in the law in these areas is sent off to investigate and interview people. It is unfortunate and indeed destructive when interviews are polluted by leading questions and inappropriate questions or even by supporting the alleged harasser. Belittling the issues raised by the complainant in a manner which is unsupportive and not designed to elicit the full and complete facts can be fatal. These factors or any one of them can lead to a fundamentally flawed investigation. So ensuring that

an investigation is conducted by someone with the appropriate level of experience, knowledge and understanding of the relevant legal framework and the sorts of outcomes that can arise from such a complaint is critical to the well being of an organisation and its capacity to properly handle and deal with a complaint.

Another critical factor was the refusal to accept that where there was only the word of the complainant and the denial of the respondent, then there was no basis to form a decided view about the complaint. This is of course nonsense and reflects old notions about sexual assault. It is not necessary to have witnesses to acts of sexual harassment to determine it occurred. A failure to make a finding on that basis is another flawed investigation.

Sadly, all the nice words on paper fall apart and no policy is effective unless the investigation process is able to support and sustain the statements of principle that are contained in that written policy. Critically there must be consistency in decision making processes across the organisation. Where there is inconsistency then this can lead to favouritism and this is particularly so when known perpetrators have for a long time avoided the consequences of their serious misconduct. The absence of any central resource or any central record keeping can also mean that both complainants and managers are denied access to a proper history of the perpetrator. So an officer can have been moved from place to place because of their conduct but there is no proper paper trail. That is, people are moved on, rather than dealt with, transferred somewhere on a temporary special project, sent off to do something rather than deal with the problem because the problem may lead to their dismissal.

The absence of a central resource also means that there is no professional and prompt advice and assistance to managers when being informed of a complaint. The lack of appropriate management response to complainants leads to or enables acts of victimisation to be perpetrated. I found that complainants who were victimised were not willing, and this is not surprising, to come forward a second time to say they were being victimised by the perpetrator and his friends. That then feeds into a culture of 'don't complain, it's not worth it'. There is no doubt that within the NSW Police Force in 2006, this was a pervasive culture amongst women police officers. I could well understand why many of them held that view. They had seen or knew of few successful complaints where perpetrators were dealt with properly. The unsuccessful complaints and the serial harassers being protected within the force were widely known.

The cultural change that is necessary to ensure a safe working environment for all officers and staff within any police force must address any negative attitudes that are held in relation to discrimination, harassment, victimisation, bullying and other inappropriate workplace conduct. These attitudes are fed, in part at least, by sex discrimination. In a dynamic and responsive work culture, the growing proportion of women in the police force across Australia should have precipitated careful planning and training programs to accommodate the changing profile of the workforce. That did not occur, as I understand it, anywhere on a consistent, thorough and ongoing basis. There were occasional programs that lacked consistency, cogency and a proper resource base.

As there were growing numbers of women entering into the police force, the culture of resistance and discrimination became entrenched rather than altered in some areas. I hasten to add, I'm not saying that all male police officers are discriminators, far from it. There are many, many male police officers who act as mentors and protectors of women police officers. However, there is a culture in NSW - and I understand in other states - that considers that women are not tough enough, strong enough, big enough etc to do the job properly. This feeds into a view that, for example, you can't complain about sexual harassment, that's just what it's like, it's part of the job, you've just got to put up with it and shut up, it's a tough job. Well it is a tough job, and none of us would underestimate that it is tough out on the streets in particular, dealing with obstreperous, difficult members of the community, often in very stressful situations. That does not however, condone inappropriate workplace conduct, occurring either in the truck or back at the station. Yet, in some peculiar way it is used within the culture as a justification for that sort of inappropriate conduct.

In fact, in my view, the reverse should be happening. If you are going out onto the streets to deal with difficult and stressful situations, where you have to draw on your personal resources and your professional training to properly assist members of the community, you should, indeed you must, be able when you return to your police station, to be in a safe working environment – a non-stressful, non-hostile working environment. That can only occur if there is no culture of discrimination, harassment and bullying in place in the station. If the stressors of the street end up being less than the stressors of the internal workplace, then there is something seriously wrong with the workplace.

A final comment on what must, or should happen, is that there must be an effective disciplinary process. I've referred to the need for consistency. Consistency in the application of the disciplinary process is absolutely essential. If there needs to be termination, then there has to be a termination. If the standard of behaviour is completely unacceptable then it must lead to a termination. That should be applied across the State without variation. If it's unacceptable conduct in the middle of Brisbane, then it's unacceptable conduct in far north Queensland. That is, there is no variation, distinction or allowances made because it's a regional area with a small police station.

The data that I collected for the report was not sufficient to permit me to make any firm findings about the differences in regional and metropolitan areas, but my gut feeling was that condemnation and victimisation were stronger and more entrenched in some regional areas. I stress not all, but in some regional areas where there were well known serial harassers who had been in operation for many years. The particular regional problems were partly the distance from headquarters and its policy directives. Promotion and transfer options were limited. Sometimes the towns themselves were considered good locations. People had moved there with their families, made commitment, kids in schools – that sort of thing. They did not want to rock the boat and so were put in a position of having to accept inappropriate conduct because of these factors. But boredom, isolation and insularity leads to unacceptable conduct and then cover ups.

Many of these factors fell away in a city environment or a larger metropolitan area, where moving to another police station is an option. In New South Wales there is a policy of transfers generally not being available within 3 years. This can present a difficulty, particularly say for

a probationary constable who has just arrived at the station and is immediately subjected to inappropriate sexual conduct by the station's serial harasser. She's then put in a difficult position of having been there a short time, knowing no-one and having no support and no mentors. These are matters that are critical for women to survive and survive well, and to then ask for a transfer barely has she tied her shoes on for the first day becomes a difficult task.

Other issues are:

Reporting – there was significant under reporting of complaints of sexual harassment and this arose partly from a lack of faith in the complaint processes to adequately respond and deal with the harasser and the environment. Concerns about a timely response need to be addressed and this is a question of resources for prompt review and investigation and also expertise in the conduct of the investigation.

Linked to the decision to complain is the immediate response of the organisation. There must be an appropriate assessment and intervention – the initial request of many complainants is just for the conduct to stop and for them to be able to work in a safe and secure environment. Often this is lost in a flurry of paperwork with no result or complete indifference to the complaint and the initial focus is lost.

I found that the culture of inaction had a linked factor of actively dissuading women from complaining - "it'll ruin your career", "you won't be believed" – is obviously a major inhibitor to a successful outcome.

Bullying

I'd like to turn briefly to the issue of bullying. Bullying should not be confused with lawful directions given within a hierarchical para-military system of command as operates within any police force. Unquestioning compliance of lawfully given directions is an integral part of the command structure. Without that compliance then the command structure falls away and that command structure is absolutely essential for appropriate emergency responses for example, or dealing with a crisis or even for the day to day management and supervisory system and structure to work. However, that command structure should not be seen as an excuse for inappropriate actions of humiliation, or unwarranted criticism of work performance. Women complain of bullying often associated with gender issues of discrimination or harassment.

In NSW, there were particular stark instances of bullying and intimidation for women who were working part time after maternity leave. There was a degree of resistance to their part time work pattern that was seen as advantaging women and so was disadvantageous to men. There was a perception that they selected the best shifts. The real picture was that many part-timers work Friday and Saturday nights as it suits their family responsibilities and their partner's work commitments. This means that other officers can routinely avoid these unpopular shifts.

Some men complained of undue work scrutiny, verbal abuse, inappropriate comments, aggressive behaviour, intimidating conduct and physical interference. Such bullying is also inappropriate workplace conduct and needs to be dealt with by the same complaint process. It can also give rise to a hostile working environment that includes stressors that should not be happening within any workplace.

Training

I understand that there are 2 Queensland Police Service Academies, one in Brisbane and one in Townsville. The Prove Programme is intended to be on a live-out basis, but there are some provisions for living on campus at each academy. In this sense the program differs from the NSW program where it is usually entirely live-in or with some living in town with large classes.

In NSW, there are two residential types of training. One is the initial training for new recruits and the other is training for existing officers.

A different training component is the sessions on sexual harassment and sex discrimination delivered to individual police officers after they leave the Academy.

In relation to the actual trigger for events at Goulburn, my inquiry found that the investigations were inadequately conducted and where there were disciplinary outcomes, they were at the lower end of the acceptable scale when one looked at comparable determinations.

In terms of general issues in relation to recruit training, it's my view that there must be proper components in the educational course about discrimination laws and complaint processes and the requirements of a safe working environment. One of the problems is that there is a lot of emphasis on the physical side of policing rather than on the educational side of policing, and that these subjects are sometimes seen as more esoteric and are not really part of the core course. There needs to be proper codes of conduct that covers educators, administrators and

students and there needs to be an assurance that there is no culture of forcing or requiring students, particularly women students, to accept sexual harassment from educators. This can only be achieved if there is an open and effective complaint process and sanctions that are appropriate in level to the degree of inappropriate conduct.

One of the issues in NSW was a notion, and I stress, in my view it is entirely a false notion, that where a student and a lecturer engage in sexual relationships, then that is OK because they are both consenting adults. This is not an acceptable view even if the relationship started while they were in the local pub and not in the classroom. There is a potential for exploitation and opportunism by any teacher of any student and that needs to be met by sound policies and proper complaint processes and a clear understanding by students that they are not required to accept as part of their enrolment, sexual harassment or intimidation or bullying of any sort.

I have a strong view that there should be a complete bar on any form of sexual relationships between students and lecturers. If a lecturer and a student genuinely want to form a permanent intimate relationship, then that can wait until the 6 month course is over, and do so at the end, or the lecturer can remove themselves permanently from the educational environment. In my view, that should be a completely rigid bar to which there is no deviation and no exceptions. In addition to that, as a new police officer goes to a police station as a probationary constable and they are subject to continuing and ongoing assessment over the next period, there should be a complete bar to any officer involved in working with, supervising or assessing the work of the probationary constable having a sexual relationship of any form with that probationary constable. This is

only fair to ensure that the probationary constable is able to engage properly in the training and recruitment process.

THE FUTURE

At a more general level, I would like to briefly reflect on the future of sexual harassment laws because I think there are important shifts occurring that need to be considered. When the federal Sex Discrimination Act was enacted we included the term 'sexual harassment' and it was then forward looking and at the forefront of legislative reform in this area.

When one examines the issue of pornography in the workplace, there has been a big shift in public and private environments. In the old days a letter would arrive, it would be given to the staff member to whom it was addressed, no-one would open it if it was personally addressed, and the chance that it would contain pornography would be so extremely small that it wouldn't have even crossed someone's mind. Now, emails flow between colleagues both in and out of the workplace and the chances of them containing sexually explicit material or offensive material or racist material, incest or child pornography are increasing. There is without doubt a real explosion in sexually explicit material in the workplace being introduced through computers and mobile phones. In my view there are serious ramifications from this social shift. As a lawyer, and not a social scientist, I do not intend to try and work out why it's happening – we would all have our own views about that. What I'm interested in is the ramifications because it is now undeniable that it is happening. There are serious ramifications in the workplace which are giving rise to problems for employers and their responsibilities to provide a safe workplace for

their employees and for co-workers who are subjected unwillingly to material that they don't want to see and they don't want to know about.

In a workplace where sexually explicit material is being shown between work colleagues, then it is almost inevitable that others will be exposed to it even if by accident. So there are issues about regulating what comes into the workplace in ways that certainly when we drafted the Sex Discrimination Act would not have been within our thoughts 20 odd years ago or even 10 years ago. The dynamics have shifted so that the contemporary workforce has changed profoundly by bringing previously exclusively private behaviour into public space. So that acts of 'old fashioned sexual harassment' that is, one on one physical touching, invitations for sexual acts etc are being overshadowed by the technological changes that have occurred and these present real concerns.

Recently the media reported a passenger in the Qantas Club looking at child pornography while waiting for a plane. Of course the Qantas Club lounges are open for anyone walking past – what does it say about the shifts in culture where someone can think that is acceptable conduct at all and especially in a public space.

I've been involved in a number of matters where senior managers have been dismissed from their employment because they were spending many hours, during working hours and after working hours looking at very serious pornography, including child pornography while sitting at their desk. This has an impact not only on them – especially when they lose their jobs – but there is a serious impact on their family life as they

spend hours away from home gazing at sexual images on a computer screen.

During my inquiry, a number of young female police officers complained about male officers using mobile phones and other technology to bring sexually explicit material into the workplace. Most aware police officers in NSW know that the police computer system can track the use of the internet and so it is no longer used to download pornography. Obviously there is a similar system in Queensland as the photos I sent for this conference brochure was rejected by the Queensland Police Service computer and sent back with a stern warning that it would be reviewed to see if it was appropriate and not to send such attachments again.

Policies tend not to cover bringing mobile phones and MP3 players and other sorts of technology into the workplace. They are viewed as people's personal possessions. Any properly formed policy must cover personal possessions brought into the workplace and being used or displayed during working hours. Young police women complained of feeling intimidated and isolated when their male colleagues stood around watching sexually explicit material including videos of sexual acts or playing sexually explicit material with the sound up so that it is obvious what it is. The increased use of this sort of material within the workplace needs to be properly addressed and the culture of the organisation must demonstrate clearly that that is not acceptable conduct.

The second area where technology has brought a new light into sexual harassment is that some males think taking a photo of their genitalia and sending it to a woman's mobile phone with a sexually explicit invitation is a suitable or appropriate way to behave. Now if it happens to be a work

phone, then the connection with work is well established. But if it happens to be a personal phone but sent to a work colleague when the mobile phone number was acquired for the purposes of work and sent either at work or after work, then it still can come within the working environment and create an unsafe work environment.

A third area is social networking technology such as Facebook and My Space. Facebook in particular, where one can have friends join up and it is used in some ways as a social setting where people may reveal quite extensive personal information about themselves, is then viewed by work colleague. This can and has, led to stalking by workplace colleagues who can find out where a particular person is going to be at a weekend because they read their Facebook entries. While the message should be that extreme care and caution should be used about what one puts on one's Facebook entry (if one has one), it is important to recognise that these changes mean that perhaps it's time we re-think the definition of sexual harassment within the legislative framework to ensure that it adequately and properly covers these sorts of technological changes and the creativity of men in devising new ways to harass women.

In relation to bullying and sexual harassment and occupational health and safety laws, it is my view that where there is a known sexual harasser or known bully, then there is an identified risk and that person can, and should be dealt with, not only in relation to the discrimination law, but also in relation to the occupational health and safety and an employer has the responsibility to deal with known risks.

CONCLUSION

Acts of sexual harassment in the workplace are frequently acts of power mixed with sex – they are based on intimidation and create fear and uncertainty in the unfortunate recipient.

Where a workplace does not have an effective and timely complaint handling process and clear policies then such conduct will continue to occur and may be covered up or excused by others.

This is plainly not acceptable and any properly informed and regulated workplace must ensure that it does not occur or if it does, it is promptly and properly eliminated.

Fear and intimidation have no place in any workplace and we must ensure that they are not present when caused by sexual harassment, bullying or other inappropriate conduct that has no role in the workplace.

So - don't cop it!