RISKY BUSINESS
Managing Sexual Harassment at Work

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The naming of 'sexual harassment' in anti-discrimination legislation was a significant victory for working women. In Australia, sexual harassment is now widely accepted as a gendered workplace harm, and most large workplaces have sexual harassment policies and grievance procedures in place. However, the level of formal complaints is persistently high and sexual harassment remains a contentious and difficult workplace issue. Drawing on a case study of the Australian banking industry, the paper explores how sexual harassment can be 'managed away' through the very workplace grievance processes put in place to address it. The article argues that, within complaint management processes, organisational and legal discourses intersect to individualise and decontextualise sexual harassment. In particular, the threat of vicarious liability and organisational concerns for risk management work to construct complainants as an organisational risk. They also work to construct sexual harassment, where it is conceded, as the aberrant or 'inappropriate' behaviour of an individual, rather than any systemic expression of gender inequality.

Introduction

All Australian jurisdictions have enacted specific sexual harassment provisions.[1] The *Sex Discrimination Act 1984* (Cth) (SDA), for example, provides that one person sexually harasses another if:

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1 Sexual harassment is made unlawful in the *Sex Discrimination Act 1984* (Cth), ss 28A–28L; the *Anti-Discrimination Act 1977* (NSW), ss 22A–22J; the *Equal Opportunity Act 1995* (Vic), ss 85–95; the *Equal Opportunity Act 1984* (SA), s 87; the *Equal Opportunity Act 1984* (WA), ss 24–26; the *Anti-Discrimination Act 1991* (Qld), ss 118–20; the *Anti-Discrimination Act 1998* (Tas), s 17; the *Discrimination Act 1991* (ACT), ss 58–64; the *Anti-Discrimination Act 1992*, (NT) s 22.

- he or she makes an unwelcome sexual advance or unwelcome request for sexual favours to the person harassed or engages in other unwelcome conduct of a sexual nature in relation to the person harassed; and
- in the situation a reasonable person, having regard to all the circumstances, would have anticipated that the person harassed would be offended, humiliated or intimidated.[2]

All jurisdictions proscribe sexual harassment in employment and most also provide that an employer may be found vicariously liable for acts of sexual harassment by an employee.[3] There is a defence whereby an employer can argue that they should not be vicariously liable for any sexual harassment if it is established that the employer took all reasonable steps to prevent the sexual harassment.[4] Employers need to prove, on the balance of probabilities, that the steps that have actually been taken are qualitatively and quantitatively reasonable in the circumstances of the case. Thus large corporations will be expected to do more than small businesses in order to be held to have acted reasonably.[5] The spectre of vicarious liability makes sexual harassment an organisational concern. It also shapes the workplace management of sexual harassment complaints as discussed below.

Legal compliance can work in contradictory ways. While the legislative proscription of sexual harassment and publicised litigated cases may well provide an impetus to organisational efforts to prevent its occurrence,[6] management strategies are also directed to preventing the escalation of complaints and third-party involvement in their resolution.[7] To better understand how sexual harassment is managed within workplaces, and how the law and legislative practice shape this management, the article draws on a case study of the Australian banking industry, which explored the link between the 'public' world of court and tribunal management of sex discrimination grievances and the 'private' ordering that occurs within the walls of the

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2 *Sex Discrimination Act 1984* (Cth), s 28A. The previous definition of 'sexual harassment' under the SDA required a complainant to show that they were subjected to actual disadvantage because of the harassment (such as dismissal or demotion). Under the revised definition, made by the *Human Rights and Equal Opportunities (No 2) Act 1992* (Cth), complainants are not required to prove they suffered any additional harm. I note, however that the issue of what precisely has to be proved to satisfy the 'reasonableness' of the victim is not standard in Australia. The SDA and the *Anti-Discrimination Act 1991* (Qld), for example, both require that a reasonable person in the harasser's shoes would anticipate that the victim be offended, humiliated or intimidated. The *Equal Opportunity Act 1984* (SA), on the other hand, requires that this element be considered from the point of view of the reasonableness of the victim's reaction.

3 The *Anti-Discrimination Act 1992* (NT) contains no specific provision for vicarious liability. However, the general common law principles of vicarious liability are regarded as applying. See CCH (2002), para 61-000.

4 For example, *Sex Discrimination Act 1984* (Cth), s 108.

5 CCH (2002) para 61-200.

6 Parker and Wolff (2000), p 522.

7 Thornthwaite (1994), p 294.

workplace.[8] In this article, the banking case study is used to highlight the way in which the management of sexual harassment complaints can be shaped by organisational understandings of sexual harassment as well as the paradox of 'doing gender' in sexual harassment grievance processes.[9]

While the case study material raises issues about the workplace management of sexual harassment more generally, the specific industry and workplace context is, of course, critical. Women now make up almost two-thirds of the banking workforce. However, banking is a highly gendered industry with increasing occupational segregation and an increasing pay equity gap, where men are the managers and women are the managed.[10] The larger Australian banks have a high profile as 'good corporate citizens' in the area of work and family policy.[11] Requirements to lodge annual reports under the *Equal Opportunity for Women in the Workplace Act 1999* (Cth) have been waived in the case of some of the larger banks.[12] However, the gulf between the policy and the implementation of equal employment opportunity is significant. Not only is there some ambivalence among managers about what constitutes equal employment opportunity for women, but there is also a dissonance between male and female workers' perceptions of the extent to which any such equal opportunity has been achieved.[13]

Interviews with women in the banking industry indicate that, while sexual harassment is less overt than it once was, it remains a concern.[14] However, a

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8 See Charlesworth (2001). Among other things, this research drew on more than 50 individual interviews with women workers and both male and female managers, including line managers, human resources and industrial relations and senior staff in three major Australian banks as well as relevant union officials between 1997 and 1999. It also drew on Human Rights and Equal Opportunity Commission conciliation files relating to complaints by bank employees lodged under the SDA as well as an historical and labour market analysis of women's employment in the Australian banking industry

9 On the concept of 'doing gender', see McDowell (1997), p 204.

10 Charlesworth (2001), pp 88–92.

11 For example, both the Commonwealth Bank of Australia and the ANZ Banking Group were finalists in the 2001 ACCI Work and Family Awards.

12 The *Equal Opportunity for Women in the Workplace Act 1999* (Cth), s 13C provides that employers can be exempted from reporting annually as provided under the legislation for a period of up to three years, where they have been compliant with the legislation for at least three consecutive years and they can demonstrate they have taken all reasonably practical steps to address issues for women in their workplace. For example, in June 2001 the National Australia Bank and the Commonwealth Bank of Australia were exempted by Equal Opportunity for Women in the Workplace Agency (EOWA) from reporting for one and two years respectively.

13 See Charlesworth (1999), pp 18–20; Still (1997), pp 41–42.

14 This is consistent with Leonie Still's 1997 findings from women banking employees' responses to an attitudinal questionnaire. While sex discrimination more generally was seen as a more common issue than sexual harassment, over a quarter of the women respondents believed that sexual harassment occurred at the

particular problem area is seen to remain in dealing room and financial market areas where few women work and a 'macho' culture in what has been described as the 'engine room' of the finance industry is accepted as the norm. Human Rights and Equal Opportunity Commission conciliation complaints lodged by banking employees under the SDA between 1987 to 1997 also suggest that sexual harassment in the banking industry has been a persistent issue.[15]

Making Sexual Harassment Complaints

Sexual harassment, particularly in employment, is one of the most common grounds for discrimination complaints made to human rights and equal opportunity agencies.[16] Importantly, too, there is now a relatively well-developed case law on sexual harassment in Australia.[17] While most complaints of sexual harassment made to anti-discrimination bodies are not determined in the public arenas of tribunals or courts, reported conciliation outcomes suggest that the conciliation of sexual harassment complaints occurs on a regular basis and can offer some real redress in individual cases.[18]

It is important to note, however, that very few complaints of workplace sexual harassment are ever pursued outside the workplace.[19] There is a high rate of attrition from the occurrence of sexual harassment to the lodging of a formal complaint in outside fora such as those offered by Human Rights and Equal Opportunity Commission (HREOC) and the Equal Opportunity Commission of Victoria (EOCV). European studies suggest that around 30–50 per cent of women and 10 per cent of men have experienced sexual

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pre-executive and executive levels of the bank in which they worked. Still (1997), p 41–42.

15 Thirty-one of the 77 complaints lodged under the SDA by banking employees between 1987 and 1997 were on the grounds of sexual harassment. For details on the banking industry conciliation files analysed, see Charlesworth (2001), pp 305–42.

16 For example, in 2000/2001, sexual harassment complaints made up 30 per cent of all complaints lodged under the SDA. In 2000/2001, there were 162 complaints of sexual harassment lodged under the SDA and 562 under the *Equal Opportunity Act 1995* (Vic) (EOAV), the majority in the area of employment. Human Rights and Equal Opportunity Commission (2001), Tables 22 and 23; Equal Opportunity Commission Victoria (2001), p 29.

17 See CCH *Australian and New Zealand Equal Opportunity Cases*.

18 For example, half of the complaints conciliated and finalised under the SDA between 1 July 2000 and 30 June 2001 were sexual harassment complaints. Recorded conciliation outcomes ranged from financial compensation, apologies and the provision of a reference to 'complainant satisfied with response' and 'private agreement — terms not disclosed to HREOC'. See HREOC 'Conciliation Register: *Sex Discrimination Act*. www.hreoc.gov.au/complaints_information/register/index.html

19 This is typical of grievances generally. As Hilary Astor and Christine Chinkin (1992), p 29 point out in their discussion of the dispute pyramid, external bodies and lawyers and courts play only a marginal role in resolving disputes.

harassment at least once in their lives, while a recent Australian survey suggests that one-third of women have been victims of sexual harassment in their workplace.[20] Of those who are sexually harassed in the course of their employment, very few make internal complaints and far fewer will pursue any concern outside the workplace.[21] Of the few who lodge formal complaints with anti-discrimination bodies, only a tiny fraction will ever go to a public hearing.[22] To better understand how sexual harassment provisions work to address sexual harassment in employment, we need turn our gaze to what happens in private in-house grievance processes. Reported cases and available information about complaints referred for conciliation suggest that sexual harassment complaints pursued outside the workplace are more likely to come from small workplaces. The fact that larger organisations, such as banks, are more likely to have policies and processes in place to deal with sexual harassment complaints makes it of interest to explore the extent to which such corporate cultures have adapted to anti-discrimination norms in managing sexual harassment.[23]

The legal 'naming' of unwelcome sexual conduct as sexual harassment has been important in giving voice to a particular gendered workplace harm. However, as I argue below, this has had limited success in drawing attention to the way in which individual behaviour reinforces gendered workplace structures. Further, the issue of redress — of how to best deal with sexual harassment — remains contentious, particularly in the workplace.[24] We know that the individualised nature of the complaint process militates against addressing complaints of more systemic nature such as those that may raise issues of a sexually permeated workplace or a sexually hostile work environment.[25] At the same time, a narrow focus on sexual harassment, arising from a failure to comprehend the full range of structural workplace inequalities in creating women's disadvantage, effectively sheers it off from other gender equality projects, with the emphasis placed on the sexual rather than sex-based

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20 European Commission (1999), p 14. A TMP Worldwide survey of 5800 people employed in a range of industries in Australia found that one in three women had been sexually harassed at work. The survey was reported in Ryan (2002).

21 In 2000/2001, for example, the EOCV recorded 1190 inquiries related to sexual harassment, while the HREOC recorded 741 telephone inquires related to sexual harassment. Equal Opportunity Commission Victoria (2001), p 26; Human Rights and Equal Opportunity Commission (2001), Table 2.

22 Hunter and Leonard (1995), p 17 found that, in a study of a sample of complaints lodged under the SDA, the EOAV and the *Equal Opportunity Act 1984* (SA), around 10 per cent of complaints, excluding declined complaints, were referred to hearing. In a study of complaints lodged with the NSW Anti-Discrimination Board, Thornthwaite (1993), p 33 found that around 6 per cent of complaints were referred to hearing.

23 Christine Parker (1999) argues that the combination of potential liability and bad publicity for sexual harassment has given many companies sufficient incentive to mobilise corporate governance to promote public anti-sexual harassment rights.

24 Bacchi and Jose (1994), p 1.

25 See Hunter and Leonard (1995), pp 27–30.

harassment and sex discrimination.[26] This is at least partly due to the shadows cast by the legislative framework and practice around sexual harassment, which effectively treat this form of sex discrimination as a discrete legal harm.

At the level of public and organisational discourse, sexual harassment is now well accepted as a workplace issue. Most larger workplaces have sexual harassment policies and grievance procedures in place, and many undertake intensive in-house training.[27] Organisations win awards and are applauded because of their innovation in sexual harassment policies.[28] Yet, despite these efforts by employers, the community education undertaken by human rights and anti-discrimination bodies and the negative publicity that accompanies reported cases of sexual harassment, sexual harassment complaints persist and may be increasing. In Victoria, for example, the Equal Opportunity Commission claims that has been a 700 per cent increase in sexual harassment complaints over the last decade.[29] On the one hand, it could be argued that the persistence, if not a rise, in the level of complaints represents public confidence in the conciliation process and the remedies available. On the other hand, the relatively high level of complaints shows that sexual harassment continues to be part of the everyday experience of women workers, and that the mere presence of sexual harassment laws and organisational policies may not be enough to address the entrenched nature of sexual harassment. The persistence of sexual harassment complaints may also be due to the in-house management of sexual harassment complaints and the failure of the external conciliation process in the settlement of individual claims to impact on the incidence of sexual harassment or lead to understanding of its systemic nature. At the same time, while the level of sexual harassment of complaints persists, there is evidence of a reluctance by both men and women to name unwanted male sexual conduct as sexual harassment.[30]

To comprehend both the systemic nature of sexual harassment and the apparent failure of sexual harassment legislation to address this, we need to look at what happens outside the publicised cases. At the workplace level, in particular, anti-discrimination law is mediated through grievance cultures and

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26 See Schultz (1998); Thornton (2002).

27 The former federal Affirmative Action Agency (now the EOWA) reported data showing that the percentage of organisations reporting to the Agency that had formal procedures in place to deal with complaints of sexual harassment increased from 71 per cent in 1994 to 93 per cent in 1997. The proportion of organisations reporting to the Agency, which provided management training including 'segments on affirmative action and sexual harassment' increased from 44 per cent in 1994 to 73 per cent in 1997. Affirmative Action Agency (1999).

28 For example, the EOWA features case studies which 'demonstrate outstanding arrangements in dealing with sex-based harassment' on its website http://search.eowa.gov.au/CaseStudies/CaseStudiesEM6.htm.

29 Equal Opportunity Commission Victoria (2002).

30 See Thomas and Kitzinger (1997), pp 8–10.

practices that reproduce organisational discourses about gender.[31] How grievances are conceived and how anti-discrimination provisions are understood will also frame and shape the influence of that law in the workplace.[32] This is important. Since the overwhelming majority of gendered grievances do not reach public fora, the internal management of these grievances largely determines the nature of the environment that employees work in, and to a large extent their *de facto* employment rights.[33] Indeed, while legal standards may be able to permeate corporate private governance,[34] this will be limited by the extent to which internal grievance management distances the resolution of complaints from the legal system.

In the following sections, I examine the way in which sexual harassment complaints are managed through in-house grievance processes, drawing on interviews with women workers and managers in three major banks as well as with relevant union officials.[35] I also draw on a number of banking industry cases that have raised the issue of sexual harassment in the federal sex discrimination and industrial relations jurisdictions, as well as insights from HREOC conciliation records.[36] In particular, I highlight the processes and consequences of the intersecting discourses of legal compliance and risk management in the management and outcomes of complaints. I argue that these intersecting discourses can work to construct the complainant rather than the harasser/harassment as the organisational risk. The formal investigation of complaints of sexual harassment further contributes to the perception of such complaints as a risky business, both for the organisation and the complainant.

Workplace Management of Sexual Harassment

The major focus in this article is on the stage of the dispute transformation process where someone with a grievance about sexual harassment makes a complaint to the person or persons seen as responsible or accountable for the detriment and asks for some remedy.[37] In particular, my concern is with

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31 There is now a vast literature on the gendered organisation. See, for example, Acker (1990); Cockburn (1991); Rantalaiho and Heiskanen (1997). On banks as gendered organisations, see particularly McDowell (1997); Halford et al (1997).

32 Charlesworth (2001), p 127.

33 Edelman et al (1993), p 498.

34 Parker and Wolff (2000), p 511.

35 See n 8. While it has declined over time, Finance Sector Union (FSU) membership, particularly in the major banks, has remained significant. In 1996, for example, union membership in the four major banks stood at 69 per cent. Charlesworth (2001), p 303.

36 See n 15.

37 This is the final stage in the 'naming, blaming, claiming' dispute transformation process outlined by William Felstiner, Richard Abel and Austin Sarat whereby a concern is transformed into a complaint. Felstiner et al (1981), p 635. Clearly the attrition rate at each stage in this transformative process, although rarely quantifiable, will mean that relatively few perceived injurious experiences ever become disputes: Bemmels and Foley (1996).

workplace grievance structures and the ways in which sexual harassment complaints may be processed, managed and reframed by the complaint-handlers, both management and union. I refer to this process as grievance *management* rather than grievance resolution. Management suggests the asymmetry of the employer–employee relationship. It also draws attention to the way in which gendered grievances are both framed as management problems and may be 'managed away' rather than resolved to both the organisation's and the complainant's satisfaction.

Formal grievance resolution structures and procedures are well established in the banking industry, especially in the major institutions. They are referred to in industrial awards and enterprise agreements, thus reflecting significant union input, and are set out in human resources policies. Banks are hierarchical organisations, and grievance management processes typically mirror this structure. Line managers generally take responsibility for dealing with formal and informal complaints in their work areas. Where a grievance cannot be resolved immediately at the local level, it is typically escalated up the organisation via the human resources function.

Most banks and financial institutions have introduced specific sexual harassment grievance procedures separate from the normal grievance process, in order — as described by one employee relations officer — 'to ensure due process and investigation'. This represents a response to the potential 'vicarious liability' of the organisation as provided for under the SDA and other state anti-discrimination jurisdictions in respect to sexual harassment. It is also a result of a number of well-publicised cases in the finance industry where the investigations of sexual harassment complaints were found to be deficient. The *Banker's Trust case* in particular drew attention to institutionalised sexual harassment in the dealing and financial market areas, and particularly to the victimisation of the complainant after she made a formal complaint.[38] Concern about incidences where customers have been sexually harassed has also led to more formal investigation processes and to the extension of sexual harassment training to protect clients of the bank.[39]

Dispute procedures, including those specifically designed to manage potential unfair dismissal and sexual harassment complaints, are typically aimed at minimising any organisational risk to the institution.[40] As Edelman et

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38 This case, which was reported extensively in the press, did not go to hearing and was ultimately settled privately. It concerned a sexual harassment and consequent victimisation complaint made against Banker's Trust Australia under the *Anti-Discrimination Act 1977* (NSW) by Julianne Ashton, an employee of Banker's Trust at the Sydney Futures Exchange. 'BT Admits Sex Blame' (1996), p 15.

39 See *Evans v Commonwealth Bank of Australia* (1996) EOC 92-822, in which the bank was found liable for the sexual harassment of a customer by a lending manager.

40 For example, the stated aim of a 1993 Commonwealth Bank dispute procedure was: 'The Bank and the Union are committed to resolving any disputes which may arise by consultation, co-operation and discussion so as to avoid disruption to the Bank's customers and its operations.' *Commonwealth Bank of Australia Enterprise Bargaining Agreement 1993* Cl 23 (a)(iii).

al argue, such complaint-handling procedures are created by organisations to enhance organisational efficiency by buffering or insulating the organisation from threats from its legal environment and minimising the cost, time and harm to public image that may result from litigation.[41] Moreover, organisations elaborate their formal dispute processing structures not only for their efficiency value, but also to create visible symbols of attention to law and legal principles.[42] The symbolic value of such structures within banks does not, however, necessarily extend to ensuring strict legislative compliance, as discussed further below.

The context in which these grievances are transformed is also important. How anti-discrimination law works in practice depends to a large degree on the broader societal gender orders, the organisational regime and the dominant gender relations in a particular workplace.[43] Perceptions about issues such as sexual harassment, or what constitutes appropriate behaviour in work areas such as financial dealing rooms, also contribute to specific workplace gender cultures. These views will in turn be shaped by the gendered work structures that reflect the sex segregation of work in an industry such as banking. Workplace power relations, the workplace complaint culture and the prevailing gender order influence not only perceptions of detriment but also perceptions about the likely outcome and fallout of any resulting complaint. At a broader level, the current neo-liberal social and political climate, which has seen the deregulation of the workplace and reassertion of managerial discretion as well the explicit resiling from equal employment opportunity at the level of government policy and action, not only works to mask sex discrimination in the workplace, but also makes it more risky for individual women to name and complain about discriminatory treatment such as sexual harassment.

Legal Compliance versus Risk Management

There is a broad awareness of anti-discrimination legislation within central and local human resource management in the major banks and in state and federal Finance Sector Union (FSU) branches. In the workplace, any anti-discrimination activity is typically seen in terms of the compliance strategies of the bank, and training emphasises the need for managers to approve compliance with the relevant legislative requirements. Paradoxically, however, compliance is measured in risk management terms, where risk to the organisation is the central concern. The use of the 'risk management' in human resources and to deal with workplace grievances has developed from credit quality and prudential concerns.[44] The risk management ethos demands an

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41 Edelman et al (1993), p 499.

42 Edelman et al (1993), p 501.

43 Connell (2002), pp 53–54 describes the pattern in gendered arrangements in organisations as *gender regimes*. The gender regimes of organisations are part of the *gender order* of a society, the wider patterns which endure over time. Both the gender order and gender regimes are comprised by a set of relationships — the ways in which people, groups and organisations are connected and divided.

44 See, for example, Scarff and Carty (1993).

assessment of potential legislative breaches and, more importantly, of their potential fallout in developing grievance resolution procedures. This arguably has been responsible for the specific unfair dismissal and sexual harassment grievance resolution procedures set up in the major banks.

While the overwhelming majority of banks in Australia have sexual harassment policies and designated personnel to manage such complaints, these policies and positions operate within a risk management culture. Organisational expectations of risk management can thus place constraints on management complaint-handlers. This means complaint-handlers face a dilemma when resolving complaints of sexual harassment may appear to conflict with organisational goals. This is particularly problematic in dealing with formal complaints of sexual harassment. While in some instances there may be encouragement by the banks, and also by the union, for the alleged harasser to resign, there are other cases where the alleged harasser may threaten unfair dismissal action if he is dismissed or fears he may be so.[45] This means that the risk of a sexual harassment complaint becoming public is weighed against the risk of an unfair dismissal claim. Such threats, real or potential, then create the complainant as the organisational risk — if she weren't pursuing her complaint, then there would be no problem. In this way, victims of sexual harassment — rather than the harasser — can be constructed as the organisational risk. In some instances, this has led the focus of grievance process to resolving the counter-grievance of the alleged harasser. In two in-house cases, union officials reported that the harasser was paid out with full entitlements and *ex gratia* payments to 'go quietly', while no compensation was paid to the complainants who remained in the organisation.

In *Thomas v Westpac* (1995), the weighing of a banking industry sexual harassment complaint against the counter unfair dismissal claim of the alleged harasser was played out in the federal industrial relations jurisdiction.[46] An employee dismissed for serious misconduct after he was found to have sexually harassed another employee undertook proceedings in the Industrial Relations Court of Australia (IRCA) for an alleged unjust dismissal and denial of procedural fairness. The IRCA found that the sexual harassment had taken place and that, after internal investigation, the bank was entitled to take the view that dismissal was the appropriate course in Mr Thomas's case. While this case directly addresses the dilemma that bank industry personnel say they face where sexual harassment complaints have to be weighed against the threat of unlawful termination claims, it appears to have had little influence in the balancing of such competing claims in the workplace.

Another problem raised by the management of sexual harassment complaints within a risk management paradigm is that, as Ulrich Beck argues,

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[45] 1993 amendments to the former *Industrial Relations Act 1988* (Cth) introduced unfair dismissal provisions at the federal level. These provisions provided that employers has to meet certain obligations for any termination to be lawful. These unfair dismissal provisions were substantially modified with the introduction of the *Workplace Relations Act 1996* (Cth), where they are set out in Part VI, Division 3.

[46] *Thomas v Westpac* (1995), EOC 92-742.

the concept of risk presupposes and is built on the concept of acceptable levels.[47] Decisions are made about what is important — such as potential unfair dismissal claims — and what can be safely ignored. And these decisions are often made by complaint handlers who have less in common with the complainant than the alleged harasser, and who may still not really 'get' sexual harassment as discussed below. The concept of acceptable levels also underlines what Margaret Thornton refers to as a 'continuum of sexual harassment', where overt heterosexed activity, with an active male harasser and a passive female victim, is more likely to be seen as sexual harassment than less individually focused sexualised conduct,[48] such as a sexually permeated environment. For example, in the *Banker's Trust case*, the bank argued, in defence of its failure to adequately address Ms Ashton's complaint, that sexually explicit language was common at the exchange and Ms Ashton had not been 'singled out'.[49]

What is seen as risky behaviour very much depends on the particular workplace environment. While the potential for adverse publicity and, to a lesser extent, the impact on productivity is of concern for banks where sexual harassment complaints are made, some within the industry have suggested that an aggressive sexualised male culture is in fact a competitive advantage. That is, because those on the dealing room floor are making large amounts of money for the bank, 'everything is acceptable'.[50] Young men typically staff these areas, although women are slowly increasing in numbers. Because of this female presence, sexual harassment has been seen until relatively recently as an inevitable part of a world of sex, money and power. Women are unlikely to lodge formal complaints if the workplace culture in which such incidents occur may be seen to be tolerated, if not endorsed, by senior management.

Women who object to a sexually permeated work environment also confirm their 'difference' in what is accepted as the normal workplace culture. The assumed complicity of those who remain silent further contributes to the construction of women as 'other' in the workplace. As a former financial service manager related her experience:

> Most women who go for that kind of work can cop it. You give as good as you get. My objection is that for some of the younger women, more junior women, it is intimidating. It created a cultural value system about women and that was what I objected to. I could handle the silly tits and bums and pricks jokes and the Christmas gifts and stuff ... but it created an undertone so that when you wanted to be treated seriously about your career the value system of where women were in society

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47 Beck (1992), p 64.

48 Thornton (2002).

49 'BT Admits Sex Blame' (1996), p 15.

50 Ivana Bottini, a high-profile economist who had worked for three years in dealing rooms, cited in Boyd (1995). In the same article, a sexual harassment consultant was cited as saying that 'banks and financial trading houses were fearful of changing the macho culture because it might upset the profitability of their entire dealing operations'.

> compromised you. I never heard anyone complain about sexual harassment. The general manager used to come along to Christmas parties where all the rude Kris Kringle presents are given out. So where do you go, why take it any further?

In many instances, sexual harassment is still viewed as a private matter, personal to the harasser and the harassed.[51] It is understood as a matter of sexual desire rather than sex discrimination. This emphasis on the sexual camouflages the systemic discrimination that fosters it.[52] Sexual harassment becomes the business of the employing organisation because of the threat of vicarious liability. Despite this, however, there seems to be considerable reluctance to take the decisive action appropriate within a risk management paradigm where vicarious liability looms large. The emphasis on sexual harassment as personal and sexual works to privatise it — both to deny that sexual harassment is employment-related and to underscores the injustice of holding an employer responsible for the misconduct of one individual employee to another.[53] One senior human resources manager described the management of what he characterised as an 'interpersonal' issue in the bank:

> It started out as a friendship. It ended in touching. There was a huge drama and the lady concerned was interviewed. The bank listened to both sides and advised both officers how the bank would handle it. The bank told the alleged harasser in writing that the matter was very serious. The woman insisted that the bank dismiss this employee but the matter was not serious enough. The bank stuck to its guns and counselled the manager. Ultimately the woman was satisfied.

The risk management paradigm constructs the risk of such behaviour as risk to the bank rather than to the targets of this behaviour. This highlights how such sexualised behaviour may only be seen as unacceptable when there are strict legal sanctions and high stakes as provided for with vicarious liability. This constrains organisational discourses around sexual harassment and contributes to a framing of sexual harassment as 'bad manners' rather than sex discrimination.[54] This is turn makes it hard to judge exactly what it is that constitutes sexual harassment. Indeed, this is an issue not only for those who manage sexual harassment complaints in-house, but also for courts and tribunals, such as HREOC in *Dunn-Dyer v ANZ Banking Group* (1997).[55] In this case, a senior money market manager had claimed sex discrimination in

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51 This characterisation of sexual harassment as a personal matter was noted by Catherine MacKinnon (1979), pp 85–90 well before any specific legislative proscription of sexual harassment.

52 Thornton (2002); see also Schultz (1998).

53 MacKinnon (1979), pp 85–87.

54 See Jenny Morgan's critique of the argument that sexual harassment is best characterised as an issue of manners, rather than inequality: Morgan (1995), pp 108–10.

55 *Dunn-Dyer v ANZ Banking Group* (1997) EOC 92–897.

the hostile working environment in her work area and in being made redundant. Sexual harassment formed part of the background to Ms Dunn-Dyer's sex discrimination complaint about her role as a female manager. HREOC accepted that evidence of incidents from the giving of sexual 'Kris Kringle' presents to pornographic posters located in the dealing room were capable of constituting sexual harassment or sex discrimination, 'in some circumstances'.[56] However, HREOC was not satisfied that the events complained of constituted sex discrimination in this case and stated that upholding such complaints 'can depend on subtleties of atmosphere which are difficult to ascertain years after the event'.[57] The lack of subtlety in the work environment described by Ms Dunn-Dyer is evident, however, with a plastic jumping penis given to her as a Christmas present and women having their bras cut off from behind when they left the department.[58] Despite the findings by HREOC in respect to a workplace culture that denigrated women, there was a reluctance to deal with the contribution of a sexualised work environment to this culture.[59]

The *Dunn-Dyer case* points to the contradictions in the way risk management works. There has been a disinclination in a number of banks to take the decisive and proactive action, surely appropriate within a risk management paradigm, to address areas of real risk such as dealing rooms. In other cases, an individual serial harasser has been moved time and time again, every complaint against him treated as a fresh one. The organisational tolerance of risky behaviour, in the relegation of sexual harassment to the interpersonal and private sphere with the attendant costs — financial and otherwise — is illustrated in the case of *Greenhalgh v National Australia Bank* (1997).[60] This case documents the failure of the respondent bank to take action prior to the incidences of sexual harassment at issue, as the inadequacy of its response to the initial complaints of sexual harassment when they were made. Ms Greenhalgh's case was that Mr 'A', her direct supervisor, would stand in her personal space and lean against her while patting and stroking his genitals. She also alleged that he would look at her breasts when he spoke to her, and on other occasions stroke his hand across her bottom. HREOC found that the bank failed to deal appropriately with the alleged harasser who had a reputation for sexualised behaviour before being transferred as a supervisor to the branch where the applicant worked. The bank failed to take action before a formal written complaint was made to the district office by a number of female staff. The sexual harassment was conceded by the bank and found to have occurred

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[56] *Dunn-Dyer v ANZ Banking Group* (1997) EOC 92–897, at 77,361.

[57] *Dunn-Dyer v ANZ Banking Group* (1997) EOC 92–897, at 77,362.

[58] *Dunn-Dyer v ANZ Banking Group* (1997) EOC 92–897, at 77,361.

[59] HREOC found that the use of such terms as 'mother's club', the 'nursery' and 'mother hen' were not only derogatory, but reflected the strongly held views of Ms Dunn-Dyer's supervisors about women. Because she was characterised as a woman, this caused assessments of Ms Dunn-Dyer's managerial qualities of be in error: *Dunn-Dyer v ANZ Banking Group* (1997) EOC 92–897, at 77,376.

[60] *Greenhalgh v National Australia Bank* (1997) EOC 92–884.

by HREOC. The bank was found vicariously liable, although Ms Greenhalgh's claim of victimisation subsequent to her complaint was not made out.[61]

Mr A was ultimately transferred and demoted and was required to undertake interpersonal skills training by the bank[62] (thus highlighting once again the construction of sexual harassment as an interpersonal issue or indeed as an issue of personal manners).[63] Dismissal of Mr A appears not to have been considered. In terms of a purely commercial decision or the risk management paradigm where the behaviour of Mr A had caused not only detriment to the complainant, incurring extensive legal costs for the bank, unwanted publicity and where psychiatric counselling had also been provided for other 'aggrieved staff members',[64] this might have been expected. However, because it was the complainant who was constructed as the organisational risk, Mr A escaped the fate of those found to have acted dishonestly, rather than 'inappropriately'.[65]

The risk management paradigm places emphasis on reducing the 'risk' to the organisation or removing the risk from the workplace even if this means failing to resolve the substance of the complaint. It also ensures a distancing of accountability. As Ulrich Beck argues, risks can be legitimised by the fact that their consequences are neither seen nor wanted.[66] Where the substance of a sexual harassment complaint is acknowledged, it may be reframed as discussed above as 'inappropriate behaviour' or as an 'interpersonal issue', rather than necessarily being seen as raising any risk of legislative non-compliance. Organisational polices and procedures such as those dealing with sexual harassment are often assumed to have an 'inoculation' effect, with complaints of sexual harassment being seen as an affront to the policies designed to prevent it. Even where the potential for a legislative breach may be conceded, a risk management approach emphasises a minimal privatised resolution of employee grievances, making an assessment of the collateral damage if a complaint were to go 'public' rather than on any merits of the actual grievance.

Why Women Don't Complain

Before looking at the investigation of complaints of sexual harassment, it is worth reflecting on why so few women make formal complaints. Like the

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61 *Greenhalgh v National Australia Bank* (1997) EOC 92–884, at 77,183–77,184.

62 *Greenhalgh v National Australia Bank* (1997) EOC 92–884, at 77,183.

63 See n 54.

64 *Greenhalgh v National Australia Bank* (1997) EOC 92–884, at 77,183.

65 Indeed, a number of cases in the industrial relations jurisdiction confirm the very different treatment of banking employees who are found to have acted dishonestly. For example, in *Gellie v Commonwealth Bank of Australia* (1996) (IRCA, unreported, 5 July 1996, www.austlii.edu.au/cases/cth/irc/960298.html and *Suares v Commonwealth Bank of Australia* (1996) (IRCA, unreported, 10 May 1996 www.austlii.edu.au/cases/cth/irc/960170.html, it was accepted by the Industrial Relations Court of Australia (IRCA) that the only course open to the respondent bank when confronted by employee dishonesty, despite the applicants' previously good work histories, was dismissal.

66 Beck (1992), p 33.

conciliation processes provided for under anti-discrimination legislation, workplace sexual harassment grievance procedures are reactive, only being activated when a formal complaint is made.[67] Given the unequal and gendered power relations between managers and employees in an industry such as banking, making a sexual harassment complaint in a workplace is always going to be a risky business.

Like many large corporations, the major banks generally treat formal complaints of sexual harassment very seriously. Paradoxically, however, this level of concern can operate to discourage complaints which are not 'serious enough'. In-house training and raised community awareness should make it easier to 'name' sexual harassment, yet there is still a reluctance to pursue a complaint of sexual harassment even within the workplace. This reluctance is both due to an unwillingness to label 'unwanted sexual attention' as sexual harassment and to the perceived price of lodging a complaint.[68] As one human resources manager who had decided not to complain when she herself was subjected to sexual harassment stated: 'The victims [of sexual harassment] have to wear the fallout of any grievance procedures. They don't want to see their names go through the mud.' The formality of the in-house sexual harassment complaint investigation procedures outlined below, and the consequential fallout, also act as a deterrent to potential complaints.

Being able to 'name' sexual harassment is particularly problematic when working in a sexually permeated environment. As highlighted in *Dunn Dyer v ANZ Banking Group* (1997), women are reluctant to draw attention to their difference in a male-dominated environment.[69] This can lead to an assumption of complicity on the part of women who do not complain, which may be thrown back at them as it was when the ANZ Bank countered Ms Dunn-Dyer's allegations of a hostile work environment with evidence that Ms Dunn-Dyer had herself been the donor of a gift representing a set of male genitals.[70] Even in female-dominated work areas, awareness of the potential for sexual harassment is not seen to raise the same issues as formal complaints, nor to necessarily require any action on the part of management. As one female senior manager recalled:

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67 Bacchi (1998), p 82.

68 Women's non-labelling of 'unwanted sexual attention' as sexual harassment has been consistently corroborated in qualitative and quantitative research. See Thomas and Kitzinger (1997), p 9. However, as Deborah Lee (2001), p 37 points out, even where such experiences are not named as sexual harassment, they remain unwelcome experiences.

69 Although research in the United Kingdom suggests that sexual harassment for women in such non-traditional work areas may be more extensive and aggressive than in traditional forms of female employment. See Collinson and Collinson (1996).

70 Ms Dunn Dyer responded, however, that she had felt obliged, like many others, to take part in such activity or to be seen as some sort of a bad sport: *Dunn-Dyer v ANZ Banking Group (1997)* EOC 92-897, at 77,361.

> There was this odd man working in my area who would stay at the bottom of the stairs so he could look up women's dresses. But he always behaved himself in front of me. There was another man who had a reputation for being a toucher. But no one really complained. In banking, women are generally protected by their numbers; there's safety in numbers.

Such tolerance, particularly by women managers, also contributes to the workplace culture, reinforcing the gendered power balance in the workplace and reminding women of their place. Without the lodging of a formal complaint, sexual harassment remains a private matter, personal to the harasser and the harassed.

Seeking a remedy for sexual harassment draws attention to women's sexuality in the workplace, where sexuality is — at least overtly — denied. This masks the covert way men's use of sexualised social relations, including sexual banter and sexual harassment, stresses the solidarity of men as well as men's difference from women.[71] This effectively raises the bar for women in deciding to pursue sexual harassment grievances. One senior manager spoke of her own experience:

> I've seen instances of sexual harassment. In my own case I don't know if complaining would have done any good, even if there was someone to complain to. A fellow senior manager came up at a Christmas dinner dance and gave me a kiss full on the lips in front of a very senior manager and stuck his tongue right in my mouth. The senior manager was shocked and apologised for him. I steered clear of this man in the future.

This situation highlights the way in which any authority held by women in the workplace can be directly challenged. It also highlights the impunity felt by this woman's male colleague in front of a more senior manager, who took no further action about this assault.[72]

Making a formal complaint is, however, not the only response that can be made to sexual harassment. Other forms of resistance or action may be employed. Many women vote with their feet, resigning or transferring out of a situation where they are being sexually harassed. Sometimes they take matters into their own hands, as one branch manager did:

> In 1990, it [sexual harassment] happened to me. A new manager came into our branch and he did it to all the girls. No one complained. It didn't bother me although he was very rude and horrible. I got him back though and got him sacked over something else.

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[71] Wajcman (1999), p 52.

[72] As Cynthia Cockburn (1991), p 142 points out, such incidents act as a warning to a woman stepping out of her proper place. They also underscore research findings that suggest that sexual harassment can be used by men to exclude women from non-traditional work: Collinson and Collinson (1996), p 51.

Investigating Complaints

As Carol Bacchi point out, sexual harassment is seen as a problem for organisations, 'as something exogenous of them in a sense and hence as something they must manage'.[73] When a complaint is made, the issue then becomes how best to deal with it. All major banks now have formal investigation processes where a formal sexual harassment complaint is made that may be undertaken by specifically trained human resources or employee relations staff, or in some instances by outside contracted investigators. In the case of the FSU, with its membership in the major banks covering management as well as lower grade positions, organisers are faced with providing some support — if not representation — to both complainants and alleged harassers, who are just as likely to contact the union for support.[74] This has also led to union intervention in the negotiation of resolutions in sexual harassment cases to become more formalised than in other discrimination complaints, and to some conflicts of interest for union representatives.

While, in the past, complaints of sexual harassment would typically result in the complainant being transferred out of her work area, adverse publicity about a number of industry cases is seen as having provided a major impetus for a more rigorous management of sexual harassment complaints, and to real efforts not to victimise the complainant. However, while the legislative prohibition of sexual harassment makes it a management issue, it remains predominantly understood as the aberrant or inappropriate behaviour of an individual as illustrated in the comments of a senior human resources manager:

> There will typically be a [formal] sexual harassment complaint once a month. The bank conducts an investigation and goes to both parties. Typically the issue concerns language and insinuations. It is usually the fellas who are unaware that their remarks are inappropriate. On occasions there have been repeated instances. Normally people don't realise what they are doing. For example, we had one guy who behaved quite inappropriately even within the context of professional behaviour. After several instances he was warned by the bank.

The requirements in federal industrial relations legislation for procedural fairness when employees are dismissed appear to have had a very real impact on the management of sexual harassment complaints.[75] A number of bank human resource managers cited the need for procedural fairness for the alleged

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[73] Bacchi (1998), p 76.

[74] This was the case, for example, in *Greenhalgh v National Australia Bank* (1997) EOC 92–884.

[75] The *Industrial Relations Act 1988* (Cth), s 170DC had provided that any failure to accord a fair hearing would in itself render a termination unlawful, regardless of whether the employee's conduct or performance appeared to merit dismissal. While this emphasis on procedural fairness has been modified in the *Workplace Relations Act 1996* (Cth), s 170CA(2), which provides for 'a fair go all around' in claims of unfair dismissal, it continues to exert some influence in management discourse, if not practice.

harasser, particularly in cases where a complaint was not substantiated. One senior human resource manager described a case where this fear was given some legitimacy:

> The bank got its fingers burnt a short time ago when a sexual harassment complaint was made and the manager [the alleged harasser] resigned and there were no witnesses. No statement had been taken from the manager and he is now suing the bank.

Another manager raised the case of:

> a person who was accused by his own female staff of stalking. There was no real hard evidence It was a grey case and the bank moved to settle with him

In both these cases, the focus was on the rights of the alleged harasser to procedural fairness, almost to the exclusion of the rights of the complainant. In neither case was any remedial action taken to address — at least at a policy level — the issues raised by the complaints. While the presence of sexual harassment policies within organisations may be perceived as consistent with *fairness*,[76] those who put them to the test by making a complaint may also be seen to compromise a *fair go* for the alleged harasser. The concern about the procedural fairness accorded alleged harassers is not only present where unfair dismissal proceedings may be threatened. Such concern — expressed consistently by many men responsible for the management of sexual harassment complaints — highlights a deep ambivalence, as expressed above, about sexual harassment and a fear that careless men, acting inadvertently, may be unfairly punished for something they did not do or did not realise they were doing.

Most human resources managers interviewed stated that the standard of proof used in the investigation of sexual harassment complaints is the 'balance of probabilities'. However, a number also believed that in the case of serious matters, such where the sexual harassment could be viewed as a criminal offence, the standard of proof should rise to both provide natural justice for the alleged harasser and the complainant. In the words of one human resources manager, the real test is 'to provide evidence that would stand up in case of unfair dismissal'. There is also concern about 'containing' sexual harassment complaints:

> Investigations can go off the rails and weave an endless web so the bank assesses each case. We are risk managers and the primary issue is to minimise the risk to the bank and the individual, especially customers, where we have to ensure that every base is covered. (Male Industrial Relations Manager)

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[76] Bacchi (1998), p 86.

One union organiser expressed concern that the sexual harassment processes at one bank were based on a very high, quasi-criminal standard of proof that did not include circumstantial evidence. It was argued that this can lead to the complainant resigning if unable to meet this standard of proof. According to FSU officials, where there are witnesses to alleged instances of sexual harassment, normally banks will act quickly. However, where there are no witnesses substantiating the complaint to the satisfaction of the bank's investigation team, resolution can be very difficult:

> Where a complaint is not made out or substantiated, the bank will try and accommodate the complainant. We try to ensure that there will be no continual problems. We also try to take reasonable steps to rebuild the relationship. The view the bank takes is: 'What can we do to assist an employee to regain trust?' This is not necessarily a solution, however. (Female Human Resource Consultant)

Where the investigation process substantiates complaints of sexual harassment, the harasser may be counselled, or in extremely rare cases dismissed.[77] A less direct removal of the 'risk' sexual harassment represents was also reported by managers and union organisers where harassers may be encouraged to resign voluntarily:

> I cannot recall anyone who has been dismissed for sexual harassment. However, a number of those who have been alleged to have sexually harassed staff are no longer working in the organisation. (Male Industrial Relations Manager)

Because there is a widespread view within the banking industry that sexual harassment occurs out of ignorance, action such as dismissal is often seen as unwarranted. Even where complaints are substantiated, actions taken to resolve the complaint may have limited effect. In one bank, in a substantiated sexual harassment complaint related by an FSU branch women's officer, a bank employee had been stalked by her manager three years previously. After the investigation, the harasser was transferred. No formal documentation was made on his file about the complaint, although he had been warned and counselled.[78] He was later returned to the same job in the same branch where the woman was still working. The woman complained and the FSU threatened to take the matter to the relevant state anti-discrimination agency; however, the bank insisted on returning him to the branch 'under supervision.' The matter was dropped when the manager in question finally decided not to return to the

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[77] In contrast, research based on interviews with financial institution equal opportunity officers and lawyers in 1997 found that people held by an internal corporate discipline system to have perpetrated an act of sexual harassment were likely to be dismissed. See Parker and Wolff (2000), p 516.

[78] The lack of formal documentation on the alleged harassers and victims' files has been consistent with the practice and policy in most banks. See, for example, Westpac (1996), p 5.

particular branch in question after the bank advised him he would be going into a 'hostile' work environment.

This incident illustrates how the discourse of risk management may be used to reframe the threat to the organisation as the pursuit of the grievance complaint and to characterise women who object to sexual harassment in vigorous terms and pursue their legal rights in this respect as 'unreasonable'.[79] It also highlights the support of the masculine culture for its own. Sexual harassment disrupts the idea of employer prerogative and the separation between public and private in the workplace. It is perhaps not surprising, then, that the grievance process may be used to try to reassert that prerogative, even where such actions themselves are 'risky'. Where the union is involved, the reframing of the grievance as an issue of legal compliance and the use of a threat of an external forum may challenge the control management complaint-handlers have of the in-house grievance process. However, it does little to modify the construction of sexual harassment complaints and complainants as an organisational risk.

Conclusion: Reframing Sexual Harassment

The practical value of 'naming' sexual harassment in anti-discrimination legislation lies not so much in redressing the gendered inequality such harassment reflects as in providing a forum for the private resolution of individual complaints, which it is hoped will have both a deterrent and some broader educative value.[80] Focusing on grievance resolution in the workplace facilitates an evaluation of the anti-discrimination legislative framework on its own terms — that is, in providing a framework and a forum for addressing individual complaints of sexual harassment. Whatever the limits of the law in redressing individual complaints of sexual harassment, it does provide a framework in which sexual harassment becomes a workplace issue. Laws that proscribe sexual harassment are important not only because of the redress they may directly provide for individual claimants. They are also important in the provision of a legal framework that 'enables, empowers and legitimises other extra legal strategies' in the shadows of that law.[81] However, those shadows are refracted through organisational discourses and the everyday doing of gender in the workplace.

While the context of the banking industry is critical, the issues raised in the case study point more generally to the way anti-discrimination law, such as that proscribing sexual harassment, works and is 'worked' within workplaces — in particular, the ways in which the law can be used to provide a vehicle for organisational resistance to women's equality. All discrimination complaints

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79 While industry consultation suggests that the precise terms of the relevant legislation is not necessarily a consideration in the in-house grievance management of sexual harassment, the 'reasonableness' or otherwise of a complainant's pursuit of a grievance may well have legal ramifications where the complaint is pursued in outside fora. See n 2.

80 Thornton (1989), p 737.

81 Bacchi and Jose (1994), p 10.

are necessarily individualised by the dispute management process. On occasions, some policy action may be taken to address particular systemic gendered concerns, such as access to promotion. However, sexual harassment is almost invariably managed as an individual, one-off grievance. That is, while claims may be lodged by a number of women in one workplace about the same alleged harasser, the resolution of such complaints rarely feeds into the handling of subsequent claims of sexual harassment. Where women decide not to pursue a complaint, this cannot be read as acceptance of sexual harassment. However, industry consultation and a number of cases in the banking industry suggest that, in the workplace, the lack of a formal complaint is interpreted in this way.

In responding to sexual harassment complaints, the emphasis in in-house grievance management has typically been on ensuring a legalistic procedural fairness. Such an approach privileges the organisation because it is the manager complaint-handlers who interpret the legislation and decide what constitutes compliance in any grievance resolution process. Moreover, in many cases compliance is balanced against the risk to the organisation should a complaint be pursued outside the workplace. The type of dispute processing represented by the grievance management mechanisms found in banks as well as other organisations typically works to narrow the disputes with which they deal in order to produce a construction of events that is manageable.[82] Such reframing may also work to place the organisation rather than the complainant as the focus of the claim. Management discretion in this respect, however, is not unfettered. Union complaint-handlers may modify the impact of the risk management discourse on the sexual harassment grievance procedures by using legal discourses, re-emphasising the legislative compliance aspects raised by such complaints. However, neither management nor union complaint-handlers play a neutral role in dispute resolution. The influence of organisational goals and constraints, broader industrial agendas and individual interests is always present.[83]

Context is critical in understanding the layers that underpin gender inequality in employment from the social to the labour market to the workplace. It is precisely this context that is contested and stripped away in the in-house and conciliation grievance processes. This allows organisational and legal discourses to separate sexual harassment from the sex discrimination which underpins it. While the law recognises sexual harassment as sex discrimination, its effective separateness in the legislation and in practice, particularly in specific grievance mechanisms such in the banking industry, hides the fact sexual harassment is an expression of sex discrimination. Because sexual harassment is not seen to raise issues of discrimination, let

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82 This can be contrasted to 'dispute processing alive to context and circumstances, (which) ... encourage a full rendering of events and exploration of the strands of interaction, no matter where they lead': Felstiner et al (1981), p 664.

83 Complaint-handlers' own responsibilities and career interests may require them to consider extra-legal factors in the handling of discrimination complaints: Edelman et al (1993), p 507.

alone systemic discrimination, its occurrence is seen as an individual lapse. This then facilitates the construction of those who use sexual harassment grievance procedures as an organisational risk, making the business of complaining a risky one.

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