

leave me alone

a manual on sexual harassment
a management issue

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Introduction to Manual

Leave Me Alone emphasises and dramatises situations that may arise when the issue of sexual harassment is being discussed.

It is our intention to stimulate community debate as to what may or may not be sexual harassment and its consequences for employers and employees.

The video should also assist managers in raising awareness among employees, particularly male employees with supervisory responsibilities, by bringing out into the open some ideas on the effect of sexual harassment in the workplace.

The National Committee on Discrimination in Employment and Occupation developed the video and manual at the request of the Sex Discrimination Commissioner, Ms Pamela O'Neil.

Pauline Griffith
Chairman
NCDEO

Introduction for Trainers

Background

The video ***Leave Me Alone*** was produced by the National Committee on Discrimination in Employment and Occupation after consultation with women's groups, employers and unions.

In these consultations it was suggested that a video and associated training material would be used in two ways:

- As a stand alone presentation to be followed by discussion of the questions it raises
- As a starting point or source of particular incidents for use by experienced trainers conducting seminar sessions on sexual harassment.

The video is not the last word on sexual harassment

The video does not attempt to be exhaustive in the treatment of the subject:

- Legislation dealing with sexual harassment varies from State to State
- There is as yet little case law interpreting the legislation
- Whether behaviour is unlawful depends on the circumstances in each case.

What the video covers

The video deals with a number of aspects of the subject:

- It provides examples of unwelcome behaviour of a sexual nature that may or may not be sexual harassment and invites the audience to discuss them
- It attempts to assist managers to recognise some of the outcomes of sexual harassment for the organisation
- It suggests how the organisation might respond to the issue
- It gives managers and supervisors some guidance on the skills required to handle the problem.

The video will work best if it is first shown in its entirety

The video lasts for twenty-four minutes and should initially be shown without interruption. If sections of the video are used to illustrate a presentation this will be more effective if the video has first been shown in full.

A background to the video

While the training package is designed around questions that arise directly from the video, there are some issues which provide a background for anyone using the video.

1. In considering the issue of sexual harassment in the workplace it is important to draw a distinction between unwelcome behaviour and mutually acceptable behaviour. Sexual harassment is about behaviour considered unwelcome by the person subjected to it.
2. Regardless of the personal or moral stand one may take, the video argues that **sexual harassment is a management issue**. The case for the involvement of management can be put as follows:
 - Some women and some men are subjected in their workplaces to behaviour of a sexual nature that they find offensive

- Individual managers may or may not believe that such behaviour constitutes sexual harassment. Whatever the manager's personal view the management problem of having to deal with the consequences of the behaviour remains
- As shown in the video sexual harassment is not only distressing for the individual, but is a cost to the organisation in reduction in morale and efficiency, resignation of trained staff, legal action etc
- Effective management will deal with sexual harassment because it adversely affects the well-being of an organisation and its people.

3. Men and women have different attitudes to the seriousness of sexual harassment. Individual men and women will have different perceptions of what constitutes sexual harassment.

4. Surveys of women workers indicate that at some time in their working lives most women have been subjected to some form of sexual harassment.

5. Sexual harassment may not be apparent in the workplace. People affected may not complain because of fear of the impact a complaint may have on their job prospects or on their work relationships.

The Contents of your Video (DVD)

These items are on the video (DVD)

Item 1	The complete program	24 mins
Item 2	Paula-Stevens' Catering Segments	4 mins
Item 3	Rita Williams—Computer Tape Loss	2 mins
Item 4	Ms Arnold—Car Park Sequence	1 mins
Item 5	Lillian Grey—Control Systems Report	2 mins
Item 6	Mr Adams—Pictures in the Office	2.25 mins
Item 7	The Plan	2 mins
Item 8	Points for Middle Management	0.5 mins

Sexual Harassment and the Law

A brief summary as at 1 July 1986

As indicated earlier, legislation dealing with sexual harassment varies from State to State. There are five Acts, and ILO Convention 111 that address the issue, the Acts are the Commonwealth Sex Discrimination Act 1984, the New South Wales Anti-Discrimination Act 1977, the Victorian Equal Opportunity Act 1984, the South Australian Equal Opportunity Act 1984, and the Western Australian Equal Opportunity Act 1984.

The Sex Discrimination Act 1984 (Commonwealth)

Sexual harassment in this law is a general term covering unwelcome sexual behaviour. This could be a demand for sexual activity. It could be unwelcome physical contact. It can also be unwelcome sexual jokes or even comments about a person's sexual behaviour.

The Act protects employees from sexual harassment when:

- They have good reason to believe that they will be treated unfairly in their job unless they put up with this unwelcome behaviour
- or
- Where they have been treated unfairly in their work situations (eg sacked, demoted or suffered further harassment) because they have complained about unwelcome sexual behaviour from an employer or other employees.

The provisions of the Commonwealth Act do not apply in relation to an act done by an employee of a State or State instrumentality.

The New South Wales Anti-Discrimination Act 1977

While this law does not specifically deal with sexual harassment, in *O'Callaghan v Loder and Anor* (1984) EOC, the NSW Equal Opportunity Tribunal held that sexual harassment can amount to discrimination on the ground of sex.

It is unlawful to discriminate on the ground of sex in the terms and conditions of employment afforded to an employee by subjecting an employee to any detriment.

The tribunal held that sexual harassment in the workplace is unlawful when:

- A working environment is made hostile, offensive or intimidating by harassment
- Employees are threatened, miss out or have benefits such as promotion, transfer or training restricted because they reject unwanted advances
- Employees are threatened with dismissal or other job disadvantages unless they comply with unwanted advances.

The Victorian Equal Opportunity Act 1984

This law makes it unlawful in certain situations for one person to make it reasonably appear to another person that the other person will be disadvantaged in certain specified ways if he or she 'does not accept the sexual advances of, or tolerate persistent sexual suggestions or innuendo from' that person.

The South Australian Equal Opportunity Act 1984

In South Australia it is unlawful to discriminate against an employee on the ground of sex by subjecting that employee to any detriment.

The Commissioner of Equal Opportunity receives and investigates complaints of discrimination. Unresolved complaints may be referred by the Commissioner to the Equal Opportunity Tribunal for determination.

The Western Australian Equal Opportunity Act 1984

A Commissioner for Equal Opportunity is appointed under the Act to conciliate complaints of discrimination. Unresolved complaints are referred to an Equal Opportunity Tribunal for determination. The Act outlaws discrimination on various grounds and also makes sexual harassment in the workplace unlawful.

ILO 111

The Committees on Discrimination in Employment and Occupation when implementing ILO Convention 111 have decided that when complaints of sexual harassment are investigated it is necessary to establish the following criteria in assessing whether sexual harassment has occurred.

1. a) Either the behaviour or conduct is such that a reasonable person could regard it as offensive and it is continued after a complainant has indicated that it is unwelcome

or

b) The behaviour constitutes an indecent assault or was grossly offensive.

2. a) Either the employee's job prospects are threatened

or

b) The behaviour interferes with the employee's performance at work or creates a hostile working environment.

Questions which might be used to stimulate discussion of the video when time is limited

If you want to focus on the nature of sexual harassment

A number of women in the video are subjected to unwelcome behaviour.

- How would you describe the feelings and the reaction of the women involved?
- Does it make a difference if the behaviour occurred once or is repeated?

What are the outcomes for South Harding Industries and Stevens Catering Service of the behaviour portrayed?

What are the outcomes for the women?

To what extent do you think similar behaviour could happen in your workplace or in other workplaces in the community?

How would you explain sexual harassment in the workplace to your employers/staff?

If you want to focus on the organisation's response

The consultant to South Harding Industries stresses the need for a plan.

What are the elements in the plan?

How would you implement it if you were:

- The Managing Director of a large company operating nationally?
- The manager of a small company?
- The owner of a small business?

If you want to focus on the skills of the supervisors

The video identifies a number of tasks and skills essential for a manager who sets out to deal constructively with sexual harassment.

What are they?

How can Management establish an environment where each individual can say 'No' to unwelcome behaviour without fear of consequences?

What skills do you consider are necessary for the supervisor to:

- Identify and deal with potential cases of sexual harassment before they develop to crisis point?
- Handle complaints of sexual harassment when they arise in the workplace?
- Respect the rights of both the complainant and the person or group complained about?

Using the video as an aid in more extensive training sessions

The video aims to:

- Assist managers develop a better understanding of the issue of sexual harassment
- Develop the organisation's response to sexual harassment
- Improve the ability of managers/supervisors to handle complaints of sexual harassment.

Develop an understanding of sexual harassment

In this video sexual harassment is presented as a management problem. The video attempts to develop an appreciation of the types of behaviour which might be considered unwelcome by some people and shows the impact of this behaviour on the organisation.

In understanding the issue of sexual harassment it is necessary to recognise that:

1. In the workplace there is a difference between unwelcome behaviour which results in sexual harassment and mutually acceptable behaviour which may be sexual in nature. This distinction is raised in the boardroom scene where the comment is made:

'We are talking about sexual harassment, not about sexual relationships.'

2. Men and women often interpret the same incidents differently. eg Mr Downes considers he is being pleasant when he touches his secretary, but she considers his behaviour unacceptable.

It may also be pointed out that at times the behaviour of a group of men can be quite different from the behaviour of the individual.

3. Only the individual who is the subject of the behaviour can decide whether it is unwelcome or welcome.

4. There is a wide range of behaviour that will be considered unwelcome by some people. Examples in the video are:

- Leering, molestation, suggestive remarks, offering preferential treatment in return for sexual favours (Paula)

- Pornographic photos (Rita Williams)
- Having to face suggestive taunts (Ms Arnold)
- Defaming another individual by telling lies about their personal life (Lilian Gray).

The video does not argue that every incident portrayed would always be regarded as sexual harassment. Behaviour which might be disregarded if it occurred once may constitute sexual harassment if repeated.

5. Sometimes a relatively unimportant act can provide the catalyst for an outburst of emotion caused by previous experiences. eg Paula's reaction 'Leave me alone!' when bumped into in the street.

6. There are many different possible outcomes for organisations.

- Damage to property (Rita Williams)
- Resignation of trained staff (Rita Williams, Lilian Gray, Paula)
- Breakdown in communication (Lilian Gray, Ms Arnold)
- Legal proceedings (Mr Tarlton).

The examples provide evidence that sexual harassment is a management problem.

7, Sexual harassment may reflect attitudes to women in the workplace.

The sequence of events between Lilian and Mr Myers provides an excellent example for discussion of attitudes to women and the use of power in the workplace.

The organisation's response to the issue of sexual harassment

In the video Ms Walters, consultant to South Harding Industries identifies the need for the company to have a plan. The plan as presented has four components:

- Have the policy on sexual harassment endorsed by senior management
- Make the policy clear to staff
- Create an appropriate structure to deal with complaints
- Take complaints seriously.

The four components can be used to discuss the practical implications of implementing the plan in small, medium and large organisations. Because the size of business in Australia is so diverse, managing directors or proprietors need to develop a policy that is appropriate for the enterprise.

Prepare a statement of policy

What matters do you think the policy statement should cover?

National organisations should develop a policy which recognises that legal definitions of sexual harassment vary from State to State.

How would you handle this problem?

For the policy to be effective it must be clear and be communicated to staff at all levels.

What about those who have limited English language skills?

The video emphasises the importance of involving unions in the development of the policy.

How can this be achieved especially if several unions are involved?

Making the policy clear to staff

What content would you include in:

- Training for managers?
- Training for supervisors?
- Training for existing employees?

- An induction course?

Establishing a structure to deal with complaints

Managers and supervisors have a responsibility for dealing with complaints of sexual harassment. Many women are reluctant to lodge complaints. It is therefore important to establish an acceptable appropriate structure for dealing with complaints.

- How would you promote the existence of the structure to staff?
- **What structure would be appropriate for a company with less than 100 employees?**

Taking complaints seriously

Many employees are reluctant to discuss work related problems particularly of a personal nature with their supervisors. If you were the chief executive or proprietor what would you do to ensure that complaints are taken seriously by:

- Managers and supervisors?
- Individual workers?

How can young women like Paula employed in a small business be helped to cope with unwelcome behaviour?

The person complained against must be treated with fairness. For the policy on sexual harassment to be effective it is essential that those whose behaviour is unwelcome are confronted with the situation and that where appropriate, effective remedial action is taken.

Improving the manager's ability to handle sexual harassment

The video stresses several points:

- The need for top management commitment
- Making the organisation's policy clear to staff
- Developing a harmonious working environment
- Making it clear that no employee will be penalised for saying 'No' to sexual harassment
- Respecting the views of complainants.

In the first instance managers/supervisors have a responsibility for dealing with complaints of sexual harassment.

It is important for the trainer to provide the manager/supervisors with an understanding of their responsibility and the limits of that responsibility. eg by reference to Ms Arnold's experience in the car park.

What would the manager's responsibility be if:

- The men were employees of the firm?
- They were not employees of the firm?

What should a manager/supervisor do in a situation similar to that in which Myers defames Lilian when talking to his mates?

Making the organisation's policy clear to staff.

When a policy is introduced it should be made known to employees at all levels by a program promoting it.

As a manager/supervisor how would you maintain awareness among staff?

Develop a harmonious working environment.

In this context it is important to create an environment where individuals feel they can seek assistance on matters of unwelcome behaviour in the workplace.

How would you go about creating this environment?

Make it clear that no employee will be penalised for saying 'No' to sexual harassment.

For many employees this involves overcoming a fear that the supervisor may consider the matter trivial, or a fear that raising the problem will lead to adverse reaction from other employees.

How can the managers/supervisors overcome these fears?

Respect the views of complainants.

It is important for the manager/supervisor to understand that the behaviour complained about is causing distress to the complainant and that he or she will not be able to give his or her best if the problem remains.

In taking complaints seriously the manager/supervisor also has to make sure that the person complained against is treated with fairness.

How can you ensure that this happens?

Draft Policy Statement

The following draft is provided to assist management develop a policy statement appropriate to the needs of the organisation.

Sexual Harassment

Sexual harassment is an unwelcome and uninvited behaviour involving a deliberate verbal or physical affront of a sexual nature against another person.

Policy

It is the policy of this organisation that sexual harassment is unacceptable in the workplace and will not be condoned.

Sexual harassment does not refer to compliments or behaviour that is welcome. It refers to behaviour that is not welcome, is personally offensive, lowers morale and interferes with work effectiveness.

Sexual harassment may include actions such as:

- Sex oriented teasing or abuse
- Subtle pressure for sexual activity
- Physical contact such as patting, pinching or constant brushing against another's body
- Demands for sexual favours, accompanied by implied or overt promises for preferential treatment, or threats concerning an individual's employment status.

What to do if you feel you are being harassed?

- If you experience sexual harassment at work from other workers you should first make it clear that such behaviour is offensive to you
- If the harassment continues you should then bring the matter to the attention of the manager/supervisor. The manager/supervisor should stop any harassment
- If the harassment continues the manager/supervisor should refer the matter to senior management for disciplinary action.

If you feel you cannot raise the matter with your manager/supervisor.

If you feel you cannot raise the matter with your manager/supervisor you should approach:

- The nominated more senior level of management
- Your union representative.

Management responsibility

It is the responsibility of management to ensure:

- Complaints are taken seriously and dealt with promptly
- Action is taken to stop any harassment
- Appropriate disciplinary action is taken where necessary
- That both complainants and those complained against are treated with fairness.

For more information please contact the following offices:

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For information about discrimination in employment and occupation:
www.hreoc.gov.au/human_rights/ilo/index.html

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Information on the International Labour Organisation (ILO) Convention 111 contact:
www.ilo.org

Information on the Australian Chamber of Commerce and Industry (ACCI) policy on Sexual Harassment contact:

www.acci.asn.au

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Information on the Australian Council of Trade Unions (ACTU) policy on Sexual Harassment contact:
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Note

This study guide was originally published in 1986. Some legal information contained within it may now be out-of-date.

All contact information has been updated on 7/11/2016.

