



*Uncomfortable Realisations*

**Remarks to the  
Women in Mining and Resources WA  
2022 Summit**

**The Honourable Justice Peter Quinlan  
Chief Justice of Western Australia**

23 September 2022

## *Uncomfortable Realisations*

### **Remarks to the Women in Mining and Resources WA 2022 Summit**

Thank you to Women in Mining and Resources WA for your kind invitation to speak at today's summit.

May I commence by acknowledging the Whadjuk people of the Noongar nation, the traditional custodians of the land on which we meet, and pay my respects to their elders past and present. It is important too, at a summit for women in mining and resources, that I should also acknowledge the traditional custodians of all of the lands on which each of you work, and to recognise the significant role that Aboriginal women, in particular, have had and continue to have, in the protection of those lands over the course of the often fraught history of the relationship between First Nations people and the mining industry.

My invitation to join you today arises from another fraught issue in the mining industry that has been so much at the forefront of public consciousness in recent times: sexual harassment against women in the mining industry. Indeed the invitation for me to speak was made on the very day, 23 June this year, that the Community Development and Justice Standing Committee of the Legislative Assembly delivered its report *'Enough is Enough' Sexual harassment against women in the FIFO mining industry*. It must be said, in that regard, that the title of the report, referring to sexual harassment, understates the gravity of much of the conduct described in the report: conduct which amounted to sexual assault and other crimes.

The invitation was extended to me, in particular, because of the recent spotlight on issues of sexual harassment and discrimination that have arisen in my own

professions, the legal profession and the judiciary. That spotlight, of course, arose following revelations concerning a former judge of the High Court of Australia.

In that context I had cause to speak at a workshop of legal practitioners last year addressing workplace sexual harassment. I made some brief, and what I thought were uncontroversial, remarks at the commencement of that workshop. I will share some of those remarks in a moment; not because I think they were particularly insightful but because I want to offer some reflection on the reaction to them, a reaction which in some respects is part of our problem in addressing these issues.

First the remarks. In opening the workshop last year I said this:

It will hardly come as a surprise to you if I observe that issues of sexual harassment, discrimination and, indeed, sexual assault have, over recent years, forced their way into the forefront of our collective consciousness like never before.

For some, the realisation that there is a pervasive and insidious current of sexual harassment and gendered discrimination at work in our culture and in our workplaces has been a shock. For many, I am sure, it has not been a realisation at all; but rather a long overdue unveiling of a reality that has been all too present for all too long. And for many in leadership, it has been a source of shame, such as the shame expressed by the Chief Justice of Australia on behalf of the High Court, in the wake of revelations in relation to a former judge of that court.

And for some, it has been a mixture of all of these reactions.

Speaking for myself, and of course in this context I may only speak for myself, the reaction has been a combination both of surprise (even shock) at the reality of the problem matched with an uncomfortable recognition that I should not be surprised at all. That in the decades in which I have been part of the legal profession there have been countless examples in which I witnessed or heard about harassment or

discrimination but was too ignorant, wilfully blind or simply afraid to stick my head above the parapet to call out what, as a lawyer, I should have been ethically bound to name and condemn.

How often have those of us in this room, those of us who have *not* been the subject of sexual harassment or discrimination, stood quietly by while others, including or perhaps especially those who were our appointed leaders, have used degrading and dehumanising language in relation to our colleagues: language that could only serve to degrade and dehumanise our professional culture and to cause harm to those who must work within it.

I won't ask for a show of hands. But I will hazard a guess that there are many people here who, like me, have in the past responded to outrageous behaviour by our colleagues with complicity, cowardice or confusion.

Again, I can say, hand on heart, that I did not think that these remarks were particularly controversial.

The reaction to them, however, suggested otherwise.

A little later in the week, I was pictured on the front page of the newspaper, under the headline 'Legal world's gender shame'. The accompanying articles described my having 'admitted' cowardice and that I had 'publicly berated' myself.

The online publication of the story referred to my remarks as an 'extraordinary admission'. That is how they were described in a radio interview I did at the end of the week. 'An extraordinary admission'. I will return to that phrase in a moment.

The online commentary also drew the usual traffic from culture warriors on both sides. At one end, I was another woke lefty, who was simply being politically correct. At the other end, I was a dinosaur who should 'sack myself'. The

response was, as is so often in our broader culture, polarised and absolutist.

I mention these reactions, because, I want to suggest, framing the problem of sexual harassment and discrimination in this polarised way runs the real risk of distorting our public conversation and our response to the problem moving forward.

That is because, for a person who has worked in a traditionally male dominated profession for 30 years to say that they have heard about, or witnessed, harassment or discrimination over that period of time, but were too ignorant, wilfully blind or afraid to speak out, is not an *extraordinary* admission.

It is, rather, a perfectly ordinary statement that we should all be able to identify with. That is, it is a perfectly ordinary thing for a person in a workplace, man or woman, to avoid confrontation or involvement in behaviour that he or she recognises is wrong; or which, through ignorance, he or she fails to recognise.

There is too often a tendency, I want to suggest, to see issues of workplace discrimination (including harassment) as involving a bright line between 'offenders' on one side and everyone else on the other, where 'everyone else' has no responsibility for the creation of the workplace cultures in which we work. And, it will come as no surprise that, when we think in these terms, we inevitably place ourselves in the 'everyone else'.

Of course, there are people who are properly described as 'offenders', as the *'Enough is Enough'* report so clearly and graphically illustrates. But in truth, the 'everyone else' covers a wide range of people with varying degrees of involvement or complicity in workplace 'cultures' that can be the seedbed of a variety of forms of discrimination and inappropriate conduct.

And yet we so often cling to an 'us' and 'them' mentality, designed to absolve ourselves from responsibility for those workplace cultures.

How often do we hear, for example, when some new report is released identifying inappropriate, even criminal, behaviour in a workplace, that people within that workplace, usually men, assure us that they, personally, have never witnessed or encountered any such behaviour. We should be wary of this kind of talk.

Anyone who has worked long enough in any kind of industry or profession who says that they have never witnessed or encountered sexism or discrimination in the workplace, is either lying or so morally obtuse that they are unable to see what is in front of their own eyes. It is a defence mechanism to avoid responsibility for the problem and to point elsewhere and say, 'Look over there! There is the real problem!'.

None of which is to say that there is not an important role for workplace discipline in cases of harassment and discrimination. In the words of the *'Enough is Enough'* report, when we encounter serious sexual harassment and discrimination it is imperative that we 'expose it, rail against it, prosecute it and punish it'. Effective investigative and disciplinary measures are, of course, an essential component of any properly functioning workplace.

But exposing and removing the 'offenders' is not enough.

Because a positive, safe and enriching workplace is not the same thing as a workplace that is simply free from sexual harassment. A workplace that is free from sexual harassment should be the bare minimum, not the end goal.

And so it is essential moving forward, I want to suggest, that we see the ordinariness of our own failings and our own complicity in poor workplace culture. Because cultivating an enriching workplace culture, characterised by trust, respect and inclusion is not simply the responsibility of a few in management, but is the responsibility of the workplace as a whole (and of each individual within it). And while it might feel reassuring to cast ourselves into polarised groups of 'us' and 'them' – where we are always in the right – in the long run framing the issue in that way will only serve to perpetuate our blindness to the more insidious aspects of sexism in the workplace.

And, I should emphasise, cultivating an enriching workplace culture free of harassment and discrimination, is not simply the responsibility of women's organisations. Look at the titles of today's presentations and their focus on inclusive leadership and cultural change. These should not be seen as niche topics at a Women in Mining conference; just as, in my profession, they should not be niche topics confined to the Women Lawyers Association. These are not simply 'women's issues'

In short, we must resist turning the problem of workplace sexual harassment and discrimination into just another battleground in the culture wars.

The issue is too important to be left to the culture wars.

It is too important, of course, because freedom from harassment and discrimination is a basic issue of respect for the fundamental dignity and humanity of each and every person. Work is not only a basic human endeavour; it is a basic human need. In my own workplace, the courts, there is also an added dimension to this issue. As the heads of jurisdiction in Western Australia said in a joint statement in 2020, any form of sexual harassment is contrary to the

demands of justice that judicial officers are sworn to uphold. For that reason any form of sexual harassment by a judicial officer is not only reprehensible, but a breach of the public trust.

Not only is freedom from harassment and discrimination a matter of justice to the individual, it is of vital significance to the strength of our institutions and our industries themselves.

While I will refer to my own profession, I am sure that many of you will draw parallels with your own industry.

When I commenced studying law, while half of my fellow students at University were women, the law remained a heavily male dominated profession with a very steep curve.

Indeed, even by the time that I had finished Law School, in 1994, not only were there no women sitting as judges of the Supreme Court, there had never been a woman appointed to the Supreme Court of Western Australia in its history. That remained the position when I first worked at the Supreme Court as an associate in 1995. It was an entirely male dominated environment.

How could that environment not shape the culture of the workplace as a whole? And how could it not affect the decisions that were made within it? I recall the welcome sitting of the first woman appointed to the Supreme Court, the Honourable Christine Wheeler AO KC, with whom I had the privilege to work in my first years in the law. She said, in the course of her speech at that welcome, in a remark that also should not have been controversial but somehow was, that, as a woman, she would be able to bring a different approach and perspective to particular problems that are brought before the Court. 'Not better', I can recall

her saying, 'just different'.

Of course, it is difference and diversity of perspective that ultimately makes all of our decision making better. Differences in approach and differences in perspective that come from diversity, not only of gender, but in all of its manifestations, make our decision making more real, more human and more intelligible.

So consider what we lose, when we create work environments that are alienating or hostile, to one group or another. We lose those perspectives. We lose that talent. And we lose the opportunity for our own institutions to improve and be strengthened.

Some of you may recall the incredibly powerful interview with Ms Alex Eggerking on the ABC's 730 in February this year. Ms Eggerking had been an associate to former High Court judge Dyson Heydon. She described in the interview feeling violated and trapped by an encounter with him on her third day at work. She ultimately left the law.

At the conclusion of the interview, Ms Eggerking was asked what message she would have for Mr Heydon. That message, which I ask you to look up and watch for yourself included the following: 'You destroyed my love for the law. You destroyed my faith in legal institutions and the legal profession.'

That is a devastating personal testimony and a devastating thing to hear as someone whose job it is to foster faith in our legal institutions. It demands a response.

On the night that the interview with Ms Eggerking aired, I forwarded the interview to my colleagues on the Supreme Court. Many of them responded, not

only in terms of how powerful and compelling the interview was, but by lamenting what a loss it was to the law itself, that a person of Ms Eggerking's obvious talents was lost to the law and to its institutions.

How many other talented women have we lost to the law, how many have you lost to the mining and resources industry, due to structural inequities, discrimination and harassment?

The extent of that loss, sadly, we may never know.

Thank you for your attention.