

## Editorial Introduction

The proliferation of the global #MeToo movement has been a watershed moment, capturing the global imagination and breaking a longstanding and deafening silence on how those in senior, influential positions harass, humiliate, discriminate, marginalise and bully. Drawing on research addressing workplace sexual harassment and recent commentary on the contours of the online movement, this briefing paper examines the achievements, and also the limitations, of #MeToo and the prospects for galvanising substantial, longstanding workplace change.

## About the Author

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## A Great Awakening with Many Dangers: What Has the #MeToo Movement Achieved?

Paula McDonald

The #MeToo hashtag was coined back in 2006 by Tarana Burke, a New York community organiser in a grassroots campaign to reach underprivileged girls dealing with sexual abuse. It was not until 2017 that scandals in the film industry, primarily in Hollywood and brought to light by actress Alyssa Milano, brought the #MeToo movement to widespread attention.

Use of the hashtag quickly spread to include high-profile posts from female stars such as Jennifer Lawrence and Uma Thurman, all claiming to have experienced inappropriate advances from Harvey Weinstein. Red carpet events such as the Oscars and BAFTA Film Awards promoted the cause. #MeToo gained global notoriety when *Time* magazine named the #MeToo movement its 'person' of the year.

Three years on, this brief addresses a fundamental question: Will #MeToo finally galvanise substantial, authentic, longstanding change for working women and some men, reversing the persistent, pervasive and damaging problem of gender-based violence and misogyny that occurs in many workplaces around the world and which is entrenched in some? Or will it be another passing phase, serving as cultural capital for privileged celebrities and quickly followed by business as usual? Can a movement, even one that is truly global and sustained, really turn these longstanding patterns around?

Nearly every country in the world has had its own #MeToo moment, including countries where ideology or religious doctrine have traditionally hampered open conversations about sexual assault.

### MeToo Achievements

#### *#MeToo Has Raised Public Awareness*

The #MeToo movement has raised awareness of the scale of violence and harassment where data and the law could not do so. The shift towards believing those who have experienced gender-based violence is what social scientists refer to a 'norms cascade', a series of long-term trends that produce a sudden shift in social mores.<sup>1</sup> MacKinnon<sup>2</sup> has argued that,

previously, survivors were routinely passed off with some version of 'she wasn't credible' or 'she wanted it'. She says that, in cases of campus sexual abuse, it typically took three or four women testifying that they had been violated by the same man in the same way to even begin to make a dent in his denial. Hence, for credibility purposes, this made a woman one-fourth a person.

This highlights the limits of the law in addressing gender-based violence. While the law created the preconditions for the #MeToo movement, the individualised dimensions of the law have the effect of being only able to deal with reactive complaints brought forward by individuals. The law also disaggregates workplace conduct rather than exposing the complexities of a hostile work environment.<sup>3</sup> Social media has enabled all women, including the formerly disregarded, to go public with accusations, bypassing the gatekeepers who had historically buried their stories.

### *#MeToo Has Acknowledged That Sexual Harassment Also Affects Men*

The allegations against Kevin Spacey, in particular, helped promote the empirical fact that men are the targets of sexualised abuse more often than is often appreciated by organisations, the community and researchers.<sup>4</sup> Importantly, however, where men experience sexual harassment, it is primarily perpetrated by other men. This is because sexual harassment is inherently gendered and underpinned by the valorisation of stereotypical masculine qualities and the denigration of stereotypical feminine qualities. If a man violates the dominant norm, he may well be targeted in a similar way to women.<sup>5</sup>

Individuals who are gay, transgender or bisexual are disproportionately targeted. Evidence suggests that gay men may be as much as six times more likely than men overall to experience sexual harassment and that lesbian women also have an elevated risk of being targeted.<sup>6</sup> Australian data suggest men are less likely than women to make formal complaints.<sup>7</sup>

### *#MeToo Has Exposed Some of the Conditions That Promote Gender-Based Violence*

We know from an extensive body of international evidence that sexual harassment is more likely to occur in workplaces characterised by certain features. They include authoritarian hierarchies and a patronage system of training—common, for example, in medicine and surgery—requiring trainees to depend on a small group of powerful senior, usually male, colleagues for entry into training and career opportunities.<sup>8</sup>

In traditionally masculine workplaces such as mining, construction, air traffic control, oil construction, air traffic control, oil rigs and finance, conservative norms of gender or sexuality keep women in their place.<sup>9</sup> This is exacerbated where there is little or no access to flexible work arrangements nor career penalties associated with using them.

In several football codes, we have witnessed how celebrity status and entitlement lead to a lack of accountability for one's actions. Also, in sport, there can be excessive consumption of drugs, and especially alcohol, which is a potential risk factor for sexual assault.

In organisations such as policing, there are also strong norms of male bonding, where codes of mateship and loyalty in tightly knit male groups intensify sexism and encourage group loyalties to override personal integrity.<sup>6</sup> Additionally, in trades occupations and university colleges, hazing or abusive initiation ceremonies have been targeted at newcomers.<sup>10</sup>

### *As a Result of #MeToo, 'Power is Paying Attention'*

Traditionally, employers were highly reticent to deliver harsh penalties to high-profile repeat-offender harassers for a number of reasons: they could thereby avoid vicarious liability under the law; it was expensive and inconvenient to replace, transfer or demote the harasser; there was concern about potential legal challenges from the harasser (such as breach of contract or unfair dismissal); and it was neater to settle using non-disclosure agreements.

Non-disclosure agreements allow the perpetrators of sexual violence to keep their reputations intact and, arguably, to reoffend. Reporters have documented a trail of such settlement agreements involving Weinstein, through which he obscured years of misconduct.<sup>11</sup> Non-disclosure agreements are very common in settlements in Australian Equal Opportunity commissions.<sup>12</sup>

On Wall Street, acquisitions, sometimes worth billions of dollars, now include what has become known as a 'Weinstein clause'. This is where companies being sold or acquired must disclose any allegations of sexual harassment against officers, directors or employees. Tippet<sup>13</sup> argues that investors and venture capitalists will now care much more about how companies handle their harassment complaints because it affects their ability to cash out and that this was unthinkable until only recently.

## The Limitations of #MeToo

### *#MeToo Has Not Yet Made a Dent in Some Obvious Gender Gaps in Australia's Laws*

Australia has hate speech laws across most jurisdictions that outlaw behaviour that publicly threatens or incites violence towards another person or group on the basis of race, sexual orientation, gender identity or intersex status. However, gendered hate speech is not similarly outlawed, even though it silences women and reinforces strict gender norms.<sup>14</sup>

There also remains an obvious omission of gendered violence as an occupational hazard in our regulatory systems. Examples of occupational violence within the scope of OH&S regulation include hitting, kicking, punching, pushing, grabbing, verbal threats and aggravated assault. Yet, if these behaviours have a sexual element (e.g., being grabbed on the breast, or being threatened with sexual assault), they do not generally fall under the scope of OH&S. Instead, individuals who experience these forms of violence are left with the burden of making a complaint through anti-discrimination processes, which have significant limitations. Not least, they do little to compensate victims, change workplace practices or address the structures that underpin gender-based violence.

### *#MeToo and Other Feminist Movements Have Provoked Backlash*

Some argue that #MeToo's methods are extreme and risk damaging the credibility of women's legitimate demands to be heard. Others argue that they are excusable when existing systems have effectively protected predators, rather than victims.

Gianino<sup>15</sup> argues that hashtag activism does not have the same emancipatory effect as consciousness-raising, because social media comes with its own problems for women. Facebook and Twitter do little about the harassment of women online, often reinterpreting misogynistic posts as controversial humour. Social media allows men to watch, search for and intervene in feminist conversations, derailing and redirecting their focus.

We have also seen backlash in Australia, such as the March for Men in Melbourne's Federation Square and, in a new twist, a scathing attack by conservative journalists on the research methods used in surveys and organisational reviews that address gender-based violence.<sup>16</sup>

Backlash is also visible in online communities of 'incels' (or 'involuntary celibates'). As an online subculture, incels define themselves as being unable to find a romantic or sexual partner. Mostly white and heterosexual, their discussions are characterised by resentment, self-pity, misogyny, a sense of entitlement to sex and an endorsement of violence.<sup>17</sup>

Backlash also occurs in workplaces. It includes claims that initiatives to promote change in workplace systems are anti-men or undermine the notion of merit, especially in recruitment and promotion; claims that the resources being used to address gender inequality should be diverted elsewhere; and denials that change is necessary at all because the problem is historical or exaggerated.<sup>6</sup>

### *#MeToo May Deliver Only Trickle-Down Justice*

Unfortunately, racism and class discrimination determine whose stories get picked up and which women are readily believed. It remains to be seen whether authentic voice systems and redress will extend to any great extent from famous celebrities to vulnerable women. This includes those working in small businesses where the harasser is also the boss; the low paid and insecurely employed; rural and remote women who may have limited opportunities for alternative employment; migrants; and those who are vulnerable on the basis of youth or disability.

Organisations, equal opportunity commissions and courts must create victim-centric complaints processes to address the chronic under-reporting of gender-based violence. Under-reporting is the result of targets anticipating, usually accurately, the overwhelmingly negative consequences of reporting. Repeated workplace surveys<sup>18</sup> confirm the scale of this problem, and there is substantial international evidence that workplace complaints processes are often delayed, drawn out and ineffective.<sup>19</sup>

### *Critics of #MeToo Have Raised Concerns about Witch Hunts and a Failure of Due Process*

The #MeToo movement has prompted some unverified accusations, sometimes referred to as 'trial by Twitter'. For example, the 'Westminster dossier' contained the names of 40 government ministers accused of various forms of unsubstantiated misconduct. As Rigby<sup>20</sup> writes, 'the #MeToo Movement is an act of public resistance. But it's also a defamatory minefield, particularly when it comes to allegations about powerful men'.

Australia's defamation laws are poorly equipped to handle a digital landscape, and they are strongly weighted towards the allegedly defamed party. In Australia, women who call out sexual abuse may face accusations of defamation by the harasser or abuser. In court, the onus is on the woman (the defendant) to prove the allegations are true. In the US the opposite occurs; the onus is on the person who makes an accusation of defamation (the plaintiff) to prove the claims are false.<sup>21</sup>

Critics have also raised concerns that #MeToo has turned the legal principle of 'innocent until proven guilty' on its head. President Trump drew on this criticism at the time when Brett Kavanaugh was appointed to the US Supreme Court, when he claimed that 'it's a very scary time for young men in America'<sup>22</sup>. However, this reveals an ignorance of the meaning and context of this legal principle. As Clark<sup>23</sup> argues, leaving aside the fact that some people on social media side with the accused, public discussion is not comparable to state punishment, and those who are concerned about the failure of a legal principle in relation to #MeToo might better focus on that of

justice for victims rather than an alleged perpetrator's right to an untarnished reputation.

## Conclusion

We still have a long road ahead in preventing and redressing gender-based violence and achieving genuine gender equality in public and private spheres. However, there are some promising signs of real change. For example, there are currently growing calls in Australia for workplaces to share the responsibility of monitoring and addressing the very real risks of gendered violence in a collective and systemic way through OH&S regulation. Likewise, we are seeing shifts in the right direction for better moderation of social media platforms and a crackdown on abusive trolls.

The #MeToo movement has almost certainly contributed to these shifts, breaking a longstanding and deafening silence and exposing how predators in senior, influential positions across all areas of society—politics, business, education, charities, the arts, sport and religion—exercise power to sexually harass, humiliate, discriminate, marginalise and bully. Though not without its dangers and limitations, the movement has shaken the world out of its complacency.

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