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of Law & Human Dignity

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GRIFFITH JOURNAL  
OF LAW & HUMAN DIGNITY

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Volume 1(1) 2013

Published in March 2013, Gold Coast, Australia by the *Griffith Journal of Law & Human Dignity*

ISSN: 2203-3114

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# HER RIGHTS AT WORK: THE POLITICAL PERSECUTION OF AUSTRALIA'S FIRST FEMALE PRIME MINISTER\*

ANNE SUMMERS AO\*\*

*This essay exposes the extent and magnitude of the sexist nature of attacks on Australia's first female Prime Minister. It argues that if the Prime Minister were in any other workplace she would be protected as a worker by anti-discrimination laws. It concludes that we can all play a part in reducing the sexist nature of political debate.*

**EDITOR'S NOTE — GRAPHIC CONTENT:** This article contains graphic images that some readers may find offensive. It is not our intention to cause offence; rather, we have reproduced the material so that readers are aware of the extent of the sexism levelled at Australia's first female Prime Minister.

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\* This is a refereed and edited version of an address delivered by Dr Anne Summers AO, for the 2012 Human Rights and Social Justice Lecture, University of Newcastle, 31 August 2012. The original version of this address is available at <<http://annesummers.com.au/speeches/>>. The author acknowledges and thanks the following people who helped in the preparation of the address: Commissioner Elizabeth Broderick, Rodney Cavalier, Anne Cooper, Kay Dee, Georgia Fullerton, Jeff Mueller, Elizabeth Raper, Barbara Riley-Smith, Chris Ronalds SC, Janet Wilson (and several members of Parliament who preferred their names not be made public).

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## I INTRODUCTION

On 24 June 2010, Julia Eileen Gillard became Australia's first female Prime Minister. She had served as Deputy Prime Minister to Kevin Rudd in the Labor government that was elected on 24 November 2007. As Deputy Prime Minister, she had enjoyed enormous popularity and although the means by which Gillard assumed the top job was controversial — and became more so over the course of time — initially her elevation was greeted with widespread enthusiasm. There was a palpable sense of history in the media coverage, with most outlets treating Gillard's ascension as an important event, to be taken seriously. The public also appeared satisfied and Ms Gillard's popularity rating was high. Women and girls especially were thrilled at this milestone having been reached.

Yet within months of this historic moment, Prime Minister Gillard was the subject of unprecedented sexist attacks. At the time of writing, the sexist political persecution of Australia's first female Prime Minister has become so topical it has received international attention. This underscores the need to illuminate the way in which certain sections of society are treating the Prime Minister. This paper examines the sexist and discriminatory treatment of Australia's first female Prime Minister by the Opposition and other elements in Australian society. In order to examine this phenomenon this article will be using sexually based language and displaying a selection of images that some people may find offensive.

Before outlining and examining the extent of the unprecedented sexist attacks on Australia's first female Prime Minister, it would be appropriate to place them in context. This is followed by an expose of the scope and extent of the sexist discourse taking place in Australian federal politics. The paper will then address the question of whether the Prime Minister is being treated in ways that are actually unlawful, under federal legislation, designed to protect the rights of ordinary workers. Before concluding, the paper refutes the possibility that the nature and extent of the sexist attacks on Prime Minister Gillard can be attributed to her performance as Prime Minister.

## II AUSTRALIA'S FIRST FEMALE PRIME MINISTER

Julia Gillard has said that women who were “just so happy” to see a woman running our country sent her gifts, often jewellery. Prime Minister Gillard said that she always tried to wear these pieces of jewellery at least once and at an event where she would be photographed so that the giver could see how much she appreciated the gesture.

Just a few weeks into the job, Ms Gillard called an election, seeking to legitimize her position through the validation of a popular vote. The election, held on 21 August 2010, failed to deliver her an outright majority. However, she was able to form a government by negotiating agreements with the Greens and three Independents. In order to secure a deal with the Greens, Ms Gillard had to agree to introduce a price on carbon and thereby break a commitment she had made during the campaign that there would be ‘no carbon tax under a government that I lead’.<sup>1</sup>

Other prime ministers have changed policies or gone back on promises. Paul Keating did not proceed with the “L-A-W tax cuts”. John Howard introduced a GST. Both were accused of performing political “backflips” and of breaking promises. Neither was ever called a “liar”. The term “Juliar” seems to have been coined by radio broadcaster Alan Jones and was quickly adopted by opponents of the Prime Minister. It featured prominently on banners at a rally protesting the carbon tax that took place in Canberra in March 2011.



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<sup>1</sup> Channel Ten, *Channel Ten News*, 16 August 2010 (Julia Gillard).

The so-called “Convoy of No Confidence” rally in Canberra was the first time that many people were exposed to the virulence of the attacks beginning to be made against Julia Gillard. This was the first time Ms Gillard was referred to as “Bob Brown’s bitch” and it was the first time the slogan “Ditch the Witch” appeared. Unfortunately, this was just the beginning.

Over the past two years, Tony Abbott MP has relentlessly used Prime Minister Gillard’s “backflip” on the carbon tax to depict her as unreliable, as untrustworthy, and as a liar. The notion that the Prime Minister is a “liar” has now been firmly planted in the public political consciousness.<sup>2</sup> Journalists have commented on Tony Abbott’s practice of heckling Julia Gillard across the dispatch box whenever she is speaking in Parliament.<sup>3</sup> Normally he does it *sotto voce* so that only she can hear, but on August 20 the Deputy Speaker heard Mr Abbott referring to the Prime Minister as a “liar” and demanded he withdraw.<sup>4</sup> It is “unparliamentary” to call someone a “liar”. Mr Abbott’s withdrawal was qualified, so much so that he was thrown out of Parliament for an hour, becoming the first Leader of the Opposition to be ejected from the House since the mid-1980s. Many political observers in Canberra today agree that the current environment has become particularly toxic. The hung Parliament, and the expectation on the part of the Opposition that it is just one lost vote on the floor of the House away from forming government has raised the stakes to levels not previously seen in Australian politics.

As a result, Australia is experiencing an era in federal politics where there is very little civility. The overall temperature of discussion and debate is torrid and people use language towards each other that even a few years ago would have been considered unacceptable. This, unfortunately, is the new norm. What is not normal is the way in which the Prime Minister is attacked, vilified, or demeaned in ways that are specifically related to her gender. Calling Ms Gillard a “liar” might not be gender-specific, although interestingly, it was not a term used against back-flipping male prime ministers.

There are numerous examples, however, where the Prime Minister has been attacked, vilified or demeaned in ways that specifically relate to her sex and this article will focus on describing, categorising, and exploring the implications raised by them. Some

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<sup>2</sup> See, eg, NewsOnABC, *Woman confronts PM over carbon ‘lies’* (12 July 2011) Youtube <<http://youtu.be/Uz3TirM7W60>>.

<sup>3</sup> See Geoff Kitney, ‘Abbott gets hammered’, *Australian Financial Review* (Melbourne), 21 August 2012, 6.

<sup>4</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 20 August 2012, 9114 (Tony Abbott).

examples are benign, in the sense that they are evidencing the double standard of a woman being treated less seriously than a man of similar status.

The most obvious and most frequent example is the way in which the Prime Minister is almost always referred to as “Julia”. For example, the banner headline in *The Australian* newspaper during the reporting of the Slater & Gordon matter, ‘What Julia Told Her Firm’.<sup>5</sup> Rarely is there a headline stating “What John Told...” or “What Paul Told...”. This is for the simple reason that previous prime ministers have been accorded the basic respect of being referred to by their last names.

There is a similar lack of respect in the way the Federal Opposition constantly just uses the female pronoun to refer to the Prime Minister. Tony Abbott is a serial offender, often referring just to “she” or “her” in his press appearances, though Mr Abbott is not alone.

Federal Hansard shows that the following exchange took place during Question Time in the House of Representatives on 21 August 2012. The Prime Minister was answering a question when the Manager of Opposition Business, Christopher Pyne, interrupted her on a Point of Order:

Mr Pyne: Madam Deputy Speaker, on a point of order. She is defying your ruling. You asked her to be directly relevant and it was a very specific question.

The DEPUTY SPEAKER: I actually stated I would listen carefully to the Prime Minister’s answer as she had only just commenced. It is for the chair to determine relevancy or not.

Mr Albanese: A point of order, Deputy Speaker: under the standing order which requires that people be referred to according to their titles, “Prime Minister” is the title.

The DEPUTY SPEAKER: The Leader of the House will resume his seat. The Prime Minister has the call.<sup>6</sup>

People might say this is politics, and that everyone is fair game. Perhaps this is so. However, should Australia’s politicians be the ones to lower the threshold of what is acceptable commentary about each other? Sadly too many are — in ways that affect all

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<sup>5</sup> ‘What Julia Told her Firm’, *The Australian* (Sydney), 22 August 2012, 11.

<sup>6</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 21 August 2012, 9370 (Christopher Pyne).

women MPs as well as the Prime Minister. Recently a Federal MP indicated that there is what she called “misogynists’ corner” on the Coalition benches. This is a group of members, who, “positively bray” whenever a female frontbencher from the government goes to the dispatch box to give an answer. It is not just the men. Opposition frontbencher, Sophie Mirabella, has been known to call out, ‘here comes the weather girl’ when the attractive Kate Ellis, Minister for Employment Participation and Early Childhood and Childcare, stands to answer a question.<sup>7</sup>

Should our politicians be setting higher standards? Arguably, they should, for the simple fact that it is now possible to posit that this conduct is having a negative influence on the national conversation. There have been several instances of people routinely using terms like “lying bitch” when referring to the Prime Minister. This has now progressed beyond derogatory comments about Prime Minister Gillard’s clothes, her accent, her “arse” (to quote Germaine Greer), and even her earlobes. These are comments that some people found offensive only a year ago. The threshold is being progressively lowered, so much so that it could now be said to be pretty much in the gutter, if not the sewer.

Other examples, all of them recent, serve to demonstrate how much the contempt for Prime Minister Gillard has leached out of the political domain and into the daily lives of ordinary Australians:

- A few weeks ago in Darwin a friend of the author was picked up from her hotel by a taxi. The taxi driver said to her, totally unsolicited: “How could you be staying at the same hotel as the lying cunt”. Apparently Prime Minister Gillard had stayed at the same hotel a week earlier when in Darwin to welcome the Indonesian president. The taxi driver continued: “Someone should have shot her while she was here. Everyone wants to do it.”
- In July, in Sydney a stallholder in the flower market at Flemington apologised to another friend of the author who was buying some flowers for having to add GST as he said, “for Julia”; he then followed it by saying “we’ve got to get rid of the bitch”.
- Another woman described as “quietly spoken and conservative-looking” had an encounter whilst at a medical office in Albury when she went to submit a form for

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<sup>7</sup> Anne Summers, ‘The Gender Agenda’, *The Sunday Age*, 26 February 2012, 11–12.

an MRI. The man behind the counter said to her: “I’ll send it off to the red-haired bitch”.

The remainder of this paper will focus on depictions and comments regarding Prime Minister Julia Gillard that are unequivocally sexist.

### III POLITICAL CRITICISM IS SEXIST

In order to establish the extent to which the Prime Minister is being treated unfairly this paper will identify ways in which Julia Gillard, Australia’s first female Prime Minister, is being persecuted both because she is a woman and in ways that would be impossible to apply to a man. Many Australians probably have no idea that this behaviour is occurring. Many Australians are probably still outraged by “ditch the witch” and other similar comments. Now, only eighteen months after that poster was first aired on national television, it has become apparent that that sentiment is tame compared with some of the things that are being suggested to, or about, the Prime Minister today.

The unacceptable material is distributed via a number of different means. With modern information technology anyone can be a publisher and thousands of people are. Most use these tools to benign effect; to chat with friends, share photographs, exchange ideas or information, or just to add a bit of entertainment to their daily lives. However, others are increasingly using these same tools to vilify, to degrade, and to undermine the authority of the office of the Prime Minister and, in particular, the present incumbent Julia Gillard. Email is one such tool, and many people are familiar with chain emails. Usually they are harmless and inoffensive, albeit annoying, but sometimes they are overtly offensive.



This is one of the infamous cartoons sent to members of Parliament by the controversial Larry Pickering, which will be examined later in this article. There are also viral emails, the ones that people forward on and on to all their friends. These are mostly harmless, such as blonde jokes, but when inappropriate images such as this one go viral, it adds to the overall climate of disrespect that is both demeaning to, and which is undermining the authority of, Australia's Prime Minister.

**Fw: I'm STILL not voting Labor!**



Arguably, this is also having an impact on Ms Gillard's personal ratings. While recent polls show the government gaining, Julia Gillard's personal popularity, and her ratings as preferred Prime Minister, are stagnant or, on some polls, falling even further. It has been suggested that when she is subject to this sort of treatment, a drop in popularity is inevitable. YouTube is another tool used against Ms Gillard.

Anyone can make a recording and post it on YouTube. Surprisingly, many ordinary people continue to record themselves disparaging the Prime Minister. For instance, in one such video called — creatively — *julia gillard: the worlds biggest slut*, a young man, who conveniently prefers anonymity, says among several other offensive things: 'Hey

just a guess, you also do not like Julia the lying bitch ... one has to remember that Julia has the rags on once a month. "WHY" Because [sic] she deserves it...'.<sup>8</sup>

Moreover, Facebook is potentially now the weapon *du monde*. In fact, it is arguable that the lethal combination of Photoshop and Facebook has taken Australia's political discourse to places previously not thought possible. A recent inappropriate Photoshop image circulating on email appears on the previous page. The extent of the distribution of similar, or worse, images on Facebook is exponentially greater due to the massive numbers of people involved.

Facebook was expected to reach one billion members worldwide last year.<sup>9</sup> In Australia, there are more than 10 million Facebook users.<sup>10</sup> Therefore, the potential exists to reach significant numbers of people using this social networking tool. In addition, many private companies are devoting significant resources into identifying just how to best exploit the commercial potential Facebook represents. Large numbers of people are already using Facebook to express political views, including, unfortunately, hate speech. Julia Gillard is not the only target. There is also a large amount of racist material, which would suggest that there may be many other instances of potentially offensive material being uploaded onto the web.

For example, there is a Facebook page titled *Julia Gillard — Worst PM in Australian History*. It was established in July 2011 and describes itself in the following terms: "This page is a community of people who like to take their anger and frustration out on this useless oxygen thief, Julia Gillard — Our motto is 'Friends don't let friends like Julia Gillard'".

This is a very busy and much visited site and it contains a great deal of material of a highly suggestive and sexual nature. Some examples are provided below. However there is so much similar material of a graphic nature that examples have been included in an online Appendix.<sup>11</sup>

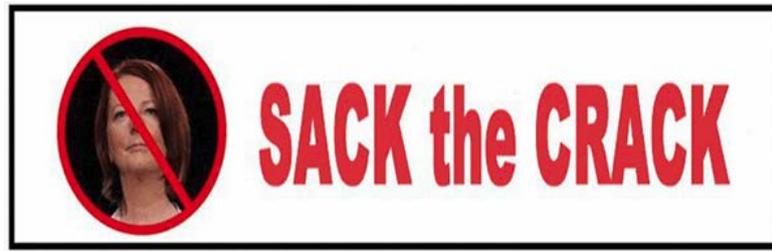
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<sup>8</sup> Mrdover mike, *julia gillard: the worlds biggest slut (cuz she fucked a whole country!)* (29 April 2012) Youtube <<http://www.youtube.com/watch?v=8cZwdgGcf1c>>.

<sup>9</sup> Todd Wasserman, *Facebook to Hit 1 Billion User Mark in August* (12 January 2012) Mashable Social Media <<http://mashable.com/2012/01/12/facebook-1-billion-users/>>.

<sup>10</sup> Clair Gowenlock, *Australian online marketing trends – 2011* (7 April 2011) The Digital Marketing Agency <<http://thedma.com.au/blog/australian-online-marketing-trends-2011/>>.

<sup>11</sup> The appendix can be located at <<http://onsman.com/annes/pdf/Appendix.pdf>>.



One of the features of this page is the very large numbers of comments visitors make about these sexually suggestive pictures. It is not uncommon for there to be 500 or 600 comments under a single photo.

Another feature of this page is to invite people to provide captions or commentary on straightforward news photos. Two such examples are the historic photograph of Governor-General Quentin Bryce with Julia Gillard just after the latter had been sworn in as Australia's first female Prime Minister and a number of photos of Gillard with Barack Obama during the United States President's visit to Canberra last year. The comments are almost without exception; base, sexual, and occasionally violent. Those involving United States President Barack Obama are often racist as well.

What makes Facebook different from email, or from the hate-filled comments from cyber trolls that appear under online opinion pieces in newspapers or on national television, is that Facebook users are much more likely to use their real names and their photographs, enabling their identity to be discoverable. The other thing about Facebook is that it is possible to measure the frequency of its use. For instance, the Facebook page *Julia Gillard — Worst PM in Australian History* had 15 686 "likes" and 43 265 people were "talking about" it on 22 August last year. By 28 August — in just six days — this had grown to 18 051 "likes" with 45 760 "talking about" it. Interestingly, this is very short of the 132 000 people who "like" Julia Gillard on her official Facebook page.





Facebook has given people new ways to intimidate, bully, harass, and defame on a previously unimaginable scale. There was another infamous Facebook page that has since been taken down. It was part of the “Alf Stewart” meme — a series of crude Facebook pages that assumed the persona of a character from the television drama *Home and Away* and used him to promote some inappropriate notions. Unsurprisingly, most of these denigrate women and some of them actually glorify rape. In particular, one shows Alf saying: “Julz you fucking slut” on top of a photo of Gillard which has superimposed over it the words: “Smash my box Alf”. Under that is another photo of Alf, and the words: “If I wanted a greasy red box I’d go to KFC ya slut”.

This graphic had been “liked” 43 253 times by the time it had been taken down. Perhaps just as alarming was the fact that 2099 had shared it. Mathematically, if each of those people who shared it with their friends had 100 Facebook friends, this image has potentially been distributed to over 200 000 people.

It must be difficult being Julia Gillard and knowing this material is in the public domain. But does she have any redress? What are the Prime Minister’s rights at work?

#### IV HER RIGHTS AT WORK

It would be reasonable to ask whether the Prime Minister is being treated in ways that are actually unlawful or even illegal under federal legislation designed to protect the rights of workers. Because politicians (and therefore prime ministers) do not — generally speaking — enjoy these rights due to parliamentary privilege, the situation

requires examining in a somewhat different way. Imagine that Julia Gillard is the CEO of a very large company, Australia Pty Ltd, and imagine that Australians generally are the company's shareholders, and some readers constitute the company's board of directors. What then would be the responsibilities and obligations as shareholders and directors to the CEO employed to run the company?

There are laws passed by the Commonwealth Parliament setting the standard for conduct in the workplace as accepted by the general Australian community. They reflect the norms and expected behaviour within Australian workplaces. One such law is the *Sex Discrimination Act 1984* (Cth).<sup>12</sup> Section 5 of this Act defines direct sex discrimination as 'less favourable treatment' of a woman compared with a man in the same circumstances.<sup>13</sup> Section 14 of the Act covers the place of employment as the area where such discrimination has occurred.<sup>14</sup> It is possible to conclude that some discrimination against Ms Gillard on the grounds of her sex has occurred in the course of her "employment" as CEO of Australia. What needs to be established is whether she has been subjected to any form of less favourable treatment relating to her employment because of her gender. Arguably, a case has been made that she is being treated less favourably because of her sex.

Using three examples where Ms Gillard has, in the course of her employment, been subject to comments that are both offensive and which relate specifically to women, this discrimination will be highlighted. In other words, these same things could not and would not have been said of a man. First, recall the comments made by Liberal Senator Bill Heffernan in 2007 who said, speaking of Julia Gillard, that 'anyone who chooses to deliberately remain barren ... they've got no idea what life's about'.<sup>15</sup> Society does not describe men who do not have children as "barren"; such usage relates only to women and therefore these remarks constitute a clear example of sex discrimination in Ms Gillard's employment.

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<sup>12</sup> *Sex Discrimination Act 1984* (Cth) ('*Sex Discrimination Act*').

<sup>13</sup> *Ibid* s 5.

<sup>14</sup> *Ibid* s 14.

<sup>15</sup> 'Barren Gillard 'unfit to be PM'', *News.com.au* (online), 1 May 2007 <<http://www.news.com.au/top-stories/barren-gillard-unfit-to-be-pm/story-e6frfkp9-1111113448384#ixzz248ixawJX>>.

A second example comes from former Leader of the Labor Party, Mark Latham, who said on ABC Radio:

Choice in Gillard's case is very, very specific. Particularly because she's on the public record saying she made a deliberate choice not to have children to further her parliamentary career. I think having children is the great loving experience of any lifetime. And by definition you haven't got as much love in your life if you make that particular choice.<sup>16</sup>

He added: 'one would have thought to experience the greatest loving experience in life — having children — you wouldn't particularly make that choice.'<sup>17</sup> Men are seldom required to make choices about paternity in order to pursue careers. This is, again, a sex-specific situation and an example of a person being disadvantaged in their employment because of their sex. This raises the question of whether there are any instances where a man has been asked about such choices. Both the original question to Gillard and the use put to it by a journalist constitute less favourable treatment.

My third example comes from the Leader of the Opposition, Mr Tony Abbott, who in February 2011 demanded that Prime Minister Gillard 'make an honest woman of herself' by taking the carbon tax to an election.<sup>18</sup> The expression of course implies dishonesty and "make an honest woman of" refers only to women, so is inherently sexist, but more pertinently, its normal use is in relation to single women. "To make an honest woman" of someone as a colloquial expression entails a man marrying a woman who is pregnant. The use of this term in relation to Ms Gillard was an unsubtle reminder to voters of the CEO's marital status. There may even be a case for discrimination on the grounds of marital status under the Act.<sup>19</sup>

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<sup>16</sup> Joe Kelly, 'Mark Latham says Julia Gillard Has No Empathy Because She Has No Children', *The Australian* (online), 4 April 2011 <[www.theaustralian.com.au/national-affairs/mark-latham-says-julia-gillard-has-no-empathy-because-shes-childless/story-fn59niix-1226033174177](http://www.theaustralian.com.au/national-affairs/mark-latham-says-julia-gillard-has-no-empathy-because-shes-childless/story-fn59niix-1226033174177)>.

<sup>17</sup> *Ibid.*

<sup>18</sup> Malcolm Farr, 'Tony Abbott tells Julia Gillard to 'make an honest woman of herself' on carbon tax', *News.com.au* (online), 25 February 2011 <<http://www.news.com.au/national-old/tony-abbott-tells-julia-gillard-to-make-an-honest-womanof-herself-on-carbon-tax/story-e6frfkvr-1226012034629>>.

<sup>19</sup> *Sex Discrimination Act* s 6.

There are other examples including:

- The comment made in July by a Kevin Rudd backer about the time it was taking to bring Gillard down: “We need her to bleed out”, as this person put it;<sup>20</sup> or
- The recent description by David Farley, CEO of the Australian Agricultural Company, of Julia Gillard as ‘an unproductive old cow’.<sup>21</sup> “A cow” is not a term usually applied to men.

No male CEO of Australia has ever been subjected to the same treatment. The Federal Magistrate’s court has found that an Aboriginal man who was subjected to constant derogatory comments about his race had been discriminated against on the grounds of race.<sup>22</sup> It is suggested that were such a case to be brought based on what Julia Gillard has had to endure, that there would likely be a finding of sex discrimination.

This then creates obligations for the board of directors of Australia Pty Ltd to rectify the situation and remove the discrimination, or be held liable for the damage done to both the CEO’s reputation and her emotional wellbeing. Arguably, the CEO has been subject to sexual harassment in her employment as set out by ss 28A and 28B of the *Sex Discrimination Act*.<sup>23</sup> It is accepted under the *Sex Discrimination Act* that the sending of sexually explicit material via email or text to a person constitutes sexual harassment.<sup>24</sup> The definition also covers accessing sexually explicit Internet sites. Interestingly, a recent test case under the *Sex Discrimination Act* as to whether exposing a worker to pornography at work constituted sex discrimination (as opposed to sexual harassment) was settled out of court.<sup>25</sup>

The creating of sexually explicit Internet sites or contributing to ones on Facebook described earlier would potentially fall within the definition of sexual harassment. As an example, it is suggested that the inappropriate cartoon depicted by Larry Pickering may also contravene the current law. Larry Pickering has once again become famous — if not

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<sup>20</sup> Peter van Onselen, ‘Backbench push for survival fuels leadership noise’, *Weekend Australian* (Sydney), 22 July 2012, 13.

<sup>21</sup> Melissa Mack, ‘“Old cow” insult for PM Gillard’, *InDaily* (online), 3 August 2012 <<http://www.indaily.com.au/?xml=mob&iid=66169#folio=1>>.

<sup>22</sup> *Trapman v Sydney Water Corporation & Ors* [2011] FMCA 398.

<sup>23</sup> *Sex Discrimination Act* s 28A.

<sup>24</sup> See, eg, the definition of “sexual harassment” published by the Australian Human Rights Commission: Australian Human Rights Commission, *What is sexual harassment?* <<http://www.hreoc.gov.au/sexualharassment/index.html>>.

<sup>25</sup> Patrick Durkin, ‘Settlement in porn case’, *Australian Financial Review* (Melbourne), 30 August 2012, 15.

infamous — after being identified by the CEO in her press conference on Thursday 23 August as someone who publishes ‘a veil [sic] and sexist website’.<sup>26</sup> Prime Minister Gillard said: “for many, many months now I have been the subject of a very sexist smear campaign from people for whom I have no respect”. What she did not say is that for many months now Mr Pickering has bombarded not just her but every member of Federal Parliament and every Senator on almost a daily basis with emails containing hate-filled commentary about Ms Gillard. Often these commentaries have been accompanied by cartoons, many of which — like the one shown above — depict Ms Gillard naked and wearing a huge strap-on dildo.

Pickering was infamous many years ago, when he was a cartoonist for *The Australian* newspaper, for producing annual calendars in which all the (then all male) politicians had extremely long penises that were used to supposedly entertaining effect. It seems that Pickering cannot envisage a Prime Minister without a penis — so he had to give Gillard a strap-on. When Facebook (where he publishes some of his material) forced him to stop drawing her this way, he started depicting her with a dildo thrown over her shoulder.<sup>27</sup> According to current members of Parliament, several of these depictions are sent as emails to every member of the House of Representatives and the Senate. They contain inappropriate images of Australia’s political leaders, in particular, Julia Gillard and, until his resignation from Parliament, former Greens Leader Senator Bob Brown.

Astoundingly, no Member of Parliament has denounced them, not in public at least. Nor, before Prime Minister Gillard mentioned them at a press conference, had they been written about by anyone in the parliamentary press gallery. Surely, it is newsworthy that Australia’s first female Prime Minister is under such constant illustrated attack. Surely, it is noteworthy that the portrayals of her are inappropriate and indisputably sexist. Surely, it would merit a report somewhere in the media by one of the journalists who churn out stories daily from Canberra. Instead, Australia has had what one might almost call a “conspiracy of silence”. Is it because the images are so inappropriate that there was an implicit agreement between parliamentarians and the press to simply

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<sup>26</sup> Press Office of the Prime Minister, ‘Transcript of press conference, Canberra’ (Press Conference Transcript, 23 August, 2012) <<http://www.pm.gov.au/press-office/transcript-press-conference-canberra-30>>.

<sup>27</sup> Karl Quinn, ‘Defiant Pickering says he’s not finished with PM yet’, *The Sydney Morning Herald* (online), 24 August 2012 <<http://www.smh.com.au/opinion/political-news/defiant-pickering-says-hes-not-finished-with-pm-yet-20120823-24p11.html>>.

pretend they did not exist? Or, were they just dismissed as the crazed work of a cranky old hack? Many journalists in the press gallery are now somewhat embarrassed about their failure to report on, and thereby smoke out, these endless vicious attacks on the Prime Minister.

It could also be said that the CEO of Australia Pty Ltd has been bullied. Comcare, the Commonwealth workplace health and safety agency defines bullying as 'repeated behaviour that could reasonably be considered humiliating, intimidating, threatening or demeaning to a person, or group of persons, and which therefore creates a risk to health and safety'.<sup>28</sup>

There can be little doubt that these sexually explicit images of Julia Gillard, by her abusive detractors, are acts of bullying in the sense that they are solely designed to demean and diminish her, humiliate and intimidate her. There is currently a parliamentary inquiry examining bullying in the workplace.<sup>29</sup> It will be interesting to see whether its findings would support this conclusion.

Turning to the industrial relations law: would the CEO have any resort under the *Fair Work Act 2009* (Cth)?<sup>30</sup> Section 340 prohibits an employer from taking 'adverse action' against an employee, which includes discriminating against an employee,<sup>31</sup> while s 351 prohibits an employer from taking adverse action against an employee because of the employee's sex or marital status.<sup>32</sup> An employer can nonetheless be held vicariously liable for the actions of their employees and for the way co-workers treat each other.

Increasingly, industrial tribunals and commissions are having to grapple with these new phenomena, and are being called upon to determine whether conduct on Facebook can warrant dismissal. Already there are examples where Fair Work Australia has been cited when employees have been dismissed for acts of sexual harassment or inappropriate

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<sup>28</sup> Comcare, Government of Australia, *Comcare's workplace bullying campaign* <[http://www.comcare.gov.au/safety\\_and\\_prevention/health\\_and\\_safety\\_topics/bullying/Comcares\\_workplace\\_bullying\\_campaign](http://www.comcare.gov.au/safety_and_prevention/health_and_safety_topics/bullying/Comcares_workplace_bullying_campaign)>.

<sup>29</sup> House of Representatives Committees, *Inquiry into workplace bullying* (31 May 2012) Parliament of Australia <[http://www.aph.gov.au/parliamentary\\_business/committees/house\\_of\\_representatives\\_committees?url=ee/bullying/tor.htm](http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=ee/bullying/tor.htm)>.

<sup>30</sup> *Fair Work Act 2009* (Cth) ('*Fair Work Act*').

<sup>31</sup> *Ibid* s 340.

<sup>32</sup> *Ibid* s 351.

conduct on social media sites such as Facebook against co-workers. This definition includes supervisors and bosses as well as more junior employees.<sup>33</sup>

While the tests may be different from those under sex discrimination law, there is little doubt that the type of commentary and images to which Julia Gillard is routinely and repeatedly subjected to would come within the type of conduct prohibited in all other workplaces. An employer would be liable to their employee and may have to pay a civil penalty (a fine) under s 539.<sup>34</sup> Indeed, there could even be the possibility of prison. In July a Bendigo magistrate gave a suspended prison sentence to the creator of the Facebook page *Bender's Root-Rate*, a Facebook page in which the creator rated named people's sexual performance.<sup>35</sup>

Back in the 1970s, when women began gaining employment in places such as the police force, the fire brigade, BHP, and other previously all-male workplaces, it was common for these women to find pornographic photographs placed inside their lockers. These were an expression of hostility on the part of some of their male co-workers who apparently resented the intrusion of these ground-breaking women into what had been all-male domains. Aren't similar processes happening now? When Julia Gillard logs onto a computer and sees images of herself naked, or holding suggestive signs, she is being subjected to similarly hostile acts by people who apparently resent her being in the job.

It would be reasonable to conclude that the CEO of Australia Pty Ltd has been subject to conduct that is outlawed under both the *Sex Discrimination Act* and the *Fair Work Act*. Each Australian, as a shareholder of Australia Pty Ltd, would rightly expect the board of directors of the company to not just pay any applicable fines and damages, but to do something about changing the culture of the company that allows this kind of behaviour to flourish. The courts can make orders to stop certain conduct and order other conduct to occur. As shareholders, Australians could demand the directors put in place some positive actions.

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<sup>33</sup> See, eg, *Damian O'Keefe v Williams Muir's Pty Limited T/A Troy Williams The Good Guys* [2011] FWA 5311; *Dover-Ray v Real Insurance Pty Ltd* (2010) 204 IR 399.

<sup>34</sup> *Fair Work Act* s 539.

<sup>35</sup> 'Jail for creator of 'root rate' Facebook page', *The Age* (online), 21 August 2012 <<http://www.theage.com.au/technology/technology-news/jail-for-creator-of-root-rate-facebook-page-20120821-24jr5.html>>.

## V SEXISM OR SOMETHING ELSE?

Making the case in this way highlights where the Prime Minister is entitled to feel aggrieved by such treatment. It says something about this country and about a society that subjects its leader to such abuse. It is disturbing that people somehow think it is acceptable or even funny to demean Ms Gillard sexually in such inappropriate ways. What has happened? How can Australia account for these levels of vitriol, for this hatred? Can it really be the case that a tax — a carbon tax — could spur so many people to such levels of hatred? One must inevitably conclude that the persecution of Julia Gillard has to be about something else. Is it just the simple fact that she is a woman?

It is difficult not to conclude that many Australians are, at this point in our history, simply incapable of accepting a woman in charge of the country. It is worth remembering that Australia was one of the last countries in the region to have a female Prime Minister or President. India, Sri Lanka, Pakistan, the Philippines, South Korea, and particularly New Zealand — that managed two — all had women leaders before Australia. Surely, Julia Gillard's continuing unpopularity is not just because she is a woman? It cannot be, because she was incredibly popular as Deputy Prime Minister.

There are two reasons why Australians are having difficulty liking their Prime Minister. For all of Australia's history the Prime Minister has been a man in a suit who has been married (to a woman) and who has children. When Australia's first female leader also happens to be the first unmarried, childless, living with a partner, not to mention atheist, Prime Minister then perhaps it is not surprising that the population is having some trouble acclimatising to this new reality. The fact that there have been ten female leaders at State or Territory level has apparently not adequately prepared people for this. However, there appears to be something else at work. That something else is the deliberate sabotaging of the Prime Minister by political enemies, including people within her own party, who are using an array of weapons, which include personal denigration, some of it of a sexual or gendered nature, to undermine her and erode her authority. It was not always so.

A story circulated in Sydney some years ago about the hard men of the NSW Labor Right, who got very nervous when they learned that then Deputy Prime Minister Julia Gillard was planning to attend an important function in the western suburbs. Party members

wondered how the traditional women of Sydney's west would react to Ms Gillard. The Sussex Street boys fretted. After all, she was single, had no children, and lived with a hairdresser. After making some inquiries, the feedback shocked them. These supposedly traditional women had no problems with Gillard's marital status, envied her freedom from the responsibilities of raising children, and, most of all, were in awe of her for choosing a hairdresser for a partner.<sup>36</sup>

In June 2010, the week she became Prime Minister, Julia Gillard presided over a 14 per cent increase in her party's vote, with Labor's two-party preferred vote rising to 55 per cent to the Coalition's 45 per cent. Julia Gillard was preferred as Prime Minister by 55 per cent of Australians against the 34 per cent who preferred Tony Abbott.<sup>37</sup> Even more striking, as Barrie Cassidy has pointed out, was the "stunning" turnaround in the leader's satisfaction rating. Kevin Rudd's rating when he was deposed had been -19. Within a week of becoming Prime Minister, Julia Gillard's satisfaction rating was +19, a 38-point turnaround.<sup>38</sup> It is difficult to remember back two years ago to Julia Gillard's rock star status. She was popular — even adored — and there was little doubt she was on track to lead Labor to a significant electoral victory. Then there were the leaks.

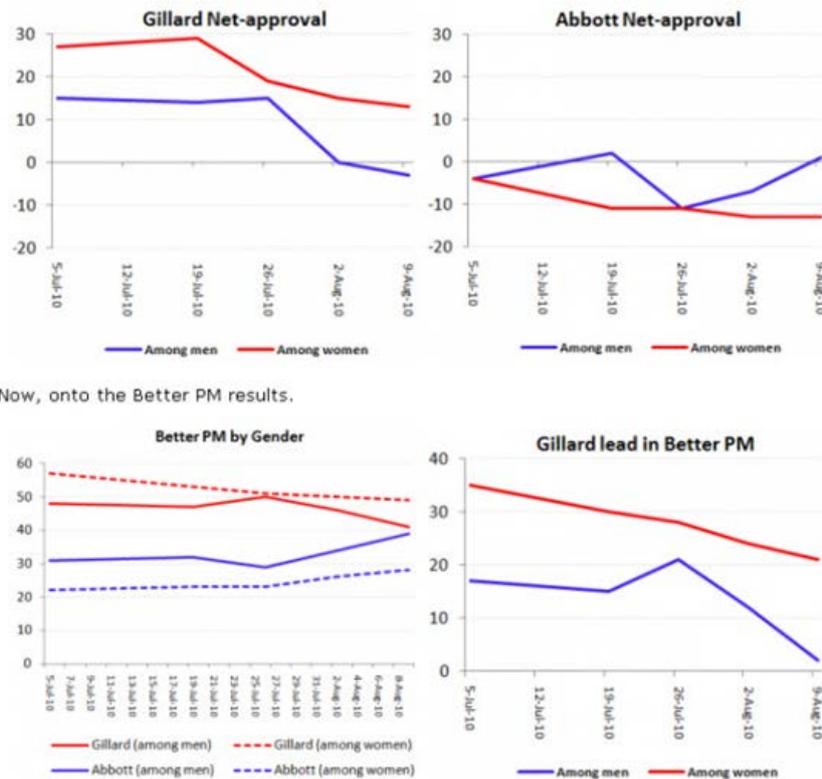
During the election campaign, several extremely damaging leaks, put into the public domain by journalist Laurie Oakes, alleged that in Cabinet before the leadership change Ms Gillard had opposed both the paid parental leave scheme and increases to the aged pension. Nothing could have been more calculated to wound her politically. She — the childless woman — stood accused of not caring about families with children (paid parental leave) and of being a heartless person who was against fairness for pensioners. As the following table shows, Gillard's popularity dropped almost 20 points virtually overnight following the leak on 27 July about her supposedly not supporting the paid parental leave scheme, and — as has been shown — the government's standing was damaged; its primary vote fell to 38 per cent and it was unable to gain a parliamentary majority in order to govern.

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<sup>36</sup> Anne Summers, 'It is Gillard's ability to connect with, surprise and delight a wide range of people that is her ace card', *The Age, Insight* (Melbourne), 26 June 2010, 3.

<sup>37</sup> Phillip Coorey, 'Gillard Saves Labor', *The Sydney Morning Herald* (online), 26 June 2010 <<http://www.smh.com.au/national/gillard-saves-labor-20100625-z9qy.html?autostart=1%22&first>>.

<sup>38</sup> Barrie Cassidy, *The Party Thieves. The Real Story of the 2010 Election* (Melbourne University Press, 2010) 147.



Now, onto the Better PM results.

Julia Gillard's popularity has never recovered from this.<sup>39</sup> Her personal popularity remains low even while the government's standing has started to improve. This is unlikely to change while a similarly brutal and targeted campaign of vilification continues to be conducted against her. In 2010, it was Kevin Rudd, or his agent, who successfully struck at her credibility and her authority with those deliberately targeted leaks.<sup>40</sup> In 2012, the continuing attacks on Ms Gillard now also includes anyone who forwards a viral email, or "likes" or "shares" or adds to a sexist comment on Facebook, who re-tweets a crude comment, or engages in casual conversations where the country's leader is dismissed as a "lying bitch". It is time to stop; to draw the line.

## VI CONCLUSION

The purpose in exploring this topic was not to titillate, and it was not to give satisfaction to the people responsible for producing this inappropriate material. Some people prefer not to illuminate it; to ignore it, delete it, and not to reinforce it. This is wrong. By exposing what is out there, the ways in which this country's leader is being demeaned

<sup>39</sup> Table first appeared in crikey.com.au <<http://media.crikey.com.au/wp-content/uploads/2010/08/arthur.jpg>>.

<sup>40</sup> Cassidy, above n 25, 163: 'Whatever the motivation behind the story, it left few people in the Labor Party in any doubt that the source was either Kevin Rudd or someone acting on his behalf, with or without his consent'.

and destabilised and its population is degrading itself, it may be possible to shame the more decent citizens into not going along with it any more. This is necessary because there is a climate of misogyny that is both widespread and contagious. It taints all Australians, makes women more vulnerable, and it is likely to act as a deterrent to young women thinking about a career in politics. Why would anyone want to step up for such treatment?

Impressively, when Helen Szoke, the Race Discrimination Commissioner, unveiled a strategy to end racism in this country, she said: "Racism: it stops with me". Simple, yet effective. Today, Australians as shareholders in Australia Pty Ltd need to make a similar commitment; the persecution of the Prime Minister: it must stop now. So next time an inappropriate email arrives, do not delete it — send it back to whoever sent it and inform them: it stops now. When someone in the workplace refers to the Prime Minister disrespectfully, do not ignore it — chastise them with: it stops now. Moreover, when discovering a website or a Facebook page that contains inappropriate commentary or images, do not ignore it — make a comment calmly saying how disappointing this is; it stops now.

This is something that is beyond party, beyond political affiliation, beyond voting intention, and beyond whether people like Julia Gillard. Australians should all be worried about this vilification of their first female Prime Minister. The same thing would happen if Ms Gillard were from the Liberal Party. Indeed Julie Bishop, the Deputy Leader of the Opposition has stated that she is "constantly attacked" for being childless. So it matters little whether a person supports Labor or Liberal, National Party or Green, whether they admire Julia Gillard or despise her, whether they intend to vote for or against her. If enough people resist, perhaps they can stop it. And if they can, perhaps that will help restore some dignity and respect to the holder of Australia's highest office. It would be a better place if we could.

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