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NEWS

The recent demotion of Boe Pahari at AMP shows how shareholders can hold a company to account for its response to claims of sexual harassment in the workplace. But does this case really mark the 'turning point' heralded by some? By *Kristine Ziwica*.

Shareholders push for corporate responsibility

The chief executive of HESTA, Debby Blakey. HESTA was the first major institutional investor to speak out about AMP.

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The managing director of one of Australia's largest and most influential investment firms says his company, Allan Gray, "didn't take some moral high ground" in relation to AMP over sexual harassment claims made against one of its executives, Boe Pahari.

Simon Mawhinney, Allan Gray's managing director and chief investment officer, lashed AMP publicly when the financial services company failed to act after reports in *The Australian Financial Review* revealed that Pahari was elevated to chief executive of AMP Capital in spite of a sexual harassment complaint made against him in 2017.

Unhappy with the board's response, Mawhinney threatened to call an extraordinary general meeting if chairman David Murray and director John Fraser didn't go. Murray and Fraser, a former Treasury secretary, resigned in August; Pahari was demoted to his former position.

"It wasn't some altruistic endeavour," Mawhinney tells *The Saturday Paper*. "We were trying to make sure that our investment in AMP was protected, and by that I mean we didn't want to see further brand damage for a business that relies significantly on its brand."

Mawhinney says "it was the digging in" by the AMP board that forced Allan Gray's hand. "As a long-term investor, it's reasonable for us to be intolerant of outcomes or corporate direction which is not in keeping with what society expects of those companies," he says.

This is a course Larry Fink, chief executive of mega-investor BlackRock, charted in a widely reported 2018 letter about companies risking their "social licence to operate" if they didn't contribute to society.

The question of what is expected of corporates was also brought into sharp relief recently by a shareholder revolt at Rio Tinto over the mining company's decision to destroy the 46,000-year-old Juukan Gorge rock shelters. Similarly, the events at AMP indicate sexual harassment and gender equality issues are now also ascendant on investors' agendas, taking their place alongside other issues that have more traditionally been the focus of so-called shareholder activism.

"I think this is going to be a turning point," Simon Mawhinney says of AMP. "If not a monumental turning point."

But the Pahari case wasn't a one-off, says Debby Blakey, chief executive of HESTA, the superannuation fund with $52 billion in assets, which was the first major institutional investor to speak out about AMP. She says it was the culmination of a change in corporate culture and governance standards that's been a long time in the making.

"There's something bigger happening," says Blakey. "The events at AMP were a big wake-up call for investors. There are systemic risks associated with how the broader social licence is managed. From an investor perspective, it really has brought to the forefront, with real clarity, that there are various financial risks with not managing these issues in line with broader societal expectations."

But, she qualifies, "It is concerning that it took investors taking the very rare step of an extraordinary general meeting before those decisions were made."

"We come at it from that perspective of fiduciary responsibility, rather than 'we want to fix the world'. But we're happy if we fix the world on the way through."

The slow response feeds into an issue Blakey says stands alongside that of the social licence: the "credibility gap", which she describes as "when the public commitments that a company makes are not matched by their actions". How can you trust a company with your money when you don't believe they will do what they've promised?

Whether what happened at AMP could have a long-lasting impact on Australian corporate culture remains an open question. But in early September, the board of insurer QBE moved quickly to remove chief executive Pat Regan after a week-long investigation into an employee's sexual harassment claims found Regan had breached the company's ethics and conduct code.

Per the *AFR*'s reporting, Regan had overseen an overhaul of this code in 2019, promoting the idea that employees should "speak up" about inappropriate behaviour in all its forms.

Sexual harassment, however, is deeply embedded, and the events at AMP alone won't change that. According to a 2018 Australian Human Rights Commission (AHRC) survey, part of a national inquiry into workplace sexual harassment, 72 per cent of Australians aged over 15 have experienced sexual harassment in their lifetime.

Sex Discrimination Commissioner Kate Jenkins, who oversaw the AHRC's 18-month inquiry into sexual harassment, remains optimistic, despite the figures.

"I believe Australia is at a turning point on sexual harassment," she says. "Now investors, workers, customers and community are demanding more transparency and accountability from our leading organisations, including in courts, universities and the business world. I welcome this shift."

The government is yet to respond to Jenkins' report on workplace sexual harassment. Nor has it adopted any of the report's 55 recommendations to address the issue.

"I take issue with the language of 'shareholder activism'," says Louise Davidson, chief executive of the Australian Council of Superannuation Investors (ACSI), whose members collectively own, on average, 10 per cent of every ASX200 company. "I prefer to think of it as being an active owner."

Like Mawhinney, Davidson says investors pushing back against companies and boards on key issues isn't about ethics.

"We come at it from that perspective of fiduciary responsibility, rather than 'we want to fix the world'," she says. "But we're happy if we fix the world on the way through."

On AMP, she adds: "I hope that it does send a message that, from an investor and a 'social licence to operate' perspective, overlooking significant workplace behavioural issues is not okay."

Davidson says that gender equality has been a focus for shareholders and investors for at least the past decade, pointing to the sustained action taken by ACSI and others to promote more women on boards.

About five years ago, ACSI started putting companies on notice that if they didn't start increasing the representation of women on their boards, ACSI would ask its members to start voting against incumbent male directors. Indeed, members did just that, declaring their intention to vote against the election, or re-election, of men at companies with no women on their boards.

ACSI engaged with the likes of ARB Corporation, Flight Centre, Tassal and TPG Telecom, all of which have now appointed women to their boards. At Flight Centre and Tassal, ACSI did not have to make a formal recommendation against male directors because those companies committed to appointing a woman and did so.

"That focused attention on the issue and led to a significant change," says Davidson, "from around 19 per cent in 2015 to 32 per cent now."

She adds: "I feel we're really on the cusp of moving to a point of genuine gender equality on boards. And once that is the case, I do think the conversation will change; there will be an emphasis at board level on things like sexual harassment and how it's dealt with at organisations."

It is clear investors have started to listen to the long-prosecuted "business case for gender equality", and its evidence base has been growing. A report released by the Workplace Gender Equality Agency earlier this year established, for the first time, a causal link between greater gender diversity in senior leadership – on boards and in management positions – and business performance. It found that an increase in the share of female "top-tier" managers by 10 percentage points or more led to a 6.6 per cent increase – about $104.7 million on average – in the market value of Australian ASX-listed companies.

For BlackRock, a thought leader on the notion of social licence to operate, the events at AMP are indicative that the tide is turning on what it calls "human capital issues", including sexual harassment.

"Looking at the rise of ESG – environmental, social and governance – issues more broadly, governance matters have always been a focal point, as it's a key signal of how a company is run and its long-term financial sustainability," says Iris Davila, head of investment stewardship at BlackRock Australia. "Similarly, the 'E' has come to the fore as investors increasingly equate climate risk to investment risk.

"Now, the impact of the pandemic has given rise to the importance of 'S' issues, including human capital management and diversity and inclusion," says Davila, who places the issue of sexual harassment firmly under the umbrella of "human capital management".

But for investors to be able to use their heft to influence management, they first have to know about the issues, and the AMP case has highlighted another hurdle that sexual harassment victims face in Australian companies – the use of non-disclosure agreements (NDAs).

In the wake of Boe Pahari's demotion, Labor senator Deborah O'Neill used parliamentary privilege to outline further accusations about two other male AMP employees. The accusations were made by a female colleague, who was told after making one of the complaints that she needed to sign an NDA or would lose her job.

O'Neill recounted the anonymous woman's words to the senate: "I am almost certain that this was illegal. I had run out of funds to pay my lawyers and I was physically and psychologically destroyed, so I signed."

Earlier this month, executives from Westpac and the National Australia Bank admitted to a parliamentary economics hearing that both companies had NDAs in place for a number of employees who'd reported sexual harassment. NAB had nine such NDAs in the past three years, the bank's chief executive, Ross McEwan, told the committee. The head of Westpac, Peter King, couldn't report how many complainants had signed such agreements.

"Disrupting the System", a new report on sexual harassment released by Male Champions of Change, a network of leading male chief executives and board directors, pointed to NDAs and commercial settlements as a key issue in the silencing of victims of sexual harassment in the workplace.

"The key issue here is choice," the report states. "When an organisation offers non-disclosure as a choice for people who experience sexual harassment, rather than a requirement, they cannot 'cover up' or 'shut down' issues."

The Male Champions of Change report also included a framework for companies to report sexual harassment claims to their boards, increasing the kind of board accountability and oversight of the issue that shareholders and investors are increasingly demanding.

It will take time to determine whether this level of transparency and oversight in regard to sexual harassment claims becomes the norm. Until it does – and until the government responds to the AHRC report's recommendations, which cover everything from a more robust legal and regulatory framework to more holistic support for victims – it remains unclear how far-reaching the recent events at AMP turn out to be. And whether Australia really has reached a "turning point" in relation to sexual harassment in the workplace.

National Sexual Assault, Domestic and Family Violence Counselling Service 1800 737 732

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