

## Chapter 1: HREOC's research on sexual harassment

### 1.1 Introduction

The Human Rights and Equal Opportunity Commission ("HREOC") is an independent statutory authority established under the *Human Rights and Equal Opportunity Commission Act 1986* (Cth). It has a variety of functions and powers to promote and protect the human rights of all people in Australia. HREOC administers the *Sex Discrimination Act 1984* (Cth) ("SDA"). Sexual harassment is a legally recognised form of sex discrimination. Sexual harassment in certain areas of public life, including employment, education, the provision of goods and services, and the administration of Commonwealth programs is unlawful under the SDA.

Sexual harassment is unwelcome sexual conduct which makes a person feel offended, humiliated and/or intimidated where that reaction is reasonable in the circumstances. It is not sexual interaction, flirtation, attraction or friendship which is invited, mutual, consensual or reciprocated.<sup>2</sup>

Sexual harassment is a perennial issue that presents a barrier to women's full participation in the workplace and to the realisation of gender equality. Since the introduction of the SDA HREOC has regularly undertaken work on the issue and will no doubt continue to do so.

This paper, along with *A Bad Business: Review of sexual harassment in employment complaints 2002*,<sup>3</sup> the updated *Sexual Harassment in the Workplace: A Code of Practice for Employers*,<sup>4</sup> and related public awareness material is the latest installment of HREOC's ongoing work on this issue.

<sup>2</sup> See Human Rights and Equal Opportunity Commission *Sexual Harassment in the Workplace: A Code of Practice for Employers* HREOC Sydney 2004, p10.

<sup>3</sup> Human Rights and Equal Opportunity Commission *A Bad Business: Review of sexual harassment in employment complaints 2002* HREOC Sydney 2003.

<sup>4</sup> Human Rights and Equal Opportunity Commission *Sexual Harassment in the Workplace: A Code of Practice for Employers* HREOC Sydney 2004.

<sup>5</sup> Human Rights and Equal Opportunity Commission *A Bad Business: Review of sexual harassment in employment complaints 2002* HREOC Sydney 2003. *A Bad Business* was launched on 12 November 2003 by the Sex Discrimination Commissioner and is available from HREOC's website at [www.humanrights.gov.au/sex\\_discrimination/bad\\_business/index.html](http://www.humanrights.gov.au/sex_discrimination/bad_business/index.html).

<sup>6</sup> See Human Rights and Equal Opportunity Commission *A Bad Business: Review of sexual harassment in employment complaints 2002* HREOC Sydney 2003, p7.

## 1.2 Complaints of sexual harassment in employment

In 2003 HREOC undertook a review of the sexual harassment in employment complaints finalised by HREOC in 2002. That review, entitled *A Bad Business: Review of sexual harassment in employment complaints 2002*<sup>5</sup> (*'A Bad Business'*), highlighted the continuing problem, particularly for women in paid employment, of sexual harassment.

The key findings of *A Bad Business* included that reported sexual harassment in the workplace was predominantly by men against women and involved multiple forms of harassing behaviour. Moreover, complainants of sexual harassment were more likely to be relative newcomers to the workplace and to be in a subordinate position to their alleged harassers. Reported sexual harassment was found to be an issue for all forms of business, and represented a significant cost to employers in terms of staff turnover – only seven per cent of complainants were still known to be actively working for the organisation where the alleged sexual harassment occurred at the time the complaint was made to HREOC.<sup>6</sup>

These findings reinforced the need for HREOC to continue to undertake public education and research on the issue of sexual harassment. The data presented in *A Bad Business* do not show who is experiencing, but not reporting, sexual harassment to HREOC. This includes sexual harassment that is resolved between individuals and within organisations, as well as sexual harassment that is continuing unchecked and unreported. In order to obtain this information and to understand the extent and nature of the problem in Australia, a national household telephone survey on the incidence and nature of sexual harassment was commissioned.

## 1.3 National telephone survey

In July 2003 HREOC commissioned the Gallup Organization to undertake a national telephone survey on the incidence and nature of sexual harassment in the Australian community. This is the first such national survey conducted in Australia to provide both an incidence rate of sexual harassment generally and insight into the nature of sexual harassment experienced in Australian workplaces within the last five years.

### 1.3.1 Purpose of the national telephone survey

The objective of this research was to provide a robust quantitative analysis of the incidence and nature of sexual harassment in the Australian community to accompany HREOC's *A Bad Business* publication reviewing the nature of reported sexual harassment in employment. The telephone survey assessed:

- the incidence of sexual harassment among Australians aged between 18 and 64 years;
- the experience of sexual harassment in the workplace, including:
  - the type and duration of sexual harassment experienced;
  - the characteristics and demographics of the victim and the harasser;
  - the characteristics and demographics of the workplace;
  - reporting behaviour and experience; and
- what people do when they observe or witness others being sexually harassed in the workplace.

### 1.3.2 Design, methodology and limitations of the telephone survey

Information regarding the design, methodology and limitations of the telephone survey is contained in Appendix A. A copy of the telephone survey questionnaire is attached at Appendix B.

A random national population sample was conducted of 1,006 persons between the ages of 18 and 64 years across Australia. One hundred and fourteen in-depth interviews were obtained from the general population sample of those who had been sexually harassed in the workplace in the past five years. Eighty-six additional in-depth interviews were conducted to boost the total sample size of these interviewees from the 114 obtained in the general population sample to 200 in total.

As the findings of the telephone survey are based on differing sample sizes, the reliability of the data varies. We can be statistically confident of findings based on the total population samples. For statistics based on the sub-sample of 200 interviewees who experienced sexual harassment in the last five years, we are still able to draw conclusions that are relatively statistically sound. Of course, the smaller the sub-sample size, the less reliable the data become. The sample sizes and the associated margin of error are provided in the footnotes for each population. For further information see Appendix A.

While a telephone survey is a relatively efficient method of interviewing a large sample population, particularly where the topic of the survey may be a sensitive issue for many people, it does have some limitations. Some of these are discussed in Appendix A.

### 1.4 Comparing the data from the telephone survey and *A Bad Business*

One of the main functions of HREOC is to investigate and conciliate complaints of discrimination in certain areas of public life including employment, education, and the provision of goods and services.<sup>7</sup> Sexual harassment is one of the most common forms of sex discrimination which HREOC routinely deals with. HREOC is also charged with fulfilling the objects of the SDA, in particular the object to eliminate, so far as possible, discrimination involving sexual harassment in the workplace, in educational institutions, and other areas of public activity.<sup>8</sup>

The findings of *A Bad Business* indicated that sexual harassment continues to be a problem for both the individuals harassed and the organisations where they are employed, almost 20 years after the introduction of the SDA.<sup>9</sup> These findings are limited to complaints to HREOC and necessarily provide only a limited perspective on the nature of sexual harassment experienced more broadly. As referred to above at 1.3.1, this research was undertaken to provide a robust quantitative analysis of the incidence and nature of sexual harassment experienced by the Australian community, particularly in workplaces.

Comparing the results of *A Bad Business* with the findings of the telephone survey provides the opportunity to consider how reported and non-reported sexual harassment differ and how that may affect an individual's decision to formally report the sexual harassment to their employer or an external agency. Comparing the data provides an insight for employers as to how grievance procedures and workplace policies to prevent sexual harassment are perceived by employees who experience sexual harassment.

<sup>7</sup> See Human Rights and Equal Opportunity Commission *A Bad Business: Review of sexual harassment in employment complaints 2002* HREOC Sydney 2003, pp14-16 for an overview of HREOC's complaints handling function.

<sup>8</sup> Section 3 of the SDA provides:

The objects of this Act are:

- (a) to give effect to certain provisions of the Convention on the Elimination of All Forms of Discrimination Against Women; and
- (b) to eliminate, so far as is possible, discrimination against persons on the ground of sex, marital status, pregnancy or potential pregnancy in the areas of work, accommodation, education, the provision of goods, facilities and services, the disposal of land, the activities of clubs and the administration of Commonwealth laws and programs; and
- (ba) to eliminate, so far as possible, discrimination involving dismissal of employees on the ground of family responsibilities; and
- (c) to eliminate, so far as is possible, discrimination involving sexual harassment in the workplace, in educational institutions and in other areas of public activity; and
- (d) to promote recognition and acceptance within the community of the principle of the equality of men and women.

<sup>9</sup> 2004 marks the 20th anniversary of the SDA.

<sup>10</sup> See Human Rights and Equal Opportunity Commission *A Bad Business: Review of sexual harassment in employment complaints 2002* HREOC Sydney 2003, p15.

Limitations with the comparison are discussed in Appendix A.

## 1.5 About this paper

Chapter 2 provides an overview of some of the main findings of the national telephone survey, including the incidence of sexual harassment in the community, and the nature and severity of sexual harassment experienced in the workplace in the five years prior to the survey.

Chapter 3 compares the results of *A Bad Business* with the findings of the telephone survey in relation to the characteristics of the sexual harassment experienced, the characteristics of the target of the sexual harassment, the characteristics of the harasser, and the characteristics of the workplace where the sexual harassment occurred.

Chapter 4 examines the results of the telephone survey and *A Bad Business* in relation to who reports sexual harassment, to whom it is reported, and management of complaints. It also provides a number of findings as to why targets of sexual harassment do not report it.

The concluding chapter provides a short overview of the public policy framework which governs sexual harassment in Australia and examines some of the implications of the findings of both the national telephone survey and *A Bad Business* for the nature of any public policy changes which might enable an improved response to sexual harassment.

### 1.5.1 A note about language

In the analysis of the telephone survey, the person surveyed is referred to as the “interviewee” and those interviewees who have personally experienced sexual harassment are referred to as “targets” of harassment. The person who did the harassing is referred to as the “harasser” in the telephone survey. While the term “harasser” is used to refer to the perpetrator of the sexual harassment, we are not drawing any conclusions as to whether sexual harassment would be proven in law.

In *A Bad Business*, the person harassed is referred to as the “complainant” and the person who allegedly harassed is referred to as the “respondent” (to the complaint).<sup>10</sup>