

Chapter 3: A detailed analysis of the nature of sexual harassment

3.1 Introduction

This Chapter compares the results of HREOC's review of sexual harassment in employment complaints reported in *A Bad Business* with the findings of the telephone survey on the incidence and nature of sexual harassment in the workplace in relation to:

- characteristics of the sexual harassment;
- characteristics of the target of the sexual harassment;
- characteristics of the harasser; and
- characteristics of the workplace where the sexual harassment occurred.

3.2 Characteristics of the sexual harassment

3.2.1 Type of sexual harassment

Most sexual harassment experienced in the workplace in the last five years involved physical types of sexual harassment, as did a bare majority of the sexual harassment complaints in *A Bad Business*.³⁹ Table 3.1 shows that of the 200 interviewees to the telephone survey who experienced sexual harassment, 38 per cent (or 75 interviewees) identified the behaviour they experienced as involving types of exclusively non-physical sexual harassment. Of the 152 complainants of sexual harassment in *A Bad Business*, 49 per cent (or 75 complainants) described the behaviour complained of as involving types of exclusively non-physical sexual harassment. The findings of the telephone survey in particular support earlier studies which found that most formal sexual harassment complaints involved elements of physical sexual harassment.⁴⁰

A possible explanation for only a bare majority of complainants in *A Bad Business* complaining of sexual harassment which included physical sexual harassment is that the legislative amendment to the definition of sexual harassment in the SDA enacted in 1992 may have facilitated complaints of non-physical sexual harassment.⁴¹ Other possible explanations may be that targets of physical sexual harassment are reporting it to other organisations, such as the police, or that workplaces are not taking exclusively non-physical sexual harassment as seriously as physical harassment, so workplace complaints are proceeding directly to HREOC.

³⁹ The telephone survey asked interviewees to indicate which of 13 descriptions of common sexually harassing behaviour best described the sexual harassment they experienced. The sexual harassment complained of in *A Bad Business* was categorised into six types of sexual harassment which were developed during the analysis of the complaint files. Two of these categories were collapsed in the final analysis, leaving five types of sexual harassment. To simplify comparisons between the two sets of data, these 13 descriptions and five categorisations were aggregated. The first aggregation was into physical and non-physical sexual harassment.

⁴⁰ J Morgan Interim Report on Examination of All Sexual Harassment in Employment Cases Closed in 1991 and 1992 (unpublished paper on the Victorian jurisdiction).

⁴¹ The sexual harassment provisions of the SDA were amended in 1992 expressly to include oral and written statements of a sexual nature. The current section 28A of the SDA states:

(1) For the purposes of this Division, a person sexually harasses another person (*the person harassed*) if: (a) the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or

(b) engages in other unwelcome conduct of a sexual nature in relation to the person harassed;

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the person harassed would be offended, humiliated or intimidated.

(2) In this section:

conduct of a sexual nature includes making a statement of a sexual nature to a person, or in the presence of a person, whether the statement is made orally or in writing.

Table 3.1

Type of sexual harassment	Telephone Survey (% interviewees who experienced)	Type of sexual harassment	<i>A Bad Business</i> (% complainants who experienced)
<p>Including physical sexual harassment⁴²</p> <p>Includes:</p> <ul style="list-style-type: none"> - Sexually explicit physical contact - Actual or attempted rape or assault - Unwelcome touching, hugging, cornering, kissing - Unnecessary familiarity eg. "deliberately brushing up against you" 	62	<p>Including physical sexual harassment⁴³</p> <p>Includes:⁴⁴</p> <ul style="list-style-type: none"> - Unwelcome physical intimacy, eg. touching thigh while travelling in a car, brushing up against you, unwanted hugs - Sexual physical behaviour eg. kissing, touching breasts, buttocks, alleged sexual assault 	51
<p>Exclusively non-physical sexual harassment⁴⁵</p> <p>Includes:</p> <ul style="list-style-type: none"> - Staring or leering - Suggestive comments or jokes - Sexually explicit postures or pictures - Unwanted invitations to go on dates - Requests or pressure for sex - Intrusive questions about your private life or body - Insults or taunts based on your sex - Sexually explicit emails or SMS messages 	38	<p>Exclusively non-physical sexual harassment⁴⁶</p> <p>Includes:⁴⁷</p> <ul style="list-style-type: none"> - Lewd suggestive comments, innuendo, display of offensive material - Propositioning - General bullying behaviour⁴⁸ 	49

⁴² Includes interviewees to the telephone survey who may also have experienced non-physical sexual harassment.

⁴³ Includes complainants to HREOC who may also have experienced non-physical sexual harassment.

⁴⁴ These subgroups are derived from the analysis of the complaints data in *A Bad Business*. See Human Rights and Equal Opportunity Commission *A Bad Business: Review of sexual harassment in employment complaints 2002* HREOC Sydney 2003, p17.

⁴⁵ Includes interviewees to the telephone survey who experienced non-physical sexual harassment only.

⁴⁶ Includes complainants to the Commission who experienced non-physical sexual harassment only.

⁴⁷ These subgroups are derived from the analysis of the complaints data in *A Bad Business*. See Human Rights and Equal Opportunity Commission *A Bad Business: Review of sexual harassment in employment complaints 2002* HREOC Sydney 2003, p17

⁴⁸ There were no incidences in the data analysed in *A Bad Business* where this behaviour was experienced independent of at least one other form of either physical or non-physical sexual harassment.

Table 3.2 displays a second aggregation of the types of sexual harassment which sought to combine similar kinds of harassing behaviours. It should be noted that the categories identified in the telephone survey do not always correspond directly to those identified in *A Bad Business*. The first type of aggregated behaviours from the telephone survey labelled "Crude or offensive behaviour" corresponds to the "Lewd suggestive comments, innuendo, display of offensive material" category in *A Bad Business*. In both sets of data, this aggregation of sexually harassing behaviours was experienced by the vast majority of the targets of sexual harassment in the telephone survey (94 per cent) and by the majority of the complainants in *A Bad Business* (71 per cent).

Table 3.2.

Type of sexual harassment ⁴⁹	Telephone Survey (% of 200 interviewees who experienced this type of sexual harassment) ⁵⁰	Type of sexual harassment	<i>A Bad Business</i> Data (% of 152 complainants who experienced this type of sexual harassment) ⁵¹
Crude/offensive behaviour ⁵²	94	Lewd suggestive comments, innuendo, display of offensive material	71
Unwanted sexual attention ⁵³	85	Unwelcome physical intimacy	37
Sexist behaviours ⁵⁴	43		
Sexual assault ⁵⁵	20	Sexual physical behaviour	23
Sexual coercion ⁵⁶	19	Propositioning	36
Other	2	General bullying behaviour	30

The "General bullying" category in *A Bad Business* has no correlation with the descriptions of sexual harassment used in the telephone survey. The reason for this was that the definition of sexual harassment given to interviewees of the telephone survey was strictly limited to the legislative definition of sexual harassment under the SDA. The primary object of the telephone survey was to measure the incidence of sexual harassment in the Australian population. It was considered that any reference to behaviours outside the legislative definition of sexual harassment would taint the measurement of the incidence of sexual harassment. Therefore, a description of behaviours that would constitute bullying as commonly understood was not included in the telephone survey. The distinctions between the types of bullying behaviours that may constitute sexual harassment were considered to be too difficult to explain in the context of a telephone survey.

However, the behaviour complained of in 30 per cent of the complaints analysed in *A Bad Business* involved behaviours that would commonly be understood as bullying. This

⁴⁹ See 2.3.1 for further discussion on the categorisation of the types of sexual harassment reported in the telephone survey.

⁵⁰ Totals are greater than 100 per cent because of multiple forms of sexual harassment experienced.

⁵¹ Totals are greater than 100 per cent because of multiple forms of sexual harassment experienced.

⁵² Includes the following descriptions of sexually harassing behaviour: "suggestive comments or jokes", "staring or leering", "sexually explicit emails or SMS messages", "sexually explicit pictures or posters".

⁵³ Includes the following descriptions of sexually harassing behaviour: "intrusive questions about your private life", "unnecessary familiarity eg deliberately brushing up against you", "unwelcome touching, hugging, cornering or kissing", "unwanted invitations to go out on dates". That is, includes both physical and non-physical behaviour, while "Unwelcome Physical Intimacy" from *A Bad Business* includes only physical behaviour.

⁵⁴ Includes the following description of sexually harassing behaviour: "insults or taunts based on your sex". This category does not have a direct correlation with data from *A Bad Business*. Behaviour of this type would probably lie in the "Lewd suggestive comments, innuendo, display of offensive material" category in *A Bad Business*.

⁵⁵ Includes the following descriptions of sexually harassing behaviour: "sexually explicit physical contact", "actual or attempted rape or assault". Note that the "Sexual Physical Behaviour" category in *A Bad Business* includes kissing and touching.

⁵⁶ Includes the following description of sexually harassing behaviour: "requests or pressure for sex". However, the description "Unwanted Invitations to Go On Dates" within the "Unwanted Sexual Attention" aggregation in the telephone survey data would also correspond to the "Propositioning" category in *A Bad Business*, such that the difference between the two may be less significant.

⁵⁷ Section 94 of the SDA prohibits acts of victimisation against a person where that person has made or proposes to make a complaint under the SDA. The victimisation provisions do not extend to acts of victimisation against a person where that person makes a workplace or internal complaint to their employer.

⁵⁸ Based on a sample size of 136.

type of behaviour was often a repercussion of the complainant's refusal of the alleged harasser's advance or a consequence of the complainant making a workplace complaint about other types of sexual harassment experienced. While probably not constituting sexual harassment in isolation, this category of behaviour, when taken in conjunction with the other types of sexual conduct complained of, formed a significant part of the course of discriminatory behaviour described in almost one third of complaints analysed in *A Bad Business*.⁵⁷

3.2.2 Duration of sexual harassment

Fifty-five per cent of targets of sexual harassment in the telephone survey indicated that the sexual harassment they experienced occurred for up to six months, compared with 52 per cent of complainants in *A Bad Business*. Thirty per cent of targets stated that the sexual harassment experienced occurred for more than six months, compared with 39 per cent of complainants. Just over one in five complainants and targets of sexual harassment in each of the *A Bad Business* data and the telephone survey data indicated that the sexual harassment they experienced continued for more than 12 months.

The sexual harassment experienced by both targets of sexual harassment in the telephone survey and by complainants in *A Bad Business* was rarely a one-off experience.

Table 3.3

Duration of sexual harassment	Telephone Survey (%)	<i>A Bad Business</i> Data (%) ⁵⁸
A one off	15	18
Less than 1 month	11	12
1-3 months	29	21
4-6 months	10	11
7 to 12 months	9	17
More than 12 months	21	22
Ongoing or sporadic	5	-

There is very little difference in the duration of the sexual harassment between the telephone survey data and the analysis of complaints in *A Bad Business* suggesting that the duration of the sexual harassment has minimal impact on a harassed person's decision to make a formal complaint of sexual harassment.

Nevertheless, the fact that both sets of data show that more than two thirds of the sexual harassment experienced in the workplace occurs for a period of months or even years indicates the serious and significant impact that sexual harassment has on the productivity of a workplace over a lengthy period of time.

3.3 Characteristics of the target of sexual harassment

3.3.1 Age of target of sexual harassment

Female targets of sexual harassment in the workplace in the last five years were most

frequently within the 35 to 44 years age range, while complainants of sexual harassment in employment in *A Bad Business* were most frequently within the 25 to 34 years age group.⁵⁹ Collapsing these two age groupings we find that 47 per cent of the female targets of sexual harassment recorded in the telephone survey were aged between 25 and 44 years compared with 56 per cent of sexual harassment complainants in *A Bad Business*.

Table 3.4

Age of target at time of survey (years)	Telephone Survey (%) ⁶⁰	Age of target at time of sexual harassment (years)	<i>A Bad Business</i> Data(%) ⁶¹
Females		Females	
		15-17	12
18-24	10	18-24	20
25-34	21	25-34	33
35-44	26	35-44	23
45-54	11	45-54	6
55-64	4	55-64	3
Males		Males	
18-24	4	18-24	1
25-34	9	25-34	1
35-44	8	35-44	0
45-54	8	45-54	0
55-64	0	55-64	0

These findings challenge a number of studies on the characteristics of targets of sexual harassment conducted throughout the 1980s in the US⁶² where targets of sexual harassment were found to be predominantly younger (single) women. It should be kept in mind that interviewees to the telephone survey were limited to individuals over the age of 18 years (to avoid issues of gaining a parent's consent to a minor responding to the survey) and that the survey did not record the marital status of interviewees. There are also numerous reports suggesting that young people are particularly vulnerable to sexual harassment and bullying in the workplace.⁶³

The New Zealand survey on the incidence of sexual harassment (see 2.2.2) found that it was more common for younger women to suffer sexual harassment, with 37 per cent of women in the 18 to 29 years age bracket reporting having experienced sexual harassment.⁶⁴

Certainly, younger and "mid-career" women are more likely to complain of sexual harassment to HREOC than their representation in the Australian labour force would suggest.⁶⁵

Male targets of sexual harassment in employment were quite evenly spread across the age brackets of 25 to 34 years (9 interviewees), 35 to 44 years and 45 to 54 years (both 8 interviewees each in the telephone survey). Of the two male complainants of sexual harassment in *A Bad Business* for which age was discernable one was in the 18 to 24 years bracket and the other in the 25 to 34 years bracket.

⁵⁹ However, note the small sample size of 66.

⁶⁰ Sample size of 200 with a margin of error of plus or minus seven percentage points at the 95 per cent confidence level.

⁶¹ Based on a sample size of 66.

⁶² T C Fain & D L Anderton "Sexual harassment: Organizational context and diffuse status" (1987) 17 *Sex Roles* 291-311; B A Gutek *Sex and the Workplace* Jossey-Bass San Francisco, 1985; US Merit Systems Protection Board *Sexual harassment in the federal workplace: Is it a problem?* Office of Merit Systems Review and Studies/Government Printing Office Washington DC, 1981; US Merit Systems Protection Board *Sexual harassment in the federal government: An update* Office of Merit Systems Review and Studies/Government Printing Office Washington DC, 1988.

⁶³ David Potter "Teen girls report work harassment" *The Courier Mail* 28 August 2003 <http://www.couriermail.news.com.au/printpage/0,5942,7082815,0,0.html>; Susie O'Brien "Young workers abused" *Herald Sun* 14 April 2002 p12.

⁶⁴ Omnibus survey conducted by NFO CM Research for the New Zealand Human Rights Commission. See Human Rights Commission of New Zealand *One in three women sexually harassed survey shows* <http://www.hrc.co.nz/index.php?p=13856>

⁶⁵ See Human Rights and Equal Opportunity Commission *A Bad Business: Review of sexual harassment in employment complaints 2002* HREOC Sydney 2003, p19.

⁶⁶ Based on a sample size of 200 with a margin of error of plus or minus 7 per cent at the 95 per cent confidence level.

⁶⁷ Based on a sample size of 152 unless indicated otherwise.

⁶⁸ This is borne out by the telephone survey. Men rated the sexual harassment they experienced in the workplace in the last five years as less offensive and as less intimidating than women targets of sexual harassment, and were less likely to formally report the harassment (see 2.3.2).

3.3.2 Sex of target of sexual harassment

It is generally recognised that the experience of sexual harassment is highly gendered. Most incidences of sexual harassment involve men harassing women. The data from both the telephone survey and *A Bad Business* clearly bear this out.

Nevertheless, Table 3.5 shows that male targets of sexual harassment are significantly under-represented in HREOC's complaints population in *A Bad Business* when compared to the proportion of male targets of sexual harassment identified in the telephone survey.

Table 3.5

Targets of sexual harassment	Telephone Survey (%) ⁶⁶	<i>A Bad Business</i> Data (%) ⁶⁷
Female	72	95
Male	28	5

A possible explanation for the under-representation of male complainants of sexual harassment may involve stereotypical notions of male power and sexuality and how these relate to community understandings of sexual harassment. Sexual harassment is commonly understood by reference to heterosexual desire and power, where men are encouraged to pursue women for romantic or sexual relationships. Sexual harassment is then interpreted as an over-stepping of the boundaries of appropriate behaviour in the workplace in what would be otherwise acceptable behaviour in another context. Some men may not be threatened by the sexual overtures of women, so that while they identify such behaviour in the workplace as sexual harassment, they fail to make a formal complaint because they are less affected by it than women⁶⁸ or they feel a complaint would not be treated seriously.

3.3.3 Gender of harasser and target

Eighty-nine per cent of the sexual harassment investigated by both the telephone survey and *A Bad Business* involved sexual harassment by the opposite sex to the target. Comparison of the data indicates that very little of the sexual harassment perpetrated on men (by both male and female harassers) is reported to agencies such as HREOC for investigation and conciliation perhaps for the reasons discussed above at 3.3.2.

Table 3.6

Gender of harasser and target	Telephone Survey (%)	<i>A Bad Business</i> Data (%)
Male to female sexual harassment	70	86
Female to male sexual harassment	19	3
Male to male sexual harassment	9	1
Female to female sexual harassment	2	2
Male and female to female sexual harassment		7
Male and female to male sexual harassment		1

3.3.4 Ethnicity of target of sexual harassment

A major disadvantage of a telephone survey as a research tool is that it favours interviewees with good English language skills. Individuals with little or limited English speaking and comprehension skills are unlikely to participate in a telephone survey.

At the same time, a complaints system requiring complaints to be in writing may also have an inhibiting effect on individuals from a non-English speaking background from reporting their experiences of sexual harassment. While HREOC attempts to address these issues by providing advice and assistance to complainants in formulating a written complaint, the proportion of complainants of sexual harassment in employment who speak a language other than English at home is under-represented in relation to the proportion of individuals in the wider Australian community who speak a language other than English at home.⁶⁹

For these reasons, the statistics in Table 3.7 on the ethnicity of targets of sexual harassment should be approached with caution and should not be read as suggesting that individuals from non-English speaking backgrounds are less likely to be subjected to sexual harassment.

Table 3.7

Main language spoken at home of target	Telephone Survey (%)	<i>A Bad Business</i> Data (%)	Australian Population (%) ⁷⁰
English	97	90	84

3.3.5 Occupation of target of sexual harassment

Occupational segregation by gender remains significant in the Australian work force. Within the following occupational groupings the number of men and women employed is most disproportionate: tradespersons and related workers; advanced clerical and service workers; intermediate clerical, sales and service workers; and elementary clerical, sales and service workers.⁷¹

Targets of sexual harassment from the telephone survey⁷² were most likely to be clerical workers (24 per cent of targets) or professional workers (22 per cent of targets). Complainants of sexual harassment in *A Bad Business* were most likely to be intermediate (30 per cent of complainants) or elementary clerical, sales or service workers (17 per cent of complainants).

⁶⁹ In 2001, 16 per cent of the Australian population spoke a language other than English at home: *2001 Census of Population and Housing in ABS 1301.0 Year Book Australia 2003*, pp145-146. See also Human Rights and Equal Opportunity Commission *A Bad Business: Review of sexual harassment in employment complaints 2002* HREOC Sydney 2003, p21.

⁷⁰ *2001 Census of Population and Housing in ABS 1301.0 Year Book Australia 2003*, pp145-146.

⁷¹ *Labour Force Australia June 2002 in ABS 1301.0 Year Book Australia 2003* 2003, p164.

⁷² The occupations of the interviewees to the telephone survey were recorded by a slightly different classification system to the Australian Standard of Classification of Occupations ("ASCO") used in *A Bad Business*. As a result, a direct comparison between the telephone survey data and the data from *A Bad Business* is not always possible. Both sets of data are compared to the most recently available Australian Bureau of Statistics data of employed persons in Australia by occupation (using the ASCO).

Table 3.8

Occupation of target	Telephone Survey (%) ⁷³	Australian Standard Classification of Occupations (ASCO)	Employed persons by ASCO occupation (%) ⁷⁴	<i>A Bad Business</i> Data (%) ⁷⁵
Manager, executive or official	8	Managers & Administrators	7.8	4
Professional worker	22	Professionals	18.5	7
		Associate Professionals	11.8	10
Skilled tradesman	6	Tradespersons & related workers	12.8	3
Clerical or office worker	24	Advanced clerical & service workers	4.3	7
Sales worker	15	Intermediate clerical, sales & service workers	17.1	30
Service worker	9	Intermediate production & transport workers	8.6	7
		Elementary clerical, sales & service workers	9.8	17
Unskilled labourer/ elementary professions	4	Labourers & related workers	9.2	9
Semi-skilled worker	3			
Business owner	3			
Manufacturer's representative	1			
Technology professional	1			
Unknown				6

⁷³ Based on a sample size of 200 with a margin of error of plus or minus seven percentage points at the 95 per cent confidence level.

⁷⁴ *Labour Force Australia June 2002* (6203.0) in ABS 1301.0 *Year Book Australia 2003* 2003, p163.

⁷⁵ Based on sample size of 146 complainants.

The data provided in Table 3.8 suggest that professional workers who are targets of sexual harassment are less likely to report it than others. Twenty-two per cent of the interviewees to the telephone survey who experienced sexual harassment classified themselves as professional workers, while only seven per cent of complainants were described thus. Professional women may be reluctant to report sexual harassment perhaps due to concerns about the adverse effect of a complaint on their reputation or career.

Studies have found that women in occupations in which the number of women is disproportionate to the number of men tend to be sexually harassed more than women in gender-balanced occupations.⁷⁶

The finding that sexual harassment is most prevalent in the clerical, sales and services occupations, all of which are female-dominated, supports these studies. While workers in these occupations constitute almost 36 per cent of employed persons in Australia, 54 per cent of complainants in *A Bad Business* and 48 per cent of the targets of sexual harassment in the telephone survey were employed in these occupations. Because these occupations are predominantly female, it is difficult to ascertain whether the prevalence of sexual harassment is due to the sex-ratio of the occupation, or the numerical dominance of women, given that women are more likely to be harassed than men. Also occupation is not a useful indicator of the sex-ratio of the workplace, which may also be a significant factor in predicting the incidence of sexual harassment.

3.3.6 Employment status of target of sexual harassment

The limitations of the complaints data in *A Bad Business*, based on self-reporting, make a direct comparison with the telephone survey data difficult. Of the complainants who stated their employment status as "Casual" or "Fixed-term contract" it was not able to be discerned whether they were employed on a full time or part time capacity. For these reasons only the telephone survey data is examined in this section. The telephone survey only asked those 30 per cent of interviewees who were part time workers whether they were permanent, casual or temporary employees.

Table 3.9

Employment status of target	Telephone Survey (%) ⁷⁷
Full time	70
Part time	30
Of part timers: ⁷⁸	
- Permanent	48
- Casual	42
- Temporary	10

The proportion of interviewees who experienced sexual harassment in the workplace in the last five years in the telephone survey working full and part time approximates the proportion in the Australian population. In 2001-02, 72 per cent of employed persons in Australia worked on a full time basis (more than 35 hours per week) while 28 per cent worked part time.⁷⁹ The proportion of female interviewees who experienced sexual harassment and worked part time (34 per cent) is not significantly different to the

⁷⁶ J E Gruber & L Bjorn "Blue-collar blues: The sexual harassment of women autoworkers" (1982) 9 *Work and Occupations* 271; US Merit Systems Protection Board *Sexual harassment in the federal workplace: Is it a problem?* Office of Merit Systems Review and Studies/Government Printing Office Washington DC 1981; US Merit Systems Protection Board *Sexual harassment in the federal government: An update* Office of Merit Systems Review and Studies/Government Printing Office, Washington DC 1988; KR Yount "Ladies, flirts and tomboys: Strategies for managing sexual harassment in an underground coal mine" (1991) 19 *Journal of Contemporary Ethnography* 396; BA Gutek & B Morasch "Sex-ratios, sex-role spillover, and sexual harassment of women at work" (1982) 38 *Journal of Social Issues* 55.

⁷⁷ Sample size of 200 with a margin of error of plus or minus seven percentage points at the 95 per cent confidence level.

⁷⁸ Sample size of 63 with a margin of error of plus or minus 12 percentage points

⁷⁹ ABS 1301.0 *Year Book Australia 2003* 2003, p162.

⁸⁰ Human Rights Commission of New Zealand "One in three women sexually harassed survey shows"
<http://www.hrc.co.nz/index.php?p=13856>

⁸¹ Based on sample size of 200, with a margin of error of plus or minus 7 percentage points at the 95 per cent confidence level.

⁸² Sample size of 121.

⁸³ ABS 6254.0 *Career Experience, Australia 2003*, p3.

proportion of employed women in Australia working part time (45 per cent).

This result does not support the New Zealand survey on sexual harassment's finding that part time women workers are more susceptible to sexual harassment than women workers generally (see 2.2.2).⁸⁰ The New Zealand survey found that 37 per cent of women who work less than 20 hours per week had experienced sexual harassment compared with 22 per cent of all women who experienced sexual harassment at work.

3.3.7 Length of employment of target

Table 3.10

Length of employment of target at time of sexual harassment	Telephone Survey (%) ⁸¹	Length of employment of complainant at time sexual harassment commenced	<i>A Bad Business</i> Data (%) ⁸²
		Immediately	13
		Less than 1 month	9
Less than 3 months	19	1-2 months	20
		3-4 months	9
		5-7 months	13
3-12 months	25	8-12 months	7
More than 12 months but less than 3 years	24	13-24 months	11
3 or more years	32	25 months or more	17

Table 3.10 shows that complainants of sexual harassment in *A Bad Business* were twice as likely as targets of sexual harassment in the telephone survey to report that the harassment commenced within the first three months of their employment (42 per cent compared with 19 per cent). Almost three-quarters (71 per cent) of sexual harassment complainants in *A Bad Business* reported that the sexual harassment commenced within the first 12 months' of their employment, compared with 44 per cent of the targets of sexual harassment in the telephone survey. This difference warrants further research, although it may be that an employee harassed early in their tenure of employment is more likely to report the sexual harassment externally because she or he may feel not as supported in the workplace.

Twenty-three per cent of employees in the Australian labour force in November 2002 had been with their current employer for less than 12 months.⁸³ Complainants of sexual harassment in *A Bad Business* are over-represented in this category by as much as three times the general population, and targets of sexual harassment in the telephone survey almost double this proportion.

The data in *A Bad Business* suggest that "new-starters" are particularly susceptible to sexual harassment, whereas the telephone survey suggests that the experience of workplace sexual harassment is more evenly spread across the range of the period of employment.

Employers should ensure that new staff members are provided with adequate information and advice about the employer's policies and grievance procedures at the commencement of their employment.

3.4 Characteristics of the harasser

3.4.1 Sex of harasser

It is generally recognised that sexual harassers are predominantly men. Both the telephone survey and the complaints data in *A Bad Business* in Table 3.11 support this finding. Very few complaints in *A Bad Business* relate to incidents of sexual harassment by female harassers. The complaints data in *A Bad Business* also included incidents of sexual harassment by men and women. These situations tended to cross over into workplace bullying, albeit with a sexual component.⁸⁴

Again, the discussion in section 3.3.2 as to the possible reasons for the apparent reluctance of male victims of sexual harassment to report it may explain the disparity in the incidence of female harassers in *A Bad Business* and the telephone survey results.

Table 3.11

Sex of harasser	Telephone Survey (%)	<i>A Bad Business</i> Data (%)
Male	79	88
Female	21	5
Male and female		7

3.4.2 Age of harasser

The age of the harasser estimated by the target of the sexual harassment in the telephone survey was predominantly over 30 years, whereas the age of the harasser estimated by the complainant in *A Bad Business* was more evenly spread across age groups. Care needs to be exercised here though, as only very few of the complaint files analysed in *A Bad Business* contained an indication of the harasser's age.⁸⁵

Table 3.12 indicates that almost seven in ten (68 per cent) of all harassers in the telephone survey data were men aged over 30 years. Almost six in ten (57 per cent) of all targets of sexual harassment in the telephone survey were women aged between 18 and 44 years. This suggests that generally harassers tend to be older than their victims. This age difference was particularly stark in *A Bad Business*⁸⁶ but note the very small sample size.

⁸⁴ See Human Rights and Equal Opportunity Commission *A Bad Business: Review of sexual harassment in employment complaints 2002* HREOC Sydney 2003, pp17-18.

⁸⁵ See Human Rights and Equal Opportunity Commission *A Bad Business: Review of sexual harassment in employment complaints 2002* HREOC Sydney 2003, p19.

⁸⁶ See Human Rights and Equal Opportunity Commission *A Bad Business: Review of sexual harassment in employment complaints 2002* HREOC Sydney 2003, pp19-21.

⁸⁷ Sample size of 200 with a margin of error of plus or minus seven percentage points at the 95 per cent confidence level.

⁸⁸ Sample of only 21 harassers where age was stated.

⁸⁹ Sexual harassment "...is dominance eroticized." See C MacKinnon *Sexual Harassment of Working Women* Yale University Press New Haven 1979, p162.

⁹⁰ See C MacKinnon *Feminism Unmodified* Harvard University Press Cambridge MA 1987, p107.

⁹¹ K Bursik "Perceptions of sexual harassment in an academic context" (1992) 27 *Sex Roles* 401-412; L F Fitzgerald & L M Weitzman "Men who harass: Speculation and data" in M Paludi (ed) *Ivory Power: Sexual Harassment on Campus* SUNY Press Albany 1990; B A Gutek et al "Interpreting socio-sexual behaviour in a work setting" (1983) 22 *Journal of Vocational Behaviour* 30-48; J B Pryor "The layperson's understanding of sexual harassment" (1985) 13 *Sex Roles* 273-286; US Merit Systems Protection Board *Sexual harassment in the federal workplace: Is it a problem?* Office of Merit Systems Review and Studies/Government Printing Office Washington DC 1981.

⁹² Of the 79 interviewees who were employed by small employers, 30 per cent were harassed by co-workers; of the 48 interviewees who were employed by medium-sized employers, 54 per cent were harassed by co-workers; of the 73 interviewees who were employed by large employers, 64 per cent were harassed by co-workers. Note the small sample sizes affects the reliability of these statistics, with a margin of error of plus or minus 12 percentage points.

Table 3.12

Age of harasser (years)	Telephone Survey (%) ⁸⁷	<i>A Bad Business</i> Data (%) ⁸⁸
Male		
15-20	2	5
21-30	9	19
31-40	21	24
41-50	30	14
51-64	15	24
65 +	2	10
Female		
15-20	2	0
21-30	6	0
31-40	8	0
41-50	5	5
51-64	2	0
65+	0	0

3.4.3 Harasser's relationship to target

The two sets of data indicate an interesting difference in the power relationships between harassers and their targets. Sexual harassment is often explained as a strategy used predominantly by men to exercise power over (subordinate) women in the workplace.⁸⁹ While this power differential is most obvious when a woman is harassed by her boss, manager or supervisor, power is not always linear or hierarchal, but is sometimes diffuse. Co-workers can also exercise personal power over each other, in terms of competing for work or advancement in the workplace.⁹⁰

US studies suggest that the source of the sexual harassment affects the severity of the harassment experienced by the target, with conduct by a person in a position of authority being more apt to be perceived as sexual harassment than that by a peer or subordinate.⁹¹ The telephone survey results do not necessarily support this notion, with just under half (48 per cent) of the harassers being identified as co-workers of the targets in Table 3.13. By contrast 61 per cent of the harassers in *A Bad Business* were in positions of authority over the complainants (compared with 34 per cent being co-workers).

Sexual harassment by a co-worker was more likely to occur in large employers than medium sized or small employers.⁹²

Table 3.13

Relationship of harasser to target	Telephone Survey (%)	<i>A Bad Business</i> Data (%)
Co-worker	48	34
Supervisor/manager	13	39
Boss/employer	20	22
Client/customer	10	4
Co-worker more senior position	2	
Others associated with workplace ⁹³	6	2

Of the 35 per cent of interviewees to the telephone survey who were harassed by a person in authority, the person in authority was more likely to be male than female.⁹⁴

Where a formal authoritative relationship does not exist between the harasser and the target, this gender characteristic is not as pronounced. Forty-eight per cent of interviewees identified their harassers as co-workers (35 per cent of interviewees identified co-worker harassers as men and 14 per cent as women). This suggests that female harassers may be more likely to harass those in similar situations to themselves rather than those in more or less powerful workplace positions.

Despite the facts that men are usually in positions of greater authority in the workplace than women, and that harassers are predominantly men, this finding suggests that there is a definite gender/power dimension to sexual harassment in the workplace, whereby men in positions of authority tend to harass women in subordinate positions.

The telephone survey also suggests that if the harasser is described as the "boss or employer" the target of the sexual harassment is less likely to make a formal complaint or report than if the harasser is described otherwise.

Almost one third of the interviewees who worked for a small employer (less than 25 employees) were sexually harassed by the "employer or boss", compared with only eight per cent of interviewees who worked for large employers (more than 100 employees), and 18 per cent of interviewees who worked for medium sized employers (26 to 100 employees).

Ten per cent of interviewees to the telephone survey stated that they were harassed by a customer or client compared with four per cent of complainants in *A Bad Business*. The relationship between an employee and a client or customer is one that may not fall under the provisions of the SDA⁹⁵ so that a person who is being sexually harassed may not have an avenue of redress directly against the alleged harasser. Instead, an employee who has been sexually harassed by a client or customer may in some circumstances construe a complaint of direct or indirect sex discrimination for which employers are directly liable if made out.⁹⁶

This more circuitous path to a remedy for sexual harassment inflicted by a customer on an employee may make obtaining a legal remedy under the SDA more difficult than an employee harassed by a co-worker, for example. As more women move into sales and service representative roles (or consultancy roles) where they deal directly with customers or clients often at the customer's or client's workplace, this type of sexual harassment may increase in prevalence.

⁹³ These individuals included couriers, cleaners and delivery persons. Similar comments apply as to customers or clients.

⁹⁴ 32 per cent of interviewees indicated that the person in authority was male while 3 per cent indicated that the person in authority was female. Rounding of percentages affects total.

⁹⁵ Section 28B of the SDA provides:

- (1) It is unlawful for a person to sexually harass:
 - (a) an employee of the person; or
 - (b) a person who is seeking to become an employee of the person.
- (2) It is unlawful for an employee to sexually harass a fellow employee or a person who is seeking employment with the same employer.
- (3) It is unlawful for a person to sexually harass:
 - (a) a commission agent or contract worker of the person; or
 - (b) a person who is seeking to become a commission agent or contract worker of the person.
- (4) It is unlawful for a commission agent or contract worker to sexually harass a fellow commission agent or fellow contract worker.
- (5) It is unlawful for a partner in a partnership to sexually harass another partner, or a person who is seeking to become a partner, in the same partnership.
- (6) It is unlawful for a workplace participant to sexually harass another workplace participant at a place that is a workplace of both of those persons.

(7) In this section:

"place" includes a ship, aircraft or vehicle.

"workplace" means a place at which a workplace participant works or otherwise carries out functions in connection with being a workplace participant.

"workplace participant" means any of the following:

- (a) an employer or employee;
- (b) a commission agent or contract worker;
- (c) a partner in a partnership.

See Human Rights and Equal Opportunity Commission *Sexual Harassment in the Workplace: A Code of Practice for Employers* HREOC Sydney 2004, p18.

⁹⁶ Sexual harassment is a legally recognised form of sex discrimination: *O'Callaghan v Loder* (1984) EOC 92-023; *Aldridge v Booth* (1988) 80 ALR 1; *Hall & Ors v A & A Sheiban Pty Ltd & Ors* (1989) EOC 92-250; *Elliott v Nanda & Commonwealth of Australia* [2001] FCA 418.

⁹⁷ The States' occupational health and safety laws require employers to provide safe working environments for their employees. This includes providing a sexual harassment-free workplace. See Human Rights and Equal Opportunity Commission *Sexual Harassment in the Workplace: A Code of Practice for Employers* HREOC Sydney 2004, p49.

⁹⁸ Although the difference could be due to the classification of small business as less than 25 employees.

⁹⁹ Based on sample size of 200 with a margin of error of plus or minus seven percentage points at the 95 per cent confidence level.

¹⁰⁰ *Small Business in Australia 2001* (1321.0) in ABS 1301.0 Year Book Australia 2003 2003, p412. Note that *Small Business in Australia* is a biennial publication, with the next edition featuring 2003 data due for release in 2004.

Sexual harassment of an employee by a client or customer of the employer often presents a difficult situation for employers to resolve. Employers are faced with a tension between their legal duty to provide a sexual harassment-free workplace for their employees⁹⁷ and their commercial imperative to maintain harmonious relationships with their clients. In addition, employers generally have little control over the behaviour of customers or clients, particularly where there is no ongoing relationship with that customer or client.

The range of strategies for dealing with sexual harassment in the workplace used by most employers is generally not appropriate or applicable to cases where the harasser is a client or customer. An employer cannot discipline or counsel a client or customer. Resolving employee complaints of sexual harassment by clients or customers will require employers to develop creative responses.

3.5 Characteristics of the workplace where the sexual harassment occurred

3.5.1 Employer size

Table 3.14 shows that while the complaints data in *A Bad Business* showed a slight tendency for sexual harassment complaints to emanate from small employers (less than 25 employees),⁹⁸ the telephone survey results indicate that sexual harassment is prevalent across all employer sizes, mirroring the proportion of employed persons in the community employed by small, medium and large business entities.

Both sets of data suggest that sexual harassment is an issue for all employers, regardless of size.

Table 3.14

Size of employer	Proportion of Telephone Survey interviewees who experienced sexual harassment by size of employer (%) ⁹⁹	Proportion of <i>A Bad Business</i> complainants by size of employer (%)	Size of employer in ABS	ABS Proportion of employed persons by size of employer (%) ¹⁰⁰
Small (less than 25 employees)	38	44	Small (1 to 19 employees)	38
Medium-sized (26 to 100 employees)	25	19	Medium (20 to 99 employees)	23
Large (more than 100 employees)	37	36	Large (more than 100 employees)	38

Table 3.15 shows the proportion of interviewees to the telephone survey by the size of their employer who were aware of sexual harassment happening to someone else in the same workplace.

Interviewees who knew of sexual harassment happening to someone else at their workplace, were more likely to be employed by large employers (43 per cent). However the proportion of interviewees in the telephone survey who stated that they knew of sexual harassment happening to someone else in their small workplace is greater than those employed by medium-sized employers. This may be because employees tend to know each other and have closer working relationships in a smaller workplace.

Table 3.15

Size of employer	Aware of sexual harassment happening to someone else	
	Yes ¹⁰¹	No ¹⁰²
Small (less than 25 employees)	36	44
Medium (26-100 employees)	22	30
Large (more than 100 employees)	43	27

3.5.2 Industry

Table 3.16 shows that targets of sexual harassment were most likely to be employed in the retail trade (16 per cent), health and community services (12 per cent) and education (10 per cent) industries. Complainants of sexual harassment in *A Bad Business* were most likely employed in the property and business services (14 per cent), retail trade (13 per cent) and accommodation, cafes and restaurants (12 per cent) industries.

Table 3.16

Australian and New Zealand Standard Industrial Classification (ANZIC)	Telephone Survey (%) ¹⁰³	<i>A Bad Business</i> Data (%)	Contribution to Total Employment (%) ¹⁰⁴
Retail trade	16	13	14.8
Health and community services	12	4	10
Education	10	2	6.9
Accommodation, cafes and restaurants	8	12	5.1
Government administration and defence	7	6	4.1
Finance and insurance	7	3	3.9
Communication services	6	6	2.1
Personal and other services	6	3	3.9
Construction	5	5	7.3
Manufacturing	5	11	12.3
Agriculture, forestry and fishing	4	1	4.7
Cultural and recreational services	4	4	2.5
Transport and storage	3	7	4.6
Property and business services	2	14	11.7
Mining	2	<1	0.9
Wholesale trade	2	7	4.7
Electricity, gas and water storage	1	0	0.7
Other/Unknown	0	4	0
Total	100	100	100

¹⁰¹ Sample size of 108 with a margin of error of plus or minus 11 per cent at the 95 per cent confidence level.

¹⁰² Sample size of 75 with a margin of error of plus or minus 11 per cent at the 95 per cent confidence level.

¹⁰³ Based on a sample size of 200 with a margin of error of plus or minus 7 percentage points at the 95 per cent confidence level.

¹⁰⁴ ABS 1301.0 *Year Book Australia 2003* 2003, p406.

It should be noted that the SDA does not cover State instrumentalities, such as public schools and hospitals, perhaps largely explaining the under-representation of the education and health and community services industries in *A Bad Business*.

These findings suggest that the experience of sexual harassment is widely spread across industries.