

## Chapter 4: Reporting sexual harassment in employment

### 4.1 Introduction

Almost one in three targets of sexual harassment in Australian workplaces in the last five years formally reported it either to employers or to external agencies, the majority reporting it to their manager, supervisor or employer. Very few targets reported the sexual harassment to external agencies.

This chapter examines the results of the national telephone survey concerning who reports sexual harassment, to whom it is reported and how reports of harassment are dealt with.

Secondly, external complaints are analysed, including the outcomes of the complaints of sexual harassment to HREOC analysed in *A Bad Business*.

Finally the telephone survey provides a number of interesting findings as to why targets of sexual harassment do not make a formal complaint. These are informative for employers wishing to improve their grievance procedures.

### 4.2 Formal complaints<sup>105</sup>

Almost one third of interviewees (32 per cent or 68 interviewees) to the telephone survey who experienced sexual harassment in the workplace in the last five years formally reported it either to their employer or to an external agency.<sup>106</sup> In contrast, over three quarters (78 per cent) of complainants of sexual harassment to HREOC in *A Bad Business* reported the incident to their employer prior to lodging a complaint with HREOC. Notably, almost all (99 per cent) of those complainants expressed dissatisfaction with their employer's complaint handling process, hence presumably accounting for their decision to lodge a complaint with HREOC.

Female targets of sexual harassment in the telephone survey were more likely to formally report the harassment than male targets. While 72 per cent of the 200 targets of sexual harassment were female and 28 per cent male, of those 68 targets of sexual harassment who made a formal complaint from the telephone survey, 84 per cent were female and 16 per cent were male.

Findings from the telephone survey suggest that there is a relationship between the likelihood of reporting the sexual harassment and the severity of the harassment, and between the probability of reporting the sexual harassment and the power relationship of harasser and target. The greater the severity of the sexual harassment (as measured in the telephone survey by rating the sexual harassment experienced on a scale of one (not at all offended or intimidated) to five (extremely offended or intimidated) the greater the probability of the sexual harassment being reported. For example, of those who rated the offensiveness of the sexual harassment as a four or five, 45 per cent reported the harassment. Of those who rated the offensiveness of the sexual harassment as one, two or three, only 19 per cent reported the harassment. A similar finding was apparent with the intimidation rating. See 2.3.2 for further discussion.

The telephone survey found that where the power differential in the relationship between the harasser and the target of the sexual harassment is greatest (that is, the harasser is described as "employer or boss") the less likely that the target would report the

<sup>105</sup> The incidence of informal reporting was not collected. Question 7 of the Sexual Harassment Telephone Survey Questionnaire (see Appendix Appendix B) asked interviewees "Did you formally report or make a complaint about the harassment to anyone?" It would be expected that the incidence of informal reporting would be higher than the incidence of formal reporting.

<sup>106</sup> Five of the 68 interviewees to the telephone survey reported the sexual harassment to an external agency (for example, a union or employee representative, the police, HREOC or a State or Territory anti-discrimination agency – see Table 4.3). However, because the targets of sexual harassment in the telephone survey may have reported the harassment to more than one reportee and due to the small number of interviewees involved, it is not possible to divide the interviewees into those who made exclusively workplace complaints or those who made exclusively external complaints for the purposes of this analysis.

<sup>107</sup> Sample size of 64 with margin of error of plus or minus 12 percentage points at the 95 per cent confidence level. Target may have reported sexual harassment to more than one reportee so total percentage will not total 100.

<sup>108</sup> Based on sample size of 109. Target may have reported sexual harassment to more than one reportee so total percentage will not total 100.

harassment. The telephone survey also found that where the harasser is described as “employer or boss” the workplace where the harassment occurred is more likely to be small (less than 25 employees) than medium (26 to 100 employees) or large (more than 100 employees).

These findings are to be expected. One would expect that more serious sexual harassment would be more likely to be reported. It is also understandable that there is a reluctance to make a complaint of sexual harassment when the boss is the harasser. Many targets of sexual harassment in this situation, particularly those employed in small businesses, may feel that they have no-one to report the harassment to.

#### 4.2.1 Reportees

Targets of sexual harassment were most likely to formally report the harassment to a manager or supervisor at work, followed by the target’s employer or boss, in both the telephone survey and the complaints data in *A Bad Business*. Clearly, employees expect that individuals in managerial or more senior roles within an organisation will be able to deal with reports of sexual harassment.

Table 4.1 provides an overview of the data from both the telephone survey and *A Bad Business* in relation to the person to whom targets of sexual harassment make workplace complaints.

Table 4.1

Sexual harassment reported to:	Telephone Survey (%) <sup>107</sup>	<i>A Bad Business</i> Data (%) <sup>108</sup>
Manager/supervisor at work	53	35
Employer/boss	34	28
Human Resources Manager or equivalent	14	14
Equity Officer/Sexual Harassment Contact Officer/ Harassment Contact Officer	11	4
Co-worker	25	3
Alleged harasser	16	8

One in four interviewees to the telephone survey who reported the sexual harassment did so to a co-worker. This suggests that some targets of sexual harassment seek support and assistance from colleagues as well as from those in more senior positions within the workplace. It also may suggest recognition of shared responsibility for dealing with incidences of sexual harassment in the workplace.

#### 4.2.2 Outcome of complaint

The statistics in the following section must be used cautiously as the sample sizes of the telephone survey data and the complaints data in *A Bad Business* in relation to this aspect are both small.

Table 4.2 provides an overview of the outcomes of reported sexual harassment from the telephone survey and the outcomes of the workplace complaints from HREOC’s review of sexual harassment complaints in *A Bad Business*. Totals of each column in Table 4.2 may add to more than 100 because interviewees may have given more than one response.

Table 4.2

Results of formal complaint <sup>109</sup>	Telephone Survey (%) <sup>110</sup>	Results of workplace complaint process <sup>111</sup>	<i>A Bad Business</i> Data (%) <sup>112</sup>
Harasser was dealt with	59		
Includes:			
- Harasser was transferred or changed shifts	7	Harasser was transferred	18
- Harasser resigned	3	Harasser resigned	12
- Harasser dismissed	17	Harasser dismissed	6
- Harasser disciplined	28	Harasser was demoted	9
		Harasser's salary increment delayed	3
		Harasser's probation period extended	3
		Harasser received counselling	15
		Harasser undertook training	3
- Harasser formally warned	1	Harasser received a written warning or a final written warning	18
- Harasser spoken to	3	Harasser received an oral warning	12
Negative impact on target	16		
Includes:			
- Target was disciplined	8	Target transferred <sup>113</sup>	2
- Target transferred or changed shifts	3	Target changed shifts <sup>114</sup>	1
- Target resigned	4	Target resigned <sup>115</sup>	45
- Target dismissed	16	Target dismissed <sup>116</sup>	19
Harasser apologised	10	Information not collected	
Employer apologised for allowing the harassment	7	Information not collected	
Employer made changes to the workplace to prevent sexual harassment in the future	13	Information not collected	
Employer provided target with a reference	1	Information not collected	
Nothing was done	13	Workplace complaint ignored <sup>117</sup>	24
Harassment stopped	3		

<sup>109</sup> Includes outcomes from both workplace complaints and complaints to external agencies.

<sup>110</sup> Sample size of 68 with margin of error of plus or minus 12 percentage points at the 95 per cent confidence level.

<sup>111</sup> Excludes the outcomes of the HREOC complaint process.

<sup>112</sup> Sample size of 33 unless indicated otherwise.

<sup>113</sup> Based on a sample size of 128 – employment status of target at time of making complaint to HREOC.

<sup>114</sup> Based on a sample size of 128 – employment status of target at time of making complaint to HREOC.

<sup>115</sup> Based on a sample size of 128 – employment status of target at time of making complaint to HREOC.

<sup>116</sup> Based on a sample size of 128 – employment status of target at time of making complaint to HREOC.

<sup>117</sup> Sample size of 67.

<sup>118</sup> Question 9 of the telephone survey asked interviewees who made a formal complaint of sexual harassment the following question: "What were the results to either yourself or the harasser as an outcome of your complaint?"

Almost three in five interviewees who formally complained of sexual harassment stated that the harasser was dealt with. This indicates that in the majority of cases where the sexual harassment was reported, the complaint was probably substantiated, and the sexual harassment reported was likely to be quite serious warranting some form of disciplinary action of the harasser (with up to 20 per cent removed from their employment). This finding also suggests that many employers take their responsibility to respond to formal complaints seriously.

There are significant differences in the outcomes of complaints for alleged sexual harassers between the telephone survey data and data from *A Bad Business*. While these differences are interesting, it may be difficult to interpret them definitively. The following discussion cannot be used to draw any firm conclusions.

In *A Bad Business*, alleged harassers were more than twice as likely transferred to another department in the same organisation or work site than harassers in the telephone survey. Also the alleged harasser was much more likely to have received an oral or a written warning as a consequence of the complainant's formal workplace complaint than harassers in the telephone survey.

Alleged harassers in *A Bad Business* were four times more likely to resign as a consequence of a workplace complaint than harassers in the telephone survey but almost three times less likely to be dismissed than harassers in the telephone survey. This may mean that complainants of sexual harassment felt less vindicated by a workplace grievance process which permitted the alleged harasser to resign from employment (with their reputation intact) instead of being dismissed, with all the implications of termination at the behest of the employer on the alleged harasser's chances for future employment.

The most striking difference between the two sets of data is the proportion of complainants or targets of sexual harassment who resigned. This is despite methodology differences which prevent direct comparison between the 45 per cent of complainants who had resigned from their job at the time of making their external complaint to HREOC in *A Bad Business* and the four per cent of the targets of sexual harassment who resigned as a consequence of making a formal complaint of sexual harassment in the telephone survey.<sup>118</sup> The fact that a complainant in *A Bad Business* resigned cannot be causally linked to the act of making either a workplace report or an external complaint of the sexual harassment to HREOC because some of the complainants who had resigned at the time of making an external complaint to HREOC had not made a workplace complaint or had resigned from their job prior to lodging a complaint with HREOC. It may be that the complainant resigned as a consequence of the harassment or that this was only one of a number of reasons for dissatisfaction with the workplace. Targets of sexual harassment who resign or are dismissed may be more likely to make external complaints to agencies such as HREOC. The telephone survey did not record whether those targets of sexual harassment, who did not formally report the harassment, resigned or remained in the workplace where the harassment occurred.

Both the complaints data in *A Bad Business* and the telephone survey data revealed that a significant minority of complainants and targets of sexual harassment had their workplace complaints either ignored or not actioned. Such non-action suggests a high degree of organisational tolerance of sexual harassment, which may also produce a 'chilling effect' – if other workers' complaints are ignored, targets of harassment may be less likely to report incidents of sexual harassment they themselves have experienced.

One US study suggests a link between reports of sexual harassment on the job and perceptions of an organisation's tolerance for sexual harassment of its employees.<sup>119</sup> The study concludes that strategies to reduce or eliminate sexual harassment in an organisation include:

- establishing and communicating the likelihood of negative outcomes for harassers of engaging in sexually harassing behaviours;
- establishing procedures that minimise the risks of reporting sexual harassment for targets of harassment, such as retaliation; and
- establishing procedures that ensure complainants will be taken seriously.<sup>120</sup>

### 4.2.3 Time period between sexual harassment and workplace reporting

Of the 68 interviewees who formally reported the sexual harassment in the telephone survey, 31 per cent made a workplace complaint either immediately, or the same or next working day after the sexual harassment occurred. Forty per cent of the 86 complainants of sexual harassment in employment reviewed by HREOC in *A Bad Business* (for which the information was available) reported the harassment immediately.

Almost three-quarters of complainants in *A Bad Business* reported the sexual harassment within three months of its initial occurrence, compared with 81 per cent of the targets of sexual harassment who reported the harassment from the telephone survey.

It is apparent that where targets of sexual harassment choose to report the harassment, the majority tend to do so within a fairly short period of the initial conduct occurring.

### 4.2.4 Finalisation of formal complaint

Of the 68 interviewees<sup>121</sup> who formally reported the sexual harassment in the telephone survey, the majority stated that their complaint was finalised either between the boss and themselves or their employer and themselves.<sup>122</sup> This indicates the usefulness of effectively dealing with workplace complaints.

A significant minority reported finalising the complaint via an external mechanism. For example, five per cent reported finalising the complaint with their unions' involvement; five per cent with the involvement of HREOC or a State/Territory anti-discrimination agency; five per cent with their legal representative or lawyer's involvement; and four per cent reported finalising their complaint in court.<sup>123</sup> A further three per cent reported that their complaint was finalised by the alleged harasser leaving the workplace, and another three per cent stated that their complaint was resolved between the employer and the alleged harasser.

Fifteen per cent reported that their complaint had not yet been finalised.<sup>124</sup>

While most complaints of workplace sexual harassment are finalised internally, a significant minority require the assistance of an external adviser or body. Due to the small sample size, few conclusions can be drawn from these data.

Resolution of sexual harassment workplace complaints can be time-consuming and therefore disruptive in the workplace, not only for the target, the alleged harasser and other workplace participants, but also for those whose task it is to investigate and resolve

<sup>119</sup> CL Hulin et al "Organizational influences on sexual harassment" in M Stockdale (ed) *Sexual Harassment in the Workplace: Perspectives, Frontiers and Response Strategies* Sage Publications Thousand Oaks 1996, 127-150.

<sup>120</sup> CL Hulin et al "Organizational influences on sexual harassment" in M Stockdale (ed) *Sexual Harassment in the Workplace: Perspectives, Frontiers and Response Strategies* Sage Publications Thousand Oaks 1996, 127-150.

<sup>121</sup> Margin of error of plus or minus 12 per cent at the 95 per cent confidence level.

<sup>122</sup> Forty-four per cent finalised the complaint between the boss and themselves; 27 per cent finalised the complaint between the employer and themselves.

<sup>123</sup> Information as to which court was not collected. Jurisdiction to deal with sexual harassment claims rests with the Federal Magistrates Court or the Federal Court for terminated complaints made to HREOC; State and Territory anti-discrimination tribunals and Administrative Tribunals, or industrial courts such as the Australian Industrial Relations Commission and its States' counterparts.

<sup>124</sup> Note however, that what was meant by "finalised" was not defined in the telephone survey.

<sup>125</sup> Human Rights and Equal Opportunity Commission *A Bad Business: Review of sexual harassment in employment complaints 2002* HREOC Sydney 2003, p32. For all complaints to HREOC in 2001-2002, 88 per cent of matters were finalised within 12 months from the date of receipt and the average time from receipt to finalisation was seven months. Human Rights and Equal Opportunity Commission *Annual Report 2001-2002* HREOC Sydney 2002, p40.

<sup>126</sup> Complaints on the ground of sexual harassment increased from 142 complaints in 1999-2000 to 167 complaints in 2000-2001 to 195 complaints in 2001-2002. Human Rights and Equal Opportunity Commission *Annual Report 1999-2000* HREOC Sydney 2000, p57; Human Rights and Equal Opportunity Commission *Annual Report 2000-2001* HREOC Sydney 2001, p73 and Human Rights and Equal Opportunity Commission *Annual Report 2001-2002* HREOC Sydney 2002, p73. Complaints decreased in 2002-2003 to 172. Human Rights and Equal Opportunity Commission *Annual Report 2002-2003* HREOC Sydney 2003, p77. The next most recent increase in the number of complaints on the ground of sexual harassment was between 1993-1994 and 1994-1995. Human Rights and Equal Opportunity Commission *Annual Report 1993-1994* Commonwealth of Australia Canberra 1994, p80 and Human Rights and Equal Opportunity Commission *Annual Report 1994-1995* Commonwealth of Australia Canberra 1995, p151. The decrease in the number of complaints on the ground of sexual harassment between 1994-1995 and 1999-2000, and between 2001-2002 and 2002-2003 corresponds to a decrease in the total number of complaints received under the Sex Discrimination Act during these periods.

<sup>127</sup> Human Rights and Equal Opportunity Commission *Annual Report 2002-2003* HREOC Sydney 2003, p77.

<sup>128</sup> Sample size of 200. Target may have reported sexual harassment to more than one reportee.

<sup>129</sup> Based on sample size of 109. Target may have reported sexual harassment to more than one reportee.

complaints.

The telephone survey did not ask interviewees how long their complaints took to resolve. Significantly in HREOC's review of sexual harassment complaints in *A Bad Business*, the average time taken from receipt of the complaint by HREOC to finalisation (whether settled via a conciliation conference chaired by HREOC or privately between the parties, terminated by HREOC, or withdrawn by the complainant) was 7.6 months.<sup>125</sup>

#### 4.2.5 Satisfaction with process of dealing with sexual harassment

When asked to rate their satisfaction with the process of dealing with a complaint of sexual harassment on a scale of one (not at all satisfied) to five (very satisfied) Figure 4.1 shows that almost half (46 per cent) of the 68 interviewees to the telephone survey who reported the sexual harassment rated their satisfaction in the four or five range. This indicates that some employers' grievance procedures are highly effective.

On the other hand, as Figure 4.1 also shows, 38 per cent of interviewees were not satisfied with the process of dealing with the sexual harassment, with one in five interviewees (22 per cent) being not at all satisfied with the process. The average satisfaction rating was 3.1.

#### 4.3 External complaints

The telephone survey confirms the widely held view that complaints of sexual harassment to anti-discrimination agencies such as HREOC constitute a tiny proportion of the sexual harassment in employment that is experienced in the community. Of the 200 interviewees who had experienced sexual harassment in the workplace within the last five years, only three interviewees (or 1.5 per cent) made a complaint to either HREOC or a State/Territory anti-discrimination agency. As a proportion of the 68 interviewees who reported the harassment, five per cent made a complaint to either HREOC or a State/Territory anti-discrimination agency.

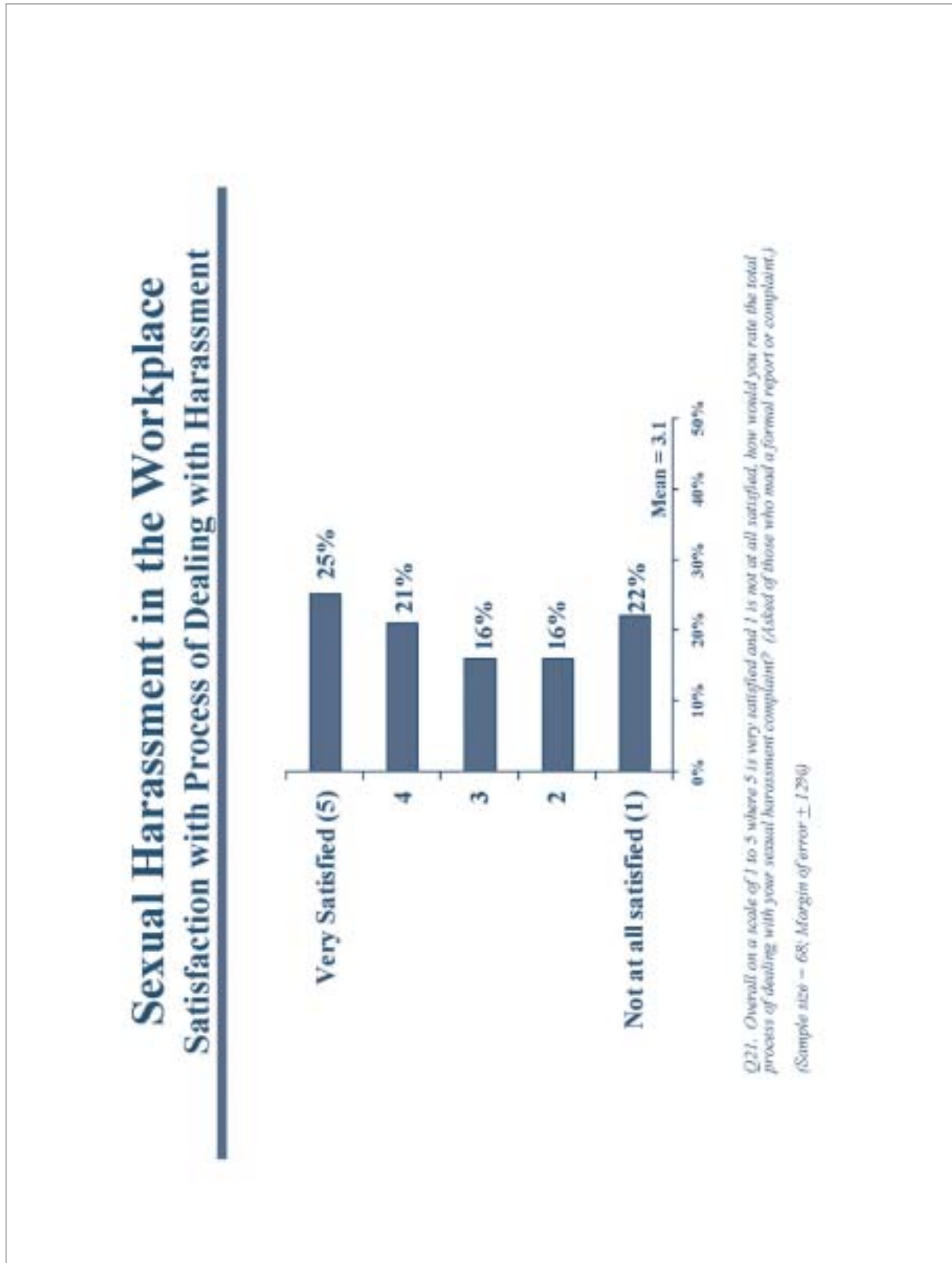
Sexual harassment in employment complaints received by HREOC under the SDA have increased over the period July 1999 to June 2002.<sup>126</sup> In addition, complaints of sexual harassment as a proportion of all discrimination complaints made under the SDA remain significant, at 27 per cent.<sup>127</sup>

As Table 4.3 shows, complaints to other external agencies, such as union or employee representatives and the police were also rare.

Table 4.3

Sexual harassment reported to	Telephone Survey (%) <sup>128</sup>	<i>A Bad Business</i> Data (%) <sup>129</sup>
Union or employee representative	1.5	8 (includes police)
Police	1.5	
HREOC or State or Territory anti-discrimination agency	1.5	100

Figure 4.1



<sup>130</sup> Sample size of 132 with a margin of error of plus or minus 9 per cent at the 95 per cent confidence level. Total does not equal 100 per cent as interviewees may have had multiple reasons for not reporting the sexual harassment experienced.

These data indicate that the number of sexual harassment in employment complaints made to anti-discrimination agencies each year represents only a small fraction of the number of people who experience sexual harassment in the workplace.

As such, complaint statistics, while informative on many levels, cannot and should not be used as some sort of proxy to estimate the incidence or nature of sexual harassment occurring in the community.

#### 4.4 Reasons for not reporting sexual harassment

Of the 200 interviewees to the telephone survey who experienced sexual harassment in the workplace within the last five years, 68 per cent did not formally report the harassment. Table 4.4 provides an overview for the reasons given for not formally reporting the sexual harassment. Interviewees may have given more than one reason for not reporting sexual harassment, so totals will equal more than 100.

Table 4.4

Reasons given for not formally reporting sexual harassment experienced	Telephone Survey Interviewees who did NOT formally report sexual harassment (%) <sup>130</sup>
Lack of faith in complaint process	42
Includes	
- Difficulties with complaints procedure	26
- Easier to just keep quiet	19
- Complaint process too difficult	4
- Complaint process too embarrassing	4
- Did not know who to report it to	2
- Did not know how to handle the situation	1
- Did not trust the people I could complain to	1
Negative impact on target	16
Includes	
- Afraid of getting fired	5
- Damage to my reputation	2
- People would treat me as the wrong-doer	2
- Did not think that I would be believed	2
- Thought people would think that I was overreacting	1
- Too scared or frightened	3
- Would have negative impact at work	2
Did not think that harassment was serious enough	31
Took care of problem myself	26
Did not think that anything would be done/would not change things	13
Harasser too senior	6
Did not want to hurt the person who bothered me	3
Sexual harassment is accepted in my workplace	1
Moved to another place of work	1
Harasser was already being dealt with	1



Many interviewees indicated in their reasons for not making a complaint of sexual harassment that they did not have faith in the grievance procedure. This lack of faith included a concern that the procedure itself was too difficult (26 per cent), or a concern that no positive outcome would be achieved (13 per cent), or that the procedure would impact negatively on the target in some way (16 per cent), either directly (getting fired or damaging the target's reputation) or indirectly (the way his or her co-workers would treat the target after a complaint was made).

This may mean that a number of employees who have experienced sexual harassment fail to formally report the harassment because of the negative perceptions they hold about their workplace grievance procedures. A greater awareness and understanding of these negative perceptions would assist employers in refining and marketing their grievance procedures to better meet employee expectations and effectively resolve complaints of sexual harassment in the workplace.

Almost a third of interviewees did not think that the sexual harassment was serious enough to warrant reporting. This suggests that there is a certain tolerance level for some incidences of workplace sexual harassment. This tolerance level is not standard and may vary significantly, depending on such variables as the target's perception of the severity of the sexual harassment (for example how much harm was caused by the harassment, or how offended or intimidated the harassment made the target feel), and the organisational tolerance or workplace culture in which the sexual harassment occurs. For example, in some workplaces sexual banter and teasing is prevalent to the extent that it is normalised within the environment despite the fact that it may constitute unlawful sexual harassment.

More than one in four interviewees stated as a reason for not reporting the sexual harassment that they "took care of the problem themselves". This may suggest that some sexual harassment targets may implement a confrontational strategy for dealing with harassment. While this strategy may be effective on an interpersonal level as between the individual harasser and the target, it reinforces the understanding of sexual harassment as conflict between individuals rather than a form of structural and systemic gender discrimination.

Another possible explanation is that targets of sexual harassment who "took care of the problem themselves" may have implemented an avoidance strategy, whereby they deliberately chose to stay out of the path of their harasser.