Are Women Safe in the New Zealand Workplace?
A Study of Sexual Harassment Policies and Procedures

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Abstract

First recognised and named by feminist activists in the 1970s, sexual harassment continues to be a critical issue for women in the workplace. Feminists took women's experiences seriously enough to uncover the problem, conceptualise it and pursue it legally. In New Zealand unions lobbied for an effective law to make sexual harassment unlawful and as a result provisions were included in the Labour Relations Act 1987. These provisions have been retained with amendments in the Employment Contracts Act 1991 and the Employment Relations Act 2000.

This study investigates the sexual harassment policies and procedures of a sample group of public and private workplaces with the purpose of gaining an insight into whether there are adequate policies to protect women from sexual harassment in the New Zealand workplace. A survey method was used to collect the data and a feminist framework was employed to analyse the survey results. The study found that only three of the twelve workplaces surveyed had what could be considered adequate policies. Six of the surveyed workplaces had no policies or procedures at all and a further three had policies but did not communicate them to their staff. Furthermore it was found that in some of the workplaces where there were policies in place, survey respondents made unsolicited reports of sexual harassment. The conclusion was reached that although there were adequate policies in one quarter of the workplaces surveyed this could barely be considered adequate overall to protect women from sexual harassment. Having policies in place is critical and should be made a legal imperative, but implementing the policies and procedures and monitoring their effectiveness is the key factor in preventing sexual harassment in the workplace.

Acknowledgements

The desire to investigate and learn more about women's issues stems from my own life experience. I fulfilled my parents' expectations for me and became pregnant and married at seventeen. They had spoken to the principal of the high school before I had begun the third form to explain that there would be no point in providing me with a formal education since I would be getting married. I was their good-looking daughter. This was unlike my older sister who, according to our parents, had brains and was destined for an academic life. With her support and encouragement I began tertiary study at the age of 40 and discovered a whole new way of understanding the world and myself. Feminist writings in particular fuelled my anger at the unfairness of the lack of equality for women in education, relationships, the workplace, in fact in all of society. I became increasingly aware that issues in my own life, which I had previously considered to stem from personal inadequacy, were actually social and political issues which affect many women. Feminists call this process consciousness raising.

I owe my sister Marianne Tremaine a huge vote of thanks for believing in my intellectual ability and for always looking out for me. I am indebted to her for time spent explaining unknown concepts when I was struggling to get my head around them and for taking it for granted that I could do it.

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Introducing the Study

> 'True equality requires that women and men be understood as equal, albeit different, so that their differences are granted equal status' (Crouch, 2001:20).

Why Research Sexual Harassment?

Sexual harassment in the workplace is a critical issue for women. It creates a barrier to their educational and occupational pursuits. In doing so it perpetuates women's subordinate socio-economic status in society. Although it has been suggested that sexual harassment is an "equal opportunity behaviour" in which women are equally likely to harass men, according to the literature, this is simply not the case. Paludi and Barickman (1991:21) suggest that the reason for this is that 'women are much less likely to hold the organisational power that would permit them to offer sexual rewards and/or punishments'. Studies show that the overwhelming majority of harassers are men and even when men themselves are harassed it is typically by other men (Fitzgerald, Collingworth and Horned, 2001). Sexual harassment is a common experience for women in the workplace all over the world and that it is extremely damaging to those who are exposed to it (Levy and Paludi, 2002; Neft and Levine, 1997; Beiner, 2005; Stockdale, 1996).

The impact of being sexually harassed is frequently disastrous, producing feelings of revulsion, violation, disgust, anger and powerlessness. Studies by Rubenstein (1992:9) found that victims may experience severe emotional trauma, anxiety, nervousness, depression, low self esteem, as well as physical reactions ranging from sleeplessness, headaches and nausea, to high blood pressure and ulcers. Research by Levy and Paludi (2002:72) indicates that 'depending on the severity of the harassment between 21% and 82% of women report that their emotional condition deteriorated as a result'. Being sexually harassed often forces women to change their employment which means that many of the benefits of long term service to the organisation will be lost (Human Rights Commission, 2001). As Hadjifotiou (1983:21) argues 'promotion, seniority, sick pay, pension rights and opportunities for training are frequently linked to length of service, and victims of sexual harassment may be forced to sacrifice these benefits'. As a victim of sexual harassment Herbert (1989:35) argues

that

> a woman's life is curtailed in a variety of ways including her sexuality, her autonomy, her professional advancement, her financial independence, her rights to a fair and equal dealing in law, medical attention and educational opportunities and her rights to peace of mind and happiness.

Sexual harassment coerces women into positions where they feel powerless and as a consequence are unable to realise their full potential in the workplace and elsewhere. Sexual harassment, rape, domestic violence and sexual abuse are all issues which impact on women in catastrophic ways. Furthermore, like victims of rape who go to court, women who are sexually harassed are likely to experience a second victimisation when they attempt to deal with the situation through a legal process (Levy and Paludi, 2002). Over the past three decades, sexual harassment has emerged as a strong and recurrent theme in women's career development.

Sexual harassment is a complex issue and the incidence of it in the workplace shows no sign of diminishing. In fact Hanisch (1996:195) suggests that 'computer mail or electronic mail (e-mail) may provide an additional unique forum for individuals to harass co-workers or subordinates and result in the likelihood of the expansion of sexual harassment'. Furthermore text messaging is now commonplace and recent advances in cell phone technology enable photographs to be emailed, both of which increase opportunities for sexual harassment to occur. Much has been written about sexual harassment over the last thirty years but little appears to have changed for women in the workplace. Although some institutions and organisations have developed policies designed to protect their employees from harassment and themselves from litigation and financial loss, sexual harassment continues to be a 'persistent workplace problem' (Beiner, 2005:1). Garvey (cited in Riger, 1991:215) states that 'unwanted sexual attention may be the single most widespread occupational hazard in the workplace' (Levy and Paludi, 2002).

The current research developed from a postgraduate research project completed in 2003 in which I discovered huge gaps and misunderstandings with regard to sexual harassment (Weeks, 2003). The earlier study consisted of a telephone survey and approached a number of organisations throughout New Zealand asking for information about their sexual harassment policies. Many of these organisations were in important advisory roles whereby hundreds of women could be affected by their apparent lack of knowledge and concern. This was shown in a number of ways. For example a policy

which had been formulated in 1972 was still operating in a North Island school and signed by a staff member in 2001. Another organisation stated that there was absolutely no problem with sexual harassment among the hundreds of employers they advised and if any woman rang them complaining of it she would be sent off to Rape Crisis forthwith. Furthermore a Ministry official believed that sexual harassment and child sexual abuse were the same thing and although I explained the difference to him he still sent me information regarding the latter. Since sexual harassment continues to affect so many women in the workplace it worried me that organisations could be so ill-prepared to deal with it. A further discovery was that even the term "sexual harassment" is not well received. Perhaps this is because it contains the word "sexual" which seems to make some people feel uncomfortable. The telephone was frequently passed around different staff members until someone was found who was prepared to discuss sexual harassment with me. Overall these responses made me even more interested in furthering research in this area.

A study by the Human Rights Commission (Human Rights Commission, 2001) of 284 sexual harassment complaints made in New Zealand between 1995-2000 showed that sexual harassment occurred more frequently in small organisations with no sexual harassment policy. Seventy-five percent of the complaints involved repeated harassment and the most common complaint involved unwanted physical contact often accompanied by repeated verbal harassment. The factors which defined the most at risk group were that they were female, young, low-skilled and low paid and often in part time work. Research by Stockdale (1996) found that being young, unmarried and female and working in a gender-skewed organisation increases the likelihood of being a victim of sexual harassment. The overall and most urgent finding of the Human Rights Commission research was that education on sexual harassment was urgently required in all sectors of New Zealand society, in workplaces, organisations and even schools.

Since embarking on this research many people have asked about the subject of this thesis and comments made in response to my reply of 'sexual harassment in the workplace' have ranged from 'I wish there was more of it' and 'I've worked here for fourteen years and no one has ever harassed me' to many anecdotal and sad tales of personal experiences. One woman's story was particularly haunting and with her permission it is repeated here. At sixteen after a blazing row with her parents she walked out of the house with nothing but the clothes on her back. She had told them that she would return around the same time hell froze over so she stayed with a friend and

the next morning set about getting a job. It was necessary to explain to the employer when she was offered a position that until payday she would be forced to wear the same clothes since they were all she had. He offered her an advance on her wages which she gratefully accepted. When she received her first pay he told her not to worry about repaying it all at once. She could pay it off in instalments. She thought he was outstandingly kind and generous. After her fourth week in the job, however, she was asked to come into his office and was told that she could keep her position and would not have to repay the money if she sat on his knee. He was naked from the waist down. She was desperate and accepted his offer.

Many women I have spoken with have had at least one experience of sexual harassment, very few have made official complaints because they feel it would probably make the situation worse and some have been profoundly affected by it. Empirical studies of sexual harassment suggest that less than 20% of women who believe they have been harassed complain to authorities within the workplace (Le Moncheck and Sterba, 2001). I vividly remember being employed in a tobacconist/barber shop when I was in my teens where the only way out from behind the counter was through a doorway where the boss always stood. At least he was always standing there every time I needed to go through it and although I would say excuse me he would stay where he was so that I had to squeeze past him. He made it quite clear that he enjoyed this experience and every day, several times a day, this would occur. I would be desperate to go to the toilet but would hold on hoping he would move out of the doorway. It was horrible. I found another position as quickly as possible and left. The memory stayed however and quite recently when visiting that city my husband decided he needed a haircut and pointed to the shop that I had worked in all those years ago. I could see through the window that it looked exactly the same as it had been then. I shuddered and walked away as quickly as I could just in case the boss suddenly appeared in the doorway. My interest in researching sexual harassment then, has grown from my own experience, and a strong desire to learn more about issues which limit women's autonomy, in the hope of making a difference.

The Aim of the Study

The aim of this study was to discover whether organisations in New Zealand considered sexual harassment a serious enough problem to have policies and procedures in place to protect women from it. In addition, if organisations did have policies and procedures to

deal with sexual harassment, did they reach a satisfactory level whereby they were likely to be effective? The literature suggests that the presence or absence of sexual harassment policies and procedures has a great deal of influence over the incidence of sexual harassment in the workplace. This study examines the sexual harassment policies and procedures of a sample range of different types and sizes of workplaces. The findings have been compared with the measures the literature suggests are most likely to prevent sexual harassment. The purpose was to discover, from the literature, which factors are more likely to prevent sexual harassment in the workplace and compare this to the measures taken by the sample group of organisations surveyed in this study. The findings have provided insights into New Zealand workplaces which have enabled recommendations to be made to increase women's safety,

The first chapter of this thesis provides a background to the subject of sexual harassment by explaining how the term originated and why early research was important. It then examines the extent and effects of sexual harassment along with the features of the two different types and finally gives an account of sexual harassment law in New Zealand. Chapter Two reviews the literature surrounding sexual harassment and is divided into three sections. The first section discusses the debates associated with defining sexual harassment. The second section describes major theoretical explanations for sexual harassment. The third and final section discusses the workplace characteristics that encourage and discourage sexual harassment and discusses the critical elements required to minimise occurrences of sexual harassment in the workplace. Chapter Three explains the methodology and methods used in the study. Chapter Four describes the organisations surveyed and provides details of the responses given to all of the survey questions as well as the responses from each of the organisations. In some cases sections of the policies forwarded to me have been included in this chapter because they portrayed a sense of the organisation's attitude to sexual harassment. Chapter Five provides an analysis of the research findings. Chapter Six draws together the findings of this study, makes recommendations based on these findings and suggests areas for further research.

Chapter One

Sexual Harassment: The History, the Behaviour, and the Law.

Introduction

This chapter opens with an explanation of the origin of the term "sexual harassment" and how the behaviour came to be understood as being "unlawful". It then provides an indication of the frequency of the occurrence of sexual harassment occurs in the workplace and how badly victims are affected by it, which supports the importance of the study. The behaviours which constitute sexual harassment are then described followed by a clarification of the two different types of harassment. Finally the law with regard to sexual harassment is presented, along with some of the landmark cases which have been pivotal in changing the way the behaviour is legally dealt with in New Zealand. Although the Court's early approach to sexual harassment tended to create the impression that the cases were not treated seriously, more recently a different approach is evident.

The History of Sexual Harassment

Sexual harassment has been documented since the early 1970s when groups of feminist women gave a name to their problematic experiences in working with men. Women coming together to discuss what they thought were personal concerns found that other women's experiences were similar and this encouraged them to organise collective action in the public arena. This transformed what had been a private and personal issue into a public and political one. Having a name for this newly recognised behaviour gave women a collective voice so that they could speak out and meant that sexual harassment became something about which women could actively protest and resist (Thomas and Kitzinger, 1997). Naming the phenomenon involved an analysis which challenged the view that men's behaviour was "natural" and led to the questioning of essentialist notions of femininity and masculinity (Kelly and Radford, 1996).

The importance of this early research was that it validated women's experiences and demonstrated that sexual harassment is not an isolated or an individual problem. The discussions made women aware that many of them shared common difficulties which, when analysed, were seen to have political consequences in that they were all an impediment to women's advancement or autonomy (Herbert, 1989). As Crouch

(2001:221) states, 'the concept of sexual harassment was formed by feminists in order to create a remedy for a kind of treatment they believed constituted a barrier to equal opportunity for women'. Prior to this, discrimination on the basis of sex had been seen as a product of "normal" men's sexuality and was therefore not illegal, or even considered inappropriate. In the U.S.A. law professor Catherine MacKinnon's book, *Sexual Harassment of Working Women* (1979) argued that sexual harassment was primarily a problem for women. She maintained that a worker who is sexually harassed is placed at a disadvantage in comparison with other workers and consequently does not have equal opportunity with other non-harassed employees. Since most sexually harassed people are women, she argued that sexual harassment should be regarded as a form of sex discrimination because this would provide a legal mechanism for dealing with it in the courts and victims could be compensated (MacKinnon, 1979). MacKinnon's book is credited with helping to bring the problem of sexual harassment to public attention and giving the term a wide exposure.

Although the term sexual harassment has been in existence a comparatively short time it seems certain that the behaviours which would later be labelled sexual harassment has been around for centuries. Crouch (2001: 25) cites the fact that 'in seventeenth-century America, indentured servants often became pregnant by their employers which probably indicates some coercive activity while 29% of rape cases recorded in England between 1700 and 1799 involved masters and servants'. Further early evidence is provided by narratives of working women complaining of sexual misconduct in their workplaces. More recently the issue of sexual harassment has been publicised by media attention on court cases against high profile public figures, receiving unprecedented public attention and exposure. In countries like the U.S.A. and Great Britain, where high profile cases of sexual harassment have received sensational coverage, the ensuing publicity has succeeded in bringing the various characteristics and definitions of sexual harassment to the attention of millions of people.

The Extent of Sexual Harassment

The first significant study which sought to gauge the extent of sexual harassment in the workplace was a survey conducted in the USA in 1976 by Redbook magazine in which 88% of the 9,000 respondents said they had received unwanted sexual attention on the job (Kramarae and Triechler, 1985). The results were a shock as no one had considered that the incidence of sexual harassment might be so high. Foote and Goodman-

Delahunty (2005:14) suggest that although 'the sampling method was susceptible to response bias' since only harassed women were likely to have completed the survey and the readership of the magazine may have included a particular age range and socio-economic group 'the study highlighted the pervasiveness and negative personal impact of sexual harassment'.

In a 1981 survey, conducted by the United States Merit Protection Board, 40% of all women employees in the federal workplace reported being sexually harassed. When the survey was repeated in 1988 and 1994 using a similar methodology, the results showed that across the 13 years sampled, the incidence of sexual harassment was remarkably stable (Foote and Goodman-Delahunty, 2005). Research by Barbara Gutek (2001) produced similar findings. Approximately half of the female workforce in the U.S.A. experiences sexual harassment (Levy and Paludi, 2002:64-65). In an international report on the status of women, Neft and Levine (1997:60) found that in 1995 a survey of 3000 women in the United States 76% reported at least some degree of sexual harassment in their workplace.

A small survey (cited in Craven, McCurdy, Rosier and Roth, 1985) of women working in New Zealand was completed by the Public Service Association in 1981. Results showed that a large number of respondents had experienced some form of sexual of sexual harassment in the workplace. Recent research commissioned by the Human Rights Commission (HRC, 2001) shows that 31% of New Zealand women report that they have been sexually harassed, usually in the workplace. From these figures it appears that sexual harassment is not as prevalent in New Zealand as it is in other countries. The lower figures, however, may be due to less frequent reporting or the fact that some behaviours are often not recognised as being sexual harassment.

The Effects of Sexual Harassment

The effects of sexual harassment are similar to other forms of sexual abuse. Women tend to feel that somehow they have encouraged or elicited sexual harassing behaviour and that it is their fault. MacKinnon (1979:47) argues that 'like women who are raped, sexually harassed women feel humiliated, degraded, ashamed, embarrassed and cheap as well as angry'. Among female victims of sexual harassment Cairns (1997:91) found 'a very high frequency and intensity of confusion, self blame and guilt being expressed'. Nesvold (1989:343) argues that 'myths of the victim inviting the relationship are so pervasive that women tend to expect a sceptical reaction to their complaints and are

therefore often reluctant to make a complaint. Sexual harassment appears to symbolise the way some men objectify women as sex objects first and employees second (MacKinnon, 1979).

Responses to Complaints of Sexual Harassment

Research by Foote and Goodman- Delahunty (2005) indicates that approximately 50% of women who report sexual harassment experience retaliation. Assertive responses to sexual harassment, like confronting the harasser or filing a complaint are not only ineffective but frequently make the situation even more difficult (Fitzgerald et al., 2001). Although popular opinion insists that victims of sexual harassment should immediately confront their harasser and report him to the appropriate authorities, the reactions to such responses are not favourable. Consistent with this view, one study in the U.S.A. indicates that 60% of workers affected by sexual harassment ignore it because they believe that complaining will not resolve the problem and will tend to make the problem worse (Rubenstein, 1992:51). This demonstrates that women's fears of retaliation if they complain about harassment are well-founded. Gutek (2001:56) found that among 81 cases filed in California almost half of the complainants were fired and another quarter quit out of fear and frustration. This experience is echoed in New Zealand where post-confrontation hostility meant that complainants were treated differently after laying a complaint. The HRC (2000:9) study reported that 'some received verbal and written warnings about minor or fabricated incidents because they had refused their superior's sexual advances, while others were fired from their place of work'.

Types of Harassment

There are two quite different types of behaviour which are deemed to be sexual harassment according to the Employment Relations Act 2000.

(¡) *Quid pro quo harassment*

Quid pro quo harassment consists of unwelcome sexual advances, requests for sexual favours, and other verbal or physical conduct of a sexual nature when (a) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment and (b) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting that individual. Put more simply, being threatened with 'no sex-no promotion or even employment' is

known as quid pro quo harassment. In these situations employees are being forced to comply with conditions that other workers do not face; however to be illegal the proposition must be unwelcomed by the employee.

(¡¡) *Hostile work environment harassment*

Hostile work environment harassment, on the other hand, consists of behaviour by a supervisor, co-worker or a customer which unreasonably interferes with an individual's work performance, or creates an intimidating, hostile or offensive work environment. Such behaviours are also illegal and considered sexual harassment. In practice, sexual harassment more commonly takes the form of unwelcome or offensive behaviour rather than an explicit demand. As Davis (1993:10) points out

> the quid pro quo 'sleep with me or I will sack you' form of sexual harassment is much less common than harassment which is abusive and demeaning, but which falls short of being a specific 'advance' to which a definite response can be made.

This is substantiated by the Human Rights Commission (2000) study which showed that nearly all (93%) of the reported sexual harassment complaints received between 1995 and 2000 involved offensive behaviour of a sexual nature (physical, verbal and/or visual) rather than a direct request for sexual activity. Although it might be considered that a direct request for sexual activity might be easier to prove, such requests are likely to be made in private, and not in the earshot of other staff. This makes it very difficult to authenticate and these cases frequently come down to a credibility issue of who is considered more likely to be telling the truth. The fact that sexual encounters do not occur openly in public means that the credibility of witnesses is more crucial in sexual harassment cases than in any other type of discrimination case (Aggarwal, 1992). Most people agree that quid pro quo harassment is wrong, since it involves a clear detriment to employment, such as job loss or loss of promotion, for refusal to comply with sexual demands. There is little agreement about hostile environment harassment. Developed to provide protection from 'offensive conduct' it has proven to be much more controversial (Crouch, 2001). Foote and Goodman-Delahunty (2005:44) argue that 'hostile environment harassment is a tool to prevent women from reaching their full potential in the workplace; quid pro quo harassment is a way of keeping women in their place'.

An Alternative View

Roiphe (1993) who claims to be speaking from a feminist perspective, attacks the

concept of hostile environment sexual harassment altogether by arguing that it feeds into traditional perceptions of women as being in need of protection from male sexuality and encourages them to see themselves as powerless victims. Roiphe (1993) suggests that other feminists are seeking to institutionalise female weakness and that unwanted sexual attention is simply a part of nature. This view is indicative of a proposition that unwanted sexual attention is merely the price women must pay to receive wanted attention. In other words, women must take the good with the bad and therefore trying to make sexual harassment illegal suggests that some feminists are not interested in any form of male attention and are probably lesbian. Roiphe (1993:171) insists that 'feminists are on the front line of sexual regulation and today's feminism provides yet another source of repression in the Freudian sense'.

Thomas and Kitzinger (1997) argue that women like Roiphe, who seek to redefine most of women's experiences of hostile environment sexual harassment as personal and just a part of normal everyday life are attempting to reverse the feminist campaigns which succeeded in making these experiences both public and political more than thirty years ago. In particular Roiphe suggests that behaviours such as leering and ogling, whistling, sexual innuendo, offensive or derogatory comments, humour and jokes about sex should be ignored because they mean nothing. Thomas and Kitzinger (1997:7) refute this idea and argue that 'it is precisely these aspects of sexual harassment which feminists have identified as the key to the subordination of women'. In addition it is these particular behaviours which create a 'sexualised environment' which studies show increases the likelihood of sexual harassment in the workplace (Beiner, 2005). Feminists have continually endeavoured to raise the issue of sexual harassment and as a consequence there has been a backlash against the supposed hegemony of political correctness (Mahood and Littlewood, 1997).

Sexual Harassment Law

Sexual harassment law has its origins in feminism and is unique in the law because it is woman-defined legal action (Davis, 1993). Feminists were first to take women's personal experiences of harassment seriously enough to name them, conceptualise them and pursue reparation through a legal framework. The first publicised surveys on sexual harassment in the workplace in the 1970s helped focus attention on the need to establish a legal framework that prohibited such behaviour. The idea that the law should see sexual harassment in the same way its victims do is directly based on a feminist inspired

paradigm. As a result, the legal claim permits women to define women's "harm" in law (Davis, 1993). From a feminist perspective Davis (1993) states that the sexual harassment law in New Zealand is the best in the world.

The Human Rights Commission Act was passed in New Zealand 1977. It prohibited discrimination in employment on the grounds of sex, marital status, race, ethnic origin, and religious or ethical belief. The landmark Equal Opportunity Tribunal decision in H v E (1985)[1] confirmed that sexual harassment was a form of sex discrimination and therefore could be the subject of a complaint under the Human Rights Commission Act. This was the first decision in which a respondent was found responsible for sexual harassment. In 1993 the Human Rights Commission Act was replaced by the Human Rights Act and provides a complaints-based system to deal with individual cases of discrimination. The Labour Relations Act 1987 also contained a section on discrimination which covered colour, race and ethnicity or national origin, sex, marital status, religious or ethical belief and trade union involvement. These conditions were carried through into the Employment Contracts Act 1991 and the Employment Relations Act 2000 with minor amendments in both. Under both statutes, the Human Rights Act or the Employment Relations Act, where sexual harassment occurs in an employment situation, a person may choose under which Act to commence proceedings. Both the Human Rights Act and the Employment Relations Act have a similar definition of sexual harassment but the Human Rights Act has wider application and protects both those seeking employment as well as those in employment. Whereas the Employment Relations Act only provides remedies for persons who qualify as an "employee", the Human Rights Act provides remedies for all persons who suffer sexual harassment in a range of different environments and activities. Like Section 108 (1) of the Employment Relations Act, Section 62 of the Human Rights Act recognises two distinct categories of sexual harassment –inappropriate requests for sexual favours, and unwelcome or offensive behaviour of a sexual nature. Under Section 62 of the Human Rights Act

> (1) It shall be unlawful for any person to make a request of any other person for sexual intercourse, sexual contact, or other form of sexual activity which contains an implied or overt promise of preferential treatment or an implied or overt threat of detrimental treatment.
> (2) It shall be unlawful for any person by the use of language (whether written or spoken) of a sexual nature, or of visual material of a sexual nature, or by

[1] H v E (1985) 5 NZAR 333

> physical behaviour of a sexual nature, to subject any other person to behaviour that –
> (a) Is unwelcome or offensive to that person (whether or not that is conveyed to the first-mentioned person); and
> (b) Is either repeated, or is of such a significant nature that it has a detrimental effect on that person.
> Where a person complains of sexual harassment no account shall be taken of any evidence of the person's sexual experience or reputation (HRC, 2000).

Section 103 (1) (d) of the Employment Relations Act 2000 provides employees with the opportunity to bring a personal grievance against an employer on the grounds that 'the employee has been sexually harassed in the employee's employment'. Section 108 (1) (b) of the Employment Relations Act deals with unwelcome or offensive behaviour and stipulates three requirements which must be satisfied before the conduct is deemed to be sexual harassment. Firstly, regardless of whether the conduct involves language, visual material and/or physical behaviour, the conduct must be of a "sexual nature". Whether something is of a sexual nature is measured by an objective standard. To succeed in a claim of this nature, the claimant is required to prove on the balance of probabilities that the conduct complained of was unquestionably of a sexual nature (Z v A WEC, 1993)[2]. The court has considered the type of conduct that amounts to "conduct of a sexual nature" in a number of decisions. It is clear that the words used cover obvious cases of direct sexual assault[3]; [4];[5]. The statutory language has also been held to cover the more insidious type of harassment arising from the unnecessary but deliberate brushing together of bodies[6];[7]. For cases involving touching and rubbing on the back see (X v AB Co Ltd.,1994)[8] and (J v M, 1994)[9]. In addition, the court in B v NZ Amalgamated Engineering Union Inc (1992)[10] held that an employee who took hold of a fellow-employee and who then commenced kissing her roughly on the side of the head fell within the phrase. The type of conduct that constitutes sexual harassment is clearly wide ranging and therefore the critical factor is likely to be the reaction of the complainant.

Secondly, the Employment Relations Act requires that the conduct complained of must be "unwelcome and offensive to that employee" whether or not the employee

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[2] Z v A WEC 21/93, unreported 3 September 1993
[3] Northern Industrial District Distribution Workers IUW v AB Ltd (1988) NZILR 761
[4] A v Z (1992) 3 ERNZ 392
[5] A v Foodstuffs (South Island) Ltd. (1993) 1 ERNZ 81
[6] Managh v Crawford (1996) 2 ERNZ 392
[7] Managh v Wallington, unreported WEC 61/ 96
[8] X v AB Co Ltd. Unreported, AT 189/94
[9] J v M, unreported, AT 235/94
[10] B v NZ Amalgamated Engineering Union Inc (1992) 2 ERNZ 554

conveys that to the harasser. What is "unwelcome and offensive" is measured on the basis of whether the employee being harassed finds it offensive or unwelcome and is therefore judged on a subjective basis. In the decision of Z v A (1993)[11] Chief Judge Goddard stated that two questions need to be resolved. These were described as:

(¡) the Authority or the court must determine whether unwelcome or offensive conduct of a sexual nature has occurred as alleged.
(¡¡) It must determine whether the behaviour had a detrimental effect on the grievant's employment, job performance, or job satisfaction.

The test for whether the actions are unwelcome or offensive is also subjective. In Lenart v Massey University (1997)[12], Judge Travis held that

> unlike some overseas developments which have included the use of concepts such as the "reasonable woman" in determining whether the actions complained of were unwelcome and offensive, the wording of section 108 (1) (b) makes it clear that when, by the use of words or physical behaviour of a sexual nature, the employee is subjected to behaviour which is unwelcome or offensive that employee (whether or not that is conveyed to the employer), that will suffice. The harasser must take the consequences of the victim's sensibilities and some commentators have drawn the analogy to the egg shell skull cases in the personal injury field.

The question of whether the "reasonable person" would have found the behaviour offensive (a concept used in U.S.A law) is irrelevant, as is the motive of the person engaging in the unwelcome or offensive behaviour.

In New Zealand then, an employee is simply required to show that the conduct complained of created an unwelcome feature of the employment leading to a detrimental effect. In such circumstances, either the unwelcome sexual conduct itself, or the hostile or demeaning atmosphere created by it, can become such a feature of the employment that it can constitute a term or condition of it. In such situations an employee need not prove that there were any tangible employment consequences as the intangible effects are considered sufficient to prove a detriment (Taylor, 2000). To establish sex discrimination in the U.S.A. complainants must show that "but for" the fact that the victim is of a particular sex, the behaviour would not have occurred. This creates difficulties in conceptualising same sex harassment or harassment by a bisexual harasser as sex discrimination. These types of harassment may involve a hierarchy, but these may be a worker, employer or class hierarchy, rather than a gender hierarchy. In New Zealand, in the provisions of the Employment Relations Act 2000, the injury of

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[11] Z v A (1993) 2 ERNZ 469
[12] Lenart v Massey University, (1997) ERNZ 253

sexual harassment is defined in non-gendered terms and applies to all sexual harassment, not just to male perpetrators and female complainants. As a consequence the theoretical difficulties inherent in categorising sexual harassment only as sex discrimination are removed. Section 62 of the Human Rights Act 1993 states that 'it is illegal to discriminate on the grounds of sex, which includes pregnancy and childbirth and sexual orientation, meaning a heterosexual, homosexual, lesbian or bisexual orientation'.

The third requirement is that the language, visual material or behaviour, either by its nature or through repetition, must have a 'detrimental effect on the employee's employment, job performance, or job satisfaction' (LexisNexis, 2005:826). This essential impact on an employee was discussed by the court in the NID Distribution Workers Union v A B Ltd (1988)[13]case. The requirements for a detrimental effect appears to contain both objective and subjective elements. While it is hard to describe an employee's job satisfaction as anything other than subjective, their job performance is something that can be measured objectively. Either way, the emphasis is on whether the harassment has had a negative effect on the person's employment. Sexual harassment of an employee has been held by the Courts to be conduct of a type which breaches the implied term of trust, confidence and fair dealing in such a way that the breach might force the employee to resign, and thus give rise to a constructive dismissal (see Slogget v Taranaki Health Care Ltd.,1995)[14]. The essential question the court is required to determine is whether the aggrieved party would have left his or her job "but for" being subject to that treatment.

In New Zealand the Employment Relations Act 2000 made some changes to the definition of sexual harassment. Under Section 29 of the Employment Contracts Act unwelcome behaviour 'had to be repeated or of such a significant nature that it has a detrimental effect'. Section 108 (1) of the Employment Relations Act 2000, in contrast, does not require the behaviour to be significant or repeated; provided the behaviour causes a detrimental effect, the harassment is actionable. Other changes to the definition include recognition that inappropriate requests and unwelcome or offensive behaviour may be either direct or indirect, and that the use of visual material may amount to sexual harassment. These changes bring the definition into line with the definition contained in the Human Rights Act 1993.

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[13] NID Distribution Workers Union v A B Ltd (1988) NZILR 761
[14] Slogget v Taranaki Health Care Ltd. (1995) 1 ERNZ 553

New Zealand has a specialist Employment Court which deals with all aspects of employment law. Where there is a successful personal grievance under the Employment Relations Act 2000 in the Employment Authority the decision maker must consider how much the complainant contributed to the problem when awarding compensation and reduce it accordingly.

In some cases a system of mediation or arbitration is insisted on by the Employment Authority, which sits below the Employment Court proper, before a complaint reaches the court system and in an attempt at reconciliation. This, however, requires both the harasser and the complainant to face each other in a discussion addressing the allegations complained of, in what can frequently be a distressing and daunting experience. The onus is on the complainant to prove her case. Mediations take place under both the HRC and the Employment Relations Act 2000 complaints procedures in New Zealand and settlements, as well as monetary compensation can also include apologies, assurances as to behaviour in the future, sexual harassment training and policy implementation and confidentiality clauses with regard to the financial settlement. The vast majority (83%) of complaints that are investigated by the Human Rights Commission are found to have substance and one quarter of these are conciliated and settled without further investigation.

New Zealand then, has comprehensive sexual harassment laws designed to protect women in the workplace. Making a formal complaint is inexpensive, (free under the Human Rights Commission and a minimal cost in the Employment Relations Authority) and is therefore reasonably accessible to anyone, regardless of their financial status. This does not appear to have had any effect on the extent and frequency of sexual harassment in the workplace however, since the numbers show no sign of diminishing and the laws are not utilised as frequently as the numbers of women reporting being harassed might suggest they could be. Statistics from the Department of Labour from 1998-2002 show that only 0.5% - 1% of all cases before the Employment Tribunal under the Employment Contracts Act 1991 and the Employment Authority under the present Employment Relations Act 2000 are personal grievances concerned with sexual harassment[15]. LexisNexis (2005:824) agrees that there have been relatively few decisions concerning sexual harassment in the Employment Court. In addition it is suggested that some of the decisions which the Court has made could give the

[15] figures received in private correspondence from Nick Robins, Employment Relations Service, 2002)

impression that sexual harassment has not been treated seriously enough. More recently in Z v A (1993) Chief Justice Goddard has stated that

> sexual harassment is wholly unacceptable and entirely devoid of any redeeming features. It follows that its occurrence can never be met with matters of justification, excuse or mitigation. It is an attack on the basic human right that all persons must be supposed to have to pursue their economic well-being in conditions of freedom and dignity. Its victims are almost invariably women. It is insidious and deceptive in character.

This statement and recent cases show that sexual harassment is now clearly condemned by the judiciary (see Turk's Poultry Farm Ltd v Adkins,1996)[16].

Conclusion

This chapter has provided an historical view of sexual harassment and has explained how the behaviour came to be considered unlawful. In addition it has described the two main types of harassment and the kind of actions which would be considered either quid pro quo or hostile environment harassment. It has become clear that sexual harassment has been part of women's lives for a very long time. Some men have considered it their right to treat women as sex objects rather than employees and women who have attempted to right this wrong by bringing a formal complaint have suffered retaliation. Even the Employment Court tended to take a rather casual approach to sexual harassment cases brought before it, as seen in its earlier determinations. A much firmer stance has become apparent recently. The next chapter will look at the debates which surround the issue of sexual harassment and the theoretical explanations for the behaviour. It will then discuss the workplace characteristics which the literature suggests may determine the increased likelihood of sexual harassment occurring.

[16] Turks Poultry Farm Ltd v Adkins (1996) 1 ERNZ 374

Chapter Two

The Features of Sexual Harassment: A Review of the Literature

Introduction

The previous chapter described sexual harassment and explained the importance of research into what has become unlawful behaviour. This chapter examines the literature in regard to specific areas of sexual harassment. The focus of the present study is based around identifying features which are understood to inhibit sexual harassment in the workplace. To facilitate this, the difficulties associated with attempts to define harassing behaviour and the debates surrounding that issue are explored, along with different theoretical explanations for the occurrence of sexual harassment. Finally, workplace characteristics that encourage and discourage sexual harassment and the conclusions the literature suggests will lead to the elimination of sexual harassment in the workplace will be examined.

Defining Sexual Harassment

Providing an operational definition of sexual harassment that is able to be scientifically measured from behavioural evidence, is extremely difficult because the concept is defined by a set of behaviours rather than a single one. This creates major difficulties when trying to interpret sexual harassment research since there is no definition on which all researchers agree. Stockdale (1996:102) insists that 'a good operational definition must be precise, so that it is clear whether a particular observable behaviour fits the concept or not'. Clear and precise statements with regard to the behaviours which constitute sexual harassment are essential and should be widely publicised. According to Herbert (1989) a confused and inconsistent range of behaviours may create gaps through which harassers or harassing behaviours can pass unnoticed or uncontested. A publication produced by the Human Rights Commission (2001) describes the following behaviours as constituting sexual harassment: personally sexually offensive verbal comments; sexual or smutty jokes; repeated comments or teasing about someone's alleged sexual activities or private life; persistent, unwelcome social invitations or telephone calls from workmates at work or at home; following someone home from work; offensive hand or body gestures; physical contact i.e. patting, pinching, touching

or putting an arm around another person's body; provocative posters with a sexual connotation; sexual assault and rape. McCafferty (1995) also includes the harassment of lesbian or gay workers or those thought to be lesbian or gay and harassment via email or use of obscene screen savers.

These examples leave little room for doubt in people's minds, either harasser or harassed, that actions such as these may be unlawful and lead to litigation. These behaviours are not flattering or pleasant because the sexual contact is forced rather than freely chosen and is not based on genuine liking and respect for the person. Further, describing the behaviour, will create an awareness that may help to decrease its occurrence. At the very least it will make people aware of the fact that sexual harassment is not only rape and sexual assault, but also a range of behaviours including continual sexual hints, touching and fondling, and direct or indirect incidents of abusive sexual language, by phone or email (Colbert,1989). McCafferty (1995) emphasises that behaviour which is welcomed by both parties and is based on mutual attraction does not cause offence to anyone and is not sexual harassment. The critical factor in defining sexual harassment is that

> it refers to conduct which is unwanted by the recipient. It is behaviour that is unwelcome, unreciprocated and imposed. Sexual attention becomes sexual harassment when it is unwelcome (Rubenstein, 1992:11).

The fact that sexual harassment includes such a wide range of different actions and that it is defined in such subjective terms, as causing offence to the person involved, causes further difficulties. The nature of discrimination, however, makes it open to subjective interpretation. What appear to be harmless actions and comments to one person may be offensive to another and the seriousness of the harassment must be judged according to its effects on the individual harassed otherwise harassers may argue that their action was trivial and meant nothing. Harassment, therefore, is judged on the basis of conduct and its effects on the recipient, not the intentions of the harasser. This is in line with feminist thinking and research. As Thomas and Kitzinger (1997:131) contend

> feminists have long been insistent that the harasser's motivation and intentions should be irrelevant when it comes to deciding whether or not a given incident constitutes harassment and that it is the recipient's subjective experience of feeling harassed that should determine whether or not the incident counts as sexual harassment.

Some individuals dispute this view and insist that if no harm was intended they 'should be absolved of the consequences, even if they persist in the behaviour after it has been

made quite clear to them that it is regarded as offensive by the recipient' (Rubenstein, 1992:10). From a feminist perspective, however, the fact that a man was only joking or flirting provides an explanation for his behaviour, not an excuse. As shown in the previous chapter, the law in New Zealand is premised upon a feminist view of sexual harassment. In establishing that the tests of effectiveness and of detriment are to be measured subjectively with reference to the particular complainant, the New Zealand Legislature recognised that, for sexual harassment law to be effective, the law must give priority to women's perceptions of whether sexual behaviour is sexual harassment. Considering that the main objective of sexual harassment law is to promote equality for women at work, it must therefore enable women to define what standard of behaviour meets their right to dignity in the workplace (Davis, 1993).

Why Does Sexual Harassment Occur?

Theorists have attempted to explain why sexual harassment occurs from many different, but frequently inter-related, perspectives. Several theoretical models have been developed to provide an analysis of sexual harassment in the workplace. This section will describe and critique these models.

Sex Role Spillover Model

A "sex role spillover model" proposed by Gutek examines the link between gender stereotypes and sexual harassment. Gutek suggests that when occupations are dominated by one gender or the other, the sex role of the dominant sex 'spills over' into the work role expectations for that job (Levy and Paludi, 2002:66). In addition Stockdale (1996:10) argues that 'since the female sex-role stereotype contains a "sexual-object" component, when this characteristic is expected in a work domain, for example, when an implicit work requirement is to be sexy, "sex role spillover" occurs'. Thomas and Kitzinger (1997:51) explain that sex role spillover 'is a situation where women are expected to demonstrate stereotypically feminine qualities which are not strictly relevant to requirements of the job'.

Gutek's model has been criticised because of the dichotomising of so-called male and female sex roles. Herrmann and Stewart (1994:61) argue that representing gender as dichotomised traits overlooks 'the extent to which presumed opposites include aspects of each other'. Furthermore 'exaggerating differences plays an important role in preserving the status quo' (Herrmann and Stewart, 1994:62.) Gutek

insists however, that a dichotomy is used by everyone, including researchers, to speak about men and women; for example 'the opposite sex' Gutek (2001). There are obvious problems with the "sex role spillover model" from a feminist perspective. As Mott and Condor (1997:52) point out, the construct of sex-role spillover

> does not appear to problematize the notion of sex-role more generally. In particular it implies that stereotypes of femininity and heterosexuality may be legitimate (relevant or appropriate) in other non-work contexts.

In a critique of some of the assumptions of Gutek's model and linking stereotyping with power, Susan Fiske (cited in Beiner, 2005:120) proposes that stereotypes are employed by people in positions of power when dealing with subordinates because it frees them from concerning themselves with individual differences between workers. Her theory is that 'stereotypes reinforce one group's or individual's power over another by limiting the options of the stereotyped group, so in this way stereotypes maintain power'. Since power is control, Fiske proposes the stereotypes are one way to exercise control, both social and personal. Sexual harassment is 'sexual conduct which is used to enforce or perpetrate gender norms and stereotypes' (Foote and Goodman-Delahunty, 2005:44). Colbert (1989) posits that sexual harassment in the workplace is a sexualised form of unpleasant bullying. From a feminist perspective however, it should not be seen simply as a form of bullying since it has a strong gender dimension (Samuels, 2003). Discounting the gender dimension tends to conceal sexual harassment among other types of bullying. This encourages a belief that there are fewer incidences of it since less is heard about it. Studies by Tangri, Burt and Johnson (cited in Levy and Paludi, 2002) in the 1980s labelled three theoretical models that incorporate a gender, power, aggression analysis.

Natural/Biological Model

The natural/biological model suggests that sexual harassment is either the result of men's naturally stronger sex drive or is simply a consequence of sexual interactions and natural attractions between two people. This can lead to sexual harassment even though that was not the intention. This perspective holds that 'sexual harassment is merely courtship gone awry' (Crouch, 2001:9). According to Crouch (2001:223) 'what is classified as hostile environment harassment in the natural/biological perspective is not wrong but simply a natural result of the conflicts engendered by the differing psychologies of women and men'. Sexual harassment is simply the result of

misunderstandings between them. Supporters of this perspective believe that a distinct line cannot be drawn between ordinary allowable romantic conduct and sexual harassment (Crouch, 2001).

The natural/biological model suggests that sexual harassment victims are likely to be women who are attractive sexual targets for men, similar in age and race and not married, and that harassment behaviours should resemble normal courtship behaviours (Cleveland, Stockdale and Murphy, 1999: 238). The reality, however, is that harassers tend to be much older than their victims (Human Right Commission, 2001), are frequently married and tend to harass more than one person (Cleveland et al.,1999). In fact, according to Buss and Malamuth (1996:31), 'a common thread which frequently unites sexual harassment cases is a stark sex difference. Harassers are older, more powerful males while their targets are much younger females who are in subordinate roles'.

A more recent development of a view which has a biological basis can be found in the writings of evolutionary psychologists. Studd, (1996: 61) argues that an evolutionary perspective proposes that sexual harassment is the consequence of evolved mechanisms which motivate men to strive for sexual access to females. Studd suggests that in ancestral environments highly motivated men would have been particularly successful competing with other men for reproductive success and 'under some circumstances males may use coercive means to gain sexual access even when females are nonconsenting due to these payoffs'. Crouch (2001:13) argues that according to evolutionary psychologists 'sexual harassment is consistent with the sexual strategies of men (who seek casual sex) and women (who almost always seek commitment) which means that it can be understood as a conflict between the two strategies'.

The evolutionary perspective appears to legitimise male sexual violence toward women as a natural biological function. Furthermore, if there is any truth to an ancestral evolutionary perspective which means that men are continually trying to gain sexual access to women, should they not have evolved a better, more respectful way of going about it? Women, after all, wish to be seen as something other than simply an object to satisfy men's sexual desires or as a depository for their sperm in the hope of reproducing themselves. There is nothing respectful about sexual harassment. Buzzanell (2004:32) confirms that 'the implications of this model are that sexual harassment is trivialised because it is seen as normal and harmless, that "boys will be boys," and women should not be offended'. It assumes that harassing behaviour in men is a

consequence of biology and nature and is therefore immutable but does nothing to explain why it is only some men who sexually harass women and not all, as a biological model would suggest. Feminists view this perspective as perilous since it can be used to justify the status quo and consequently further the oppression of women (Buss and Malamuth, 1996).

Sociocultural Model

A second model outlined by Tangri and her colleagues (cited in Levy and Paludi, 2002) is a sociocultural model which posits that sexual harassment is only one example of the much larger patriarchal system in which men are the dominant group and social beliefs legitimise their dominance. A patriarchal society establishes gender norms of male dominance and female subservience, where men are socialised to be aggressive and women are socialised to be acquiescent (Cleveland et al., 1999). Sexual harassment is seen as a means by which men express dominance and as 'one of the ways in which men keep women from competing with them in the economic and political spheres' (Crouch, 2001:16). Foote and Goodman-Delahunty (2005:44) posit that a 'hostile work environment is a tool to prevent women from reaching their full potential; quid pro quo harassment is a way of keeping them in their place'. The roles of power and dominance have long been considered important in explaining sexual harassment by feminists such as Catharine MacKinnon (1979), whose perspective has had a significant influence on the body of knowledge. In line with this dominance perspective MacKinnon argues that gender is not a biological category but a socially constructed one and sexual harassment is a manifestation of a gender hierarchy (Crouch, 2001). According to the sociocultural model 'sexual harassment is designed to maintain male dominance occupationally and therefore economically, by intimidating, discouraging or precipitating the removal of women from work (Tangri, Burt and Johnson cited in Foote and Goodman-Delahunty, 2005: 40). Stockdale (2001:144) suggests that 'sexual harassment is what we should expect since it characterises heterosexual relationships'.

The continuum of male violence has often been an object of feminist concern with the link between power, violence and sexuality being one of the foundations of feminist analyses of male domination. James and Saville-Smith (1989:64) argue that 'violence is a key feature of male culture in New Zealand because it proves ones masculinity to other men, expresses male solidarity and is also an important means of exercising power and authority over women and children in the home'. From this

perspective, wife battering, rape, incest, sexual harassment, prostitution and pornography are all interrelated because these acts function to maintain the patriarchal structure of society. The element of aggression is deeply embedded in the masculine gender role. As Levy and Paludi (2002:69) point out 'for many men aggression is one of the major ways to "prove" their masculinity, especially among those men who feel some sense of powerlessness in their lives'. Sexual harassment is considered to be an extension of men "doing power" over women. This is the model that is supported by many feminists who see sexual harassment as a form of violence against women rather than an aberration or as individual misconduct (Samuels, 2003).

Models of power-based theories, however, encounter some difficulty when attempting to explain same-sex harassment. Epstein (1997:158) argues that a feminist analysis of sexual harassment based on power is too narrow since it fails to include the harassment of homosexuals. She maintains that harassment is related to the enforcement of heterosexuality. Compulsory heterosexuality is a concept initially proposed by Adrienne Rich (1980) which posits that women are not free to choose their sexuality because they are subject to a lifetime of overt and subtle instruction in conformity. Lesbian feminism insists that because of the socialisation process which forces women to believe that anything other than heterosexuality is abnormal and therefore deviant, very few women are aware that there is an alternative. Rich (cited in Humm, 1995) argues that compulsory heterosexuality, which inculcates and then enforces a heterosexual preference in women by a variety of mechanics, is a key mechanism in perpetuating male dominance.

Recent research shows that more same sex harassment occurs among males than females and that men who do not fit the traditional norms of masculinity are more likely to be harassed. Sexual harassment in these instances, according to Stockdale (cited in Beiner, 2005:117) is used to 'enforce or perpetuate gender norms and stereotypes'. Stockdale sees this form of harassment as similar to gender harassment. This theory is supported in a study by Miller (cited in Beiner, 2005:116) who found that men in traditionally masculine occupations used gender harassment to 'discourage women from entering their workforce but also used it against men who did not conform to gender roles. Thus, just as they harass women, men harass other men to enforce male dominance'. Two further studies have supported a power model of sexual harassment. One by Tangri et al. (cited in Beiner, 2005:116) found in their analysis of data from the U.S Merit System Protection Board that 'the more educated a women was, the more

likely she was to be sexually harassed'. A recent study by De Coster et al. also found that the most common target of sexual harassment were powerful women who threatened men's dominant position in the workplace (Beiner, 2005).

Organisational Model

The third model outlined by Tangri et al.(cited in Levy and Paludi, 2002) is an organisational model which suggests that sexual harassment results from opportunities presented by relations of power and authority. Institutions provide opportunities to use power and dominance to obtain sexual gratification. People in higher positions use their authority and power to force others in lower positions into engaging in sexual interactions or activities. Because of their powerlessness, victims feel unable to respond assertively (Cleveland et al., 1999). Proponents of this perspective see sexual harassment as aberrant behaviour by some individuals which adversely affects other individuals in the workplace (Crouch, 2001). Within this model, women are viewed as sex objects rather than valued employees. This model focuses on organisational power rather than on gender as well as power and is not well supported by the data. Crouch (2001:135) explains that this is because 'within its model or perspective the data can be explained so that it is consistent with each of the three theories'. By their own analysis of their data on sexual harassment, Tangri, Burt and Johnson agreed that neither the natural/biological model, the sociocultural model nor the organisational model could, by themselves, offer an adequate explanation of why sexual harassment occurs (Gutek, 2001:57).

A feminist analysis does not see sexual harassment as simply an aberration or as individual misconduct but rather as a form of violence against women. Anita Superson proposes that this should be seen as a 'group harm,' that is a harm to all women because she believes sexual harassment is directed at all women. She cites examples of men who whistle at women on the street, call women 'sheilas' or have pinups of the genital area of naked women hanging on their workplace walls. These and other examples express a person's beliefs about women as a group, on the basis of their sex. As Superson (cited in Crouch, 2001:148) explains,

> the group harm has to do primarily with the fact that the behaviour reflects and reinforces sexist attitudes that women are inferior to men and that they do and ought to occupy certain sex roles.

Crouch (2001) rejects this perspective for quid pro quo harassment since it only appears

to be concerned with hostile environment harassment and overall, like MacKinnon's definition, it limits sexual harassment to the harassment of women by men.

Characteristics of Harassers

It is difficult to identify any particular characteristics that are associated with harassers other than the fact that they are predominantly, but not exclusively, male. However, misogynist attitudes, adversarial sexual beliefs and hostility toward women along with a commitment to traditional role arrangements between the sexes appear to be factors harassers have in common (Fitzgerald et al., 2001). Studies have shifted the focus from trying to understand sexual harassment from a broad perspective, to more subtle, personality and situational-based explanations. Pryor (1987) used a methodology employing a self-report inventory called the Likelihood to Sexually Harass scale (LSH) to study sexual harassment proclivities in the general population of men. The LSH scale measures a readiness to use social power for sexually exploitive purposes (Pryor, LaVite, and Stoller, 1993). Pryor's theory, labelled the "person x situational model", suggests that men who have very negative attitudes toward women and a high need for power are shown to be more likely to sexually harass women than other men (Cleveland, Stockdale and Murphy, 2000:240). He also proposes that men who score high on this measure tend to look for situations where they can conceal their motives to get away with harassment, and touch women in more sexual ways than other men. It appears that some men have personalities and attitudes which cause them to view women in negative, hostile ways. In addition, Cleveland et al. (1999: 243) point out that 'these men have no idea that they are acting in a hostile manner toward women and believe they are working on friendly sexual inclinations'. There is substantial support for the link between sexual harassment and 'doing masculinity'. As Thomas (1997:145) states,

> conformity to the perceived 'rules' of masculinity necessitates both drawing attention to one's differences from women and the conspicuous display of one's heterosexuality-both of which are easily combined in acts of sexual harassment such as whistling.

This suggests that men who harass women are simply exhibiting behaviours which are characteristic of the masculine gender role and are therefore normal and a necessary part of being male. However Levy and Paludi (2002) argue that sexual harassment along with rape, incest and wife beating, should be understood as an extreme acting out of qualities that are regarded as masculine i.e. aggression, power, dominance, and force.

Levy and Paludi (2002:69) assert that

> for many men aggression is one of the major ways to 'prove' their masculinity, especially among those men who feel some sense of powerlessness in their lives. The theme of male-as-dominant or male-as-aggressor is so central to many men's self concepts that it literally carries over into their interpersonal communications, especially with women co-workers.

From this perspective, all types of male violence including sexual harassment are interrelated because these acts function to maintain the patriarchal structure of society.

One of the most consistent findings in studies of sexual harassment is that men and women differ in their perceptions and definitions of it with women being more likely than men to label a particular situation as sexual harassment (Fitzgerald, Collingworth and Horned, 2001). Men consistently say they are flattered by sexual attention from women while women insist they are insulted by sexual propositions from men (Gutek: 2001). As a consequence of this the courts have stated that the only way to decide these cases is by looking at a 'reasonable victim' standard so that lawsuits involving a female complainant should use the reasonable woman guideline. However from a feminist perspective the 'reasonable woman' test is flawed. Given that we have 'a judicial system where the decision makers are overwhelmingly male', Davis (1993:19) argues that

> the adoption of a reasonable woman standard has an air of unreality and artificiality about it. Given that men and women experience sexuality differently, how then can decision makers determine how a reasonable woman would have reacted without resorting to a male defined culturally biased perspectives?

Women's claims to economic independence have led to a reassertion of male supremacy in the workplace (Samuels, 2003). Accepting that society is a patriarchal structure and that sexual harassment is one of the ways that male supremacy is maintained in the workplace, encouraging organisations to consider formulating procedures to prevent sexual harassment may be a difficult process. Pointing out the financial disadvantages of not doing so may provide an incentive. It is evident that sexual harassment costs organisations through absenteeism, lowered productivity, people resigning and negative publicity. It is clearly preferable for them to prevent harassment rather than deal with the consequences of employees' harassing conduct.

Workplace Characteristics and Practices that Discourage Sexual Harassment

Although many questions remain unanswered with regard to the causes of sexual harassment, research supports the conclusion that organisations can exert some control over its occurrence and ultimate consequences. Certain workplace characteristics tend to increase the likelihood of sexual harassment occurring. Research shows that organisations with a skewed gender ratio, where most employees are male and there are few women, and where the duties and tasks are historically masculine in nature are more likely to have problems with sexual harassment (Beiner, 2005).

Studies by Fitzgerald, Collingworth and Horned (2001) have shown that organisations where there is a high tolerance of offensive behaviour, where employees believe that the issue of sexual harassment is not taken seriously, that it is risky to complain and that perpetrators will not be reprimanded, have far greater problems with sexual harassment. Their main finding is that sexual harassment is more common in settings tolerant of such behaviour. Aspects of tolerance include the lack of strong policies and clear procedures for dealing with sexual harassment. As Tong (1984:81) argues,

> when a company tolerates the sexual harassment of one female employee, it makes an implicit statement to all female employees, telling them that their merits are to be measured, not in terms of their skills or job performance, but in terms of their sexual attractiveness and compliance.

In a study concerned with organisational climate, which refers to the degree an organisation is perceived as insensitive to, or tolerant of, sexual harassment, Hulin, Fitzgerald and Drasgow, (1996) contend that organisational factors are most critical in determining whether sexual harassment will occur. A considerable amount of literature demonstrates that organisational variables act as facilitators, inhibitors or triggers for sexually harassing behaviour (Hulin et al. cited in Stockdale, 1996:131). Research has shown that strong policies and procedures are associated with fewer complaints of sexual harassment (Pryor, LaVite and Stoller, 1993). In a study of almost 2000 Canadian workers Gruber (cited in Beiner, 2005:156) found that giving workers information on sexual harassment does have an effect on reducing its occurrence although having training programs and complaint procedures are much more effective. A further important finding was that women's lack of knowledge about an organisation's harassment procedures, and steps to take if they were being harassed,

were strongly associated with sexual harassment (Bell and McLaughlin, 2001). They suggest that 'efforts should be made to change skewed gender ratios and power imbalances by having women in non-stereotyped positions, in decision-making and supervisory positions, and earning pay comparable to men' (Bell and McLaughlin, 2002:90). In addition Beiner, (2005:156) suggests eliminating sexually demeaning or explicit materials, hiring a more diverse workforce and taking complaints seriously will decrease the amount of sexual harassment in the workplace.

Preventing Sexual Harassment

The most critical element in preventing sexual harassment in the workplace is undoubtedly the presence of a sexual harassment policy and a well-known procedure for dealing with incidents of it when they occur. As Gupta (2004:17) argues 'an employer who is serious about preventing sexual harassment will focus on developing an effective harassment policy'. Having a comprehensive policy in place sends several messages to all of the employees inasmuch as it educates, protects, advises as well as validates the organisation's commitment to a harassment free workplace (Gupta, 2004). The Canterbury Employers' Chamber of Commerce publication agrees that 'all employers should have a written policy statement advising employees that sexual harassment is illegal and will not be tolerated or condoned'. This statement is also found in the Human Rights Commission (2001) publication called '*Dealing with Sexual Harassment*'. A comprehensive strategy to minimise the risk of harassment and respond appropriately when it does occur includes: clear policies and procedures; getting the message across to staff; equipping managers to respond appropriately; providing information and support; and developing an environment where sexual harassment is discouraged (Hanson, 2002).

This chapter has examined sexual harassment issues, theoretical perspectives and controversies which surround the phenomenon. Weak or nonexistent policies and procedures with regard to sexual harassment, or women's lack of knowledge about them even if the policies are strong and potentially effective, are associated with increased levels of sexual harassment in the workplace. Most importantly the literature shows that strong policies and procedures can inhibit the occurrence of sexual harassment and when it does occur penalties should be seen to be equally as powerful. Faced with the possibility of legal consequences, men may be forced to reconsider their assumptions about women, employers may be forced to recognise their workers as workers, rather

than as sexually exploitable conveniences. Employers are required by law to provide a work environment that is free from sexual harassment. This research will show how seriously a sample group of New Zealand organisations consider the issue examining the policies and procedures they have in their workplaces to deal with sexual harassment when it occurs. The next chapter will explain the methodology applied in this study and provide details of the methods used to gather the data and analyse the results.

Chapter Three

Methodology

Introduction

The aim of the current research was to investigate and evaluate the adequacy of the policies and procedures organisations have in place to deal with sexual harassment. The investigation was achieved by conducting a survey of a sample group of workplaces. The responses to the survey questions were then evaluated by measuring them alongside what the literature suggested was most likely to prevent sexual harassment in the workplace. A numerical analysis scale was created using information from the literature to give an observable basis for comparison between the policies and procedures of the different organisations. This allowed a reasoned decision to be made as to the type of policy which could be considered "adequate". This chapter will provide a descriptive account of the method used for the data collection and the evaluation of the data, along with the rationale for the feminist epistemological stance adopted for the research. It will also demonstrate how the policies and procedures provided by the organisations were interpreted and analysed and clarify the reasons these particular methods were chosen.

Methodology: Key Issues

Methodology involves finding 'procedures for making knowledge valid and authoritative' (Ramazanoglu and Holland, 2002:9). Questions of truth and authority however, are hotly disputed and can be understood from many different perspectives. Using a feminist methodology is one way of addressing the difficulty in producing justifiable knowledge of gender relations. But feminist researchers frequently disagree on the most effective feminist methodology to use in the search for 'truth' and consequently propose multiple methods to explore women's gendered experiences. The principal reason for a feminist stance being chosen for this study is that feminist methodology places sexual harassment in a framework where discrimination against women in society is considered prevalent, ingrained and unremitting (Davis, 1993). As Skeggs (cited in Letherby, 2003:7) claims 'feminist research begins from the premise that the nature of reality in western society is unequal and hierarchical'. Feminist research involves an examination of gender relations that epitomise the inequality

between men and women.

The present study examines the issue of sexual harassment which is almost always a "women's problem" and is in line with studies conducted by other feminist researchers who see 'gender as a basic organising principle which profoundly shapes/mediates the concrete conditions of women's lives' (Lather, 1988:571). Androcentric research practises are critiqued by feminists who argue that the knowledge acquired presents a perspective of 'truth' which is based on a male perspective. Sexist thinking, therefore, has dominated male-defined epistemologies. Women's experiences were not seen as credible but as fanciful, whereas men's experiences were understood to be the basis for the production of true knowledge (Letherby, 2003). This perspective not only renders women's experience invisible, it creates a barrier for women's perception of their own situation. An important feature of feminist research is to make women's experiences visible. Gender is a key factor in understanding the role of women in the workplace and the reasons why sexual harassment exists.

Gender as a Dichotomy

Gender divides human beings into two categories of male and female and then privileges the male over the female (Cranny-Francis, Waring, Stavropoulos, and Kirkby, 2003). This binary division of gender generally tends to equate male with positive attributes which becomes the standard by which all others are judged. In effect male becomes the norm and female "other" (Humm, 1995). Simone de Beauvoir was the first to describe woman as "other" meaning "not man" when she stated "one is not born, but becomes a woman" (Code, 2000). Male experience is also considered the norm and anything other, like women's experience, is a deviation from that norm. Grant (cited in Code, 2000:188) argues that 'all institutions, theories, and political perspectives, indeed reality itself, are reality and truth only as told from a male perspective'. Women have rarely been able to express their experience as the means to such an expression, in media, literature, and scientific publications, are all male controlled. Women's experience has been described and interpreted for her through a male filter (Kravetz, 1989). Cairns (1997:95) argues that,

> even as small children women are required to understand that they are less than and subordinate to men, not only in their social value, but in their abilities, their characters, and the accuracy of their perceptions of the world.

Women are taught to have a sense of themselves as being fundamentally deficient.

Feminist research then, is research for women to be used in transforming their sexist societies (Letherby, 2003).

Gender as a Social Construction

Feminist theory argues that gender-associated behaviour is linked arbitrarily by society to each biological sex and is understood to be a social construct. Herbert (1989:23) posits that 'the definition of "normal" and "typical" dress, speech, attitudes, actions, and roles for women and men is largely influenced by what society has determined as femininity and masculinity'. These culturally dominant ideas about masculinity and femininity are stereotypes which are frequently inconsistent with reality. As Levy and Paludi (2002: 67) state 'gender stereotypes imply that men should be aggressive and women should be ready to be sex objects'. There is substantial support for the link between sexual harassment and "doing masculinity". From this perspective men who sexually harass are exhibiting behaviours characteristic of the masculine gender role. Thomas (1997:145) argues that

> conformity to the perceived roles of masculinity necessitates both drawing attention to one's differences from women and the conspicuous display of one's heterosexuality - both of which are easily combined in acts of sexual harassment such as whistling.

Gender or power based models of sexual harassment propose that a patriarchal social system perpetuates the economic and political dominance of men over women. Sexual harassment results from societal or cultural power which suggests that it could best be predicted from a careful consideration of gender-based behaviour (Paetzold, 2004).

The Concept of Patriarchy

Radical feminism argues that sexual harassment is yet another way that men, in a patriarchal society, attempt to keep women under their control in the workplace. Patriarchy is characterised by male dominance and female subordination. Kate Millet (1971) introduced the concept of "patriarchy" into feminist thought as a way of describing male supremacy and women's oppression. Bryson (1992:185) argues that 'the patriarchal power of men over women is basic to the functioning of all societies and extends far beyond formal institutions of power'. In a patriarchal society Cairns (1997: 97) argues that

> women are taught to accept that their bodies, their femaleness, their simple

> presence, are responsible for men's behaviour towards them. They are encouraged to see themselves as intrinsically wrong.

Hartmann (1981:14) argues that capitalism and patriarchy are equally responsible in creating an oppressive society for women and suggests that it is men's control over women's participation in the workforce which enables them to perpetuate their domination. Brant and Too (1994: 4) argue that

> sexual harassment is patriarchy's everyday way of intimidating women: either to keep them out of the workplace altogether (particularly in historically male dominated areas of employment) or to keep them in lowly or low paid positions.

Wise and Stanley (1987:49) agree that because 'capitalism and economic conditions require that many women find paid work outside the home, sexual harassment acts as the prime control over women in the workforce'.

These feminist accounts, however, which use the concept of patriarchy in a universal way to explain inequalities between men and women are now thought to be inadequate. Poststructuralist theorists argue that the concept of patriarchy is "essentialist" in that it constructs and positions women as inevitable victims and fails to account for women's volition. Poststructuralist theorists argue that conceptualising patriarchy as the overarching axiom of oppression has the effect of essentialising both femininity and masculinity which reproduces the problems, even while criticising them:

> Assuming such positions are fixed, they limit the potential for change. If men are always bad they do not have to take responsibility for individual actions, nor will women because it is never their own fault (Warner, 1996:45).

Within poststructuralist theory it is now a matter of debate whether it is even possible to speak about "women" as a social category because it fails to recognise differences between them (Hester, Kelly and Radford, 1996). Central to poststructuralism is the assumption that material power does not inhabit the structures of modern society, such as the patriarchal relations of oppression and subordination; rather, power is represented as being diffuse, pervading all social and personal relationships. In more recent feminist theories there has been a move away from portraying women as one homogenous whole and more of an emphasis put on the concept of "difference" and the diverse nature of women's lives. This concept of "difference" is intended to allow the voices of black and lesbian women to be heard among what had begun to be a challenge to feminism as a white, western, middle-class endeavour. As Maynard (1998, 251) states

> in the early days, cosy assumptions were made, both explicitly and implicitly, that all women could be defined in terms of a universal sisterhood meaning that

they could be described in terms of the things they experienced and shared in common.

Feminist standpoint epistemologies insist that research should begin from the perspective of all women's lives not just from those 'who are most highly valued by conventional androcentric, white Western, economically advantaged, heterosexist thought' (Herrmann and Stewart, 1994:343). Letherby (2003) contends that 'although it is necessary to avoid essentialism it is also necessary to acknowledge the commonalities between women and to remember that gender is a difference that makes a difference'. Under the poststructuralist ideas of Foucault, feminist theories have moved away from the assumption that there is one specific cause of women's subordination which is more important than any other. Maynard (1998:255) explains that 'concepts such as patriarchy have given way to more pluralistic notions, such as patriarchal relations'. This suggests that relationships between men and women are frequently unstable and contradictory. However, Bagilhole (2002) argues that men's resistance to women's success in the workplace should not be underestimated. Sexual harassment is useful as a means of controlling women's success. As Connell (1993: 285) states 'in a gender order where men are advantaged and women are disadvantaged, major structural reform is, on the face of it, against men's interests'. Feminist theory does not see sexual harassment as merely an aberration or as individual misconduct. Instead it understands sexual harassment either as a form of violence against women, or as an expression of their economic oppression which is grounded in a profoundly gendered and patriarchal society (Samuels, 2003).

The Role Of Researcher in Feminist Research

Throughout this study I have endeavoured to state my position as a feminist researcher and the reasons for choosing to research sexual harassment quite clearly. I have explained one of my own experiences of being harassed and how the memory of how it felt has remained to this day. Many women could relate similar experiences. Others, like the young woman in the first chapter of this study have much more serious stories to tell. Stockdale (1996:11) argues that 'in our society (and most others) men are accorded greater status and power simply because they are men' and as a consequence of 'growing up in a culture of privilege they may have a sense of entitlement to sexually harass women'. This seems to me to be decidedly unfair and the injustice of this situation has stimulated my interest in investigating this issue. To situate myself even

further I am a fifty-something white-looking woman of Ngai Tahu descent who, as already explained in the acknowledgements section, came to higher education as a mature student of 40. My first degree was in adult education and it was here that my feminist consciousness was raised when I became aware that even the education system is a different experience for boys and girls. One example of this is that boys behave badly and receive more of the teacher's attention because of it. That also seems to me to be unfair. A key principle of feminist research is that the researcher is always inevitably implicated in the research process. This necessitates a critical self-reflexivity on the part of the researcher as to the ways in which aspects of her own positioning or political beliefs may have impacted on the research process and the interpretation of the research findings. To this end, in the next section I shall explain the method used for this study and the attempts made to ensure that my resentment of the injustices for women in the workplace did not influence the responses made to the survey questionnaires.

Method

A survey method was chosen as the best method of gathering the required data for this study for several reasons. Primarily, since the focus of the research was based on the policies and procedures that organisations had in place to deal with sexual harassment, if indeed they had any at all, a survey method was the most practical way of obtaining them. Furthermore it enabled explicit statistical information to be gathered in an objective manner by email, which prevented the researcher's voice becoming intertwined with those of the respondents. Since I was not researching women's actual experiences of sexual harassment in the workplace, an interview method would have been unnecessarily time consuming and unhelpful. It was also hoped that this objectivity would allow a more impartial analysis to be made without criticism being levelled regarding researcher bias. By creating a research method which allowed the results to stand on their own merits exactly as they were returned from the respondents I did not require further clarification of any of the questions asked. I could not therefore be accused of 'twisting of the facts'. Although I had left my options for further questioning open in the survey questionnaire it proved unnecessary except in one instance where I contacted the survey respondent, who was also a contact person for complaints, to ask how many sexual harassment complaints had been made in the preceding year. There is a widespread acceptance of the objectivity of survey research findings (Rienharz,1992). According to Reinharz (1992:76) many people believe that

survey research provides a methodology which is 'the most rigorous and scientifically sound'. I wanted this study, and the subsequent findings, to be taken seriously, so that they might be used in some positive way to assist women in their working lives. This was a further reason that a survey method was considered the most appropriate for this study. In actual fact feminists frequently use survey research to show that either a problem is more widespread than previously thought or to 'dispel a common argument that the complaint of a particular woman is idiosyncratic'(Reinharz, 1992:79). I must admit that researching sexual harassment, and being faced with evidence of the extremely damaging consequences for women, produced a fair degree of anger at the apparent unfairness of the situation. But if this had not been the case prior to the onset of this study it would never have begun, so the resentment proved to be a useful tool in reinforcing the need for the research.

Organisations Selected

I decided to survey both public and private sector organisations because of the different legislative requirements in each sector and then chose small and large organisations within each sector. Defining large and small in both sectors was a problem as there is no formal definition of this in New Zealand. In fact it is in dispute. For the private sector it was decided to use the Cameron and Massey (1999) definition in which organisational size is defined by the number of employees in the organisation and where 100+ employees is determined to be a large enterprise. Cameron and Massey (1999:9) further define the enterprises which employ under 100 people into categories of: Micro 0-5; Small 6-49; Medium 50-99. In contrast the Ministry of Economic Development (2004) defines small and medium enterprises as those with nineteen or fewer employees. For the purposes of this study, however, in the private sector "small" meant "not large", which is less than 100 employees (Cameron and Massey, 1999).

In the public sector there were 37 public service departments listed in the Human Resource capability survey from the State Services Commission (2005) publication in the period from 2003-2005. Only seven of these employed less than 100 staff. A further sixteen had less than 1,000 staff in contrast with the largest department employing almost 6,000. I decided that for the purposes of this study small, in the public sector, meant a department employing less than 1,000 staff in total. The numbers were largely irrelevant in the public sector as in almost all instances the survey respondents were employed in a branch of a larger department. The size of the branches

reflected the size of the organisations with the smaller ones having less employees in them. Data was collected from a number of organisations which would typify a spread across a range of different types of occupations and percentages of women workers. As some occupations are highly segregated by gender (Statistics New Zealand, 1999) it was possible to choose a range of different types of organisations and conclude that the percentages of female staff would be high or low depending on the type of work. For example, women made up 97% of all people working as secretaries in 1996 while men accounted for 99.1% of all carpenters and joiners (Statistics New Zealand, 1999). It was felt that a sample of twelve organisations could be typical of others of a similar size and type and hence I could be justified in drawing some conclusions from the results obtained.

Research Technique

I employed a purposive sampling technique for this research which meant that particular respondents were identified as having the ability to provide significant data on the research subject (Oliver, 2004). In this case Human Resource personnel were chosen as being most likely to be able to supply the necessary information. They would have to have some knowledge of the processes employed by their organisations to deal with sexual harassment and providing they were willing to do so would not have any difficulty accessing the required policies and procedures and forwarding them to me. I wanted to ask specific questions and hoped that most would respond to the questionnaire in a positive and constructive manner. With this in mind I asked advice from a contact who works as a Human Resources (HR) manager. I wanted to know what I needed to do to encourage a response from her colleagues. In previous research I had used the telephone to elicit the responses but finding a person prepared to answer my questions had proved difficult and time consuming. My contact agreed that an email survey was a preferable option since the questions could be responded to when the HR manager had a few spare moments and would not cause an unnecessary and perhaps annoying interruption to their day. Questions would need to be short, easily understood and quickly answered before the respondents decided they were too busy and pushed the delete button. She contacted me later in the week to suggest I attend an HR meeting as her guest, which I did. There I was introduced to several other HR managers with a brief explanation of my thesis and the reason I was there. Eight people whom I met said they would be happy to assist with my research and provided me with a business card,

in some cases writing their email address onto it. I was careful not to influence respondents in any way by informing them of my personal views on the subject of sexual harassment in the workplace. When I was asked I simply reflected the question back by stating that for the sake of my thesis I was much more interested in their response. I did add, however, that I would be happy to discuss it with them when it was completed and would send them a report if they wished. I particularly did not want to discuss the feminist epistemological stance I had taken to the research as I felt that might influence their responses. Seven of the eight HR people I had met responded to the survey questions I emailed to them. Some of the smaller organisations I approached did not have HR personnel, particularly in the private sector and smaller departments in the public sector. In these cases employees responded to the survey questions. It seemed to be the case that whoever opened the email responded to the survey. This presented a dilemma, inasmuch as the responses provided by employees provided quite a different and somewhat qualitative perspective on their organisations as would reasonably be expected. Three of these respondents chose to post their survey responses, rather than send them electronically, because they were concerned about their comments remaining confidential. In contrast, HR personnel stuck to factual accounts of their policies and procedures. I contemplated rethinking the research design and only having employees as survey respondents since it was unlikely that I would be able to have all HR respondents in the small private sector without a great deal of investigation. Then I reminded myself that the basis of the study was the sexual harassment policies and procedures of the organisations and that these could be provided by either employees or HR personnel. Therefore, although the perspectives on their respective organisations might differ, the central research question as to whether the policies were adequate would not be affected by their responses.

The Survey Questionnaire

A letter of introduction was composed which explained who I was, my course of study, my contact details and those of my supervisors, and an assurance that I was available to answer any queries respondents might have. Participants were assured of anonymity and confidentiality with regard to their responses and the names of their organisations. Attached to the introductory letter was a series of nine questions. They were formulated to gather the specific information required and provide samples of the policies for further analysis (a copy has been attached as Appendix One). Twelve organisations

were chosen so that the amount of data would be manageable, and to enable clarification of a response or follow-up information if necessary. Since I was unsure about how much information would be obtained from the survey questions I wanted to have the option of asking further questions of the respondents if that became necessary. This was not required in most instances as the responses to the surveys provided sufficient data to enable comparisons to be made. There was one exception however, where I wanted to know how many complaints had been received in the preceding twelve months and contacted the survey respondent to enquire.

I was interested in how, or if, the sexual harassment policies were communicated to the people working in each of the organisations. What happened, for example, once a formal policy position had been agreed on? How was the policy communicated to staff? When new staff were inducted were the sexual harassment policies explained to them? The first two survey questions asked how many employees worked for the organisation and what percentage of the workforce were female. The latter was relevant as the literature had stated that sexual harassment occurs more frequently where there is a male dominated workforce (Beiner, 2005). I wondered whether a low percentage of female workers would increase the likelihood of an organisation having strong policies in place. The third question asked whether the most senior manager was male or female to ascertain whether differences in the policies could be detected which might be attributable to the gender of the manager. Would a female CEO be noticeably more supportive of women's issues in the organisation? The fourth question asked whether the organisation was part of the public or private sector. The fifth question asked whether there was a sexual harassment preventative programme operating in the organisation and if the answer was affirmative the sixth question asked whether it included policies, procedures and a complaints process. Question seven asked how the policy was communicated to staff. Were there notices on walls, induction manuals which included sexual harassment procedures, or training for staff? Question eight asked for copies of the procedures to be forwarded and question nine asked whether further contact could be made if additional information was required.

Survey Responses

All but one of the eight surveys emailed to the HR managers I had met were responded to and replies received within a week. Surveys emailed to organisations asking an

employee to respond were also returned promptly. In these instances the organisations were known to me, because I had used their services, which meant that I had the name of someone to contact. Some of the employee respondents wished to add comments to the questionnaire and where they had done so their responses were then mailed to me in preference to using the email system. These women were concerned that their comments might be able to be accessed on their work computers but felt strongly enough about wanting to speak out that they went to additional lengths to do so. This added an un anticipated qualitative dimension to the study. Of the twelve organisations surveyed that actually had sexual harassment policies and procedures in place all but one attached copies of them to their responses.

Analysing the Policies and Procedures

In order to be able to measure and compare the adequacy of the policies and procedures of different organisations I created an analysis scale. This enabled a numerical degree of worth to be assigned to each available measure which, according to the literature, helps to prevent sexual harassment. Each organisation could then be assessed as to the quality of their policies and procedures and a number assigned to them, giving a basis for comparison. In some instances organisations had a harassment policy but without a specific mention of sexual harassment while others expressed a verbal intention of formulating a sexual harassment policy in the future. Categories for the analysis scale were obtained from the literature (Human Rights Commission, 2001; Mathieson, Burns and Hanson, 1998; McCafferty, 1995) by collecting all of the statements regarding effective policies and procedures for dealing with and preventing sexual harassment. These were then put in order of least effective through to the optimum policy available. Numbers began at 0 for no harassment policy at all. Number 1 was given for an organisation which expressed an intention of formulating a policy in the future. Each number had further procedures added to it until ending at 10 for the most comprehensive policies and procedures that could be put in place by an organisation. Each set of survey answers and the corresponding policies and procedures were studied so that a number from the analysis scale could be assigned to each organisation. This allowed them to be rated and measured allowing a clearer representation of their merit and inadequacies and made the process of making comparisons between public and private organisations relatively simple and transparent.

Table One shows each category of harassment policy along with the number

assigned to it. It indicates the options available to organisations when sexual harassment policies are being formulated.

Table One: The Analysis Scale

0	No harassment policy
1	An intention of formulating a sexual harassment policy in the future
2	A harassment policy but without a specific mention of sexual harassment
3	A harassment policy with a brief mention of sexual harassment but without a specific definition or examples of harassing behaviours which constitute sexual harassment
4	A sexual harassment policy with a clear definition of sexual harassment but without a complaints procedure
5	As per number four with a complaints procedure but not well communicated to staff
6	A sexual harassment policy and a complaints procedure which is well communicated to new and existing staff at orientation and in a policy manual and Code of Conduct booklet given to all employees
7	A sexual harassment policy and a complaints procedure which is well communicated to new and existing staff at orientation and in a policy manual and Code of Conduct booklet given to all employees with posters on the walls promoting policies
8	As per number seven but with specified employees designated to hear complaints and a policy statement of organisational commitment
9	As per number eight plus education for employees about their rights and responsibilities with managers targeted for sexual harassment training
10	As per number nine plus ongoing monitoring and evaluation of policy effectiveness. An employee assistance programme running; an 0800 number for queries about sexual harassment where confidentiality of the caller is guaranteed; an assurance that all enquiries and complaints made in person will be private and confidential and that the complainant will be supported in whatever decision is made.

The Meaning of "Adequate"

From the procedures listed on the analysis scale it was possible to reach a conclusion about what would constitute an "adequate" sexual harassment policy, which was the focus of this study and was included in the research question. An organisation with an analysis score less than five was clearly inadequate. A score of five meant that the organisation had a sexual harassment policy but it was poorly communicated to staff. A

policy is very little use if no one knows that it exists. Therefore the decision was made that a score of six would be considered adequate for this study. It should be noted that an adequate sexual harassment policy still lacked some of the features considered to be an essential part of an effective and comprehensive prevention strategy as can be seen on the analysis scale.

It must be acknowledged that there were some limitations as a result of the methodological choices made in the design of this thesis. If I had asked different questions in the survey and studied the experiences of women who had lodged complaints, for example, completely different data would have been generated. The relative absence of qualitative data came from the fact that most of the survey respondents were Human Resource managers. Evidence of this can be seen in the qualitative responses from those respondents who were employees. The small size of the study also limited the generalisation of the results beyond the research population involved in the survey.

Ethical Issues

Since this research did not involve interviews in what would be considered a sensitive area, a low risk application for approval for the study was made to the Massey University Human Ethics Committee. In order to protect the anonymity of the respondents in this study the organisations they work for have not been identified. The assurance of confidentiality for the individual respondents and their place of work was made as a precursor to the survey questions and was contained in the information letter. In some cases policy information has not been able to be added to the study as an appendix because inclusion may have made it possible to identify the organisation involved. In other cases the name of the organisation was able to be eliminated from the documents relatively easily. Policy documents were added wherever possible because I particularly wanted to show the respondents' personal responses to the survey questions which were an entirely unanticipated part of the study.

This chapter has described how the data was collected for this study and how it was then evaluated using an analysis scale which was designed by the researcher to measure the adequacy of the policies. The reasons for adopting a feminist epistemological stance have been explained as usefully placing sexual harassment in a framework of discrimination against women in society. The next chapter will describe the responses received from the survey questionnaires.

Chapter 4

Research Findings

Introduction

The previous chapter discussed the principles of feminist research which have directed this study and explained the method used to obtain data regarding the policies and procedures the various organisations had in place to prevent sexual harassment. This chapter details the responses from the six public and six private sector organisations surveyed for this research. Public organisations are listed from largest to smallest, numbered one to six and designated as public by a number plus a (#) sign whereas the private organisations are listed and numbered the same way but are designated private by a number and an asterisk(*). The total number of employees, the percentage of female employees, the gender of the Chief Executive Officer (CEO) and an indication of whether a sexual harassment policy is in place in each of these organisations can also be found in Table 2 (page 50) and Table 3 (page 54) for both public and private organisations respectively. These tables are placed at the conclusion of the sections which list the details of each of the sectors.

Following these details are descriptive summaries of the organisations which have been given a rating on an analysis scale by number as presented in Table 1 (page 42). This shows in numerical form the quality of the harassment policies and procedures operating in each workplace and enables comparisons to be shown between the large/small organisations within each sector, as well as the differences in analysis scores between the public/private sectors themselves. These latter differences are shown in Figure 1 (page70). Some of the survey respondents made verbal and written comments to the survey questions which were unanticipated and added a further qualitative dimension to the findings. These responses are also described in this chapter.

Survey Responses For Public Organisations

Company #1 was a large public sector community services provider employing 8000+ workers. The survey was completed by the HR manager who could not provide details of the percentage of female employees. Based on Statistics New Zealand (1999) listings of the top ten occupations for women, it is likely that the percentage of females

employed in Company #1 was very high. This is based on the traditional belief that 'women are assumed to be good at interpersonal relationships and to focus on people and emotion' (Bagilhole, 2002:52). As a consequence women are segregated into occupations which are classified as "caring". Women's paid work frequently parallels their unpaid work in the home, and these occupations such as cooking and cleaning 'are congruent with feminine stereotypes' (Bagilhole, 2002:53). The HR manager reported that a preventative sexual harassment policy which included policies, procedures and a complaints process, operated in this workplace. These were conveyed to employees by a presentation delivered at orientation along with a brochure. The brochures were also available in work areas and notices were displayed on walls. Information with regard to sexual harassment was also included in employment agreements. Copies of the actual policies and procedures were not forwarded to me and therefore I was reliant on the verbal report of the HR manager. As this organisation had a sexual harassment policy and a complaints procedure which was well communicated to new and existing staff at orientation and in a policy manual and promoted with posters on the walls, and a Code of Conduct booklet given to all employees, it was rated seven on the analysis scale.

Company #2 was a large public sector organisation employing 4000+ workers. The survey was completed by an employee who reported that 34.5% of the workforce were female. Policies and procedures dealing with sexual harassment were documented in an induction manual for new staff. Included in the manual was a clear definition of sexual harassment and examples of harassing behaviour. The manual also included a complaints procedure and a statement informing potential harassers that 'sexual and racial harassment will be considered serious misconduct and may result in a written warning or dismissal'. The survey respondent reported that there were posters on the walls which gave the names of employees who have been designated to act as contact people for harassment complaints. A Code of Conduct manual had been adapted from the Public Service outline to make it particularly relevant to this organisation. Among statements designed to show its obligations to employees there was an assurance that good working conditions would be provided 'including freedom from harassment or discrimination'(Code of Conduct manual for Company # 2, 2003).The manual was given to all new employees. An Equal Employment Opportunity (EEO) statement in the induction manual states that,

> the organisation aims to promote an environment where all staff, regardless of sex, race or disability, ethical or religious belief, family responsibilities, marital

> or sexual orientation are able to fully and equally develop their abilities and potential to the full (Code of Conduct manual for Company # 2, 2003).

This would be achieved by implementing the following policy and practise which reflects this aim:

> eliminating all discriminatory policies and practises and promoting affirmative employment practises that foster fairness and equity and by creating a positive and safe work environment free from sexual and racial harassment (Code of Conduct manual for Company # 2, 2003).

A procedure for dealing with sexual harassment or inappropriate sexual behaviour is also discussed in the induction manual giving a range of ways to take action to stop it recurring using both formal and informal methods. Policy documents, including an induction manual and a Code of Conduct booklet for this organisation, were forwarded to me but cannot be added as appendices due to promises of confidentiality to survey participants and the impossibility of ensuring this with these documents.

The survey respondent for Company# 2 reported that she had, in the past and after a great deal of deliberation, put in a complaint of sexual harassment against a male colleague in this organisation. She considered the harassment to have been fairly serious in that she felt fearful when going to work and constantly concerned about how to deal with the harasser's comments and actions. The survey respondent had chosen a female contact person because she thought that a woman would be more sympathetic, understanding and supportive. The contact person was one of several employees designated by the organisation. Rather than providing support, however, the contact person had suggested that 'she would not want to make a fuss by making her complaint official' (private communication with Survey Respondent #2) and that had been the last reference to the incident. The harasser was moved to another work area some weeks later but the respondent was unclear whether that had anything to do with her complaint. No further discussion was held or feedback ever relayed to her. As this company had a well communicated sexual harassment policy and a complaints procedure for both new and existing staff, a Code of Conduct booklet given to all employees, posters on the walls designating specific employees to hear complaints and a policy statement of organisational commitment to the elimination of sexual harassment in the workplace, it was rated eight on the analysis scale.

Company #3 was a public sector organisation employing 1605 employees. The survey was completed by an employee who reported that 60.5% of the employees were

female. She stated that there was a sexual harassment prevention programme operating in the workplace and this was conveyed to employees in the Public Service Code of Conduct on the intranet, which is available to all staff. The policy and the complaints procedure used in this organisation was forwarded to me and is attached as Appendix Two. Sexual harassment was not specifically mentioned in this version of the New Zealand Public Service Code of Conduct. There is a small mention of it in the complaints procedure which provides a definition from the Employment Relations Act 2000 placed at the bottom of a page discussing harassment in general. There is also a reference to 'harassment being unlawful under the following Acts' which are then listed: Human Rights Act 1993-unlawful discrimination; Employment Relations Act 2000; Harassment Act 1997 and the Crimes Act 1961, if physical assault is involved. Detailed procedures for complaints and the way in which they would be resolved are provided. These include time frames for completing stages of the complaints resolution process, namely, one month between the complaint and the investigator's report and two weeks between the investigator submitting his or her report and the manager's decision on disciplinary action. All costs for the investigator, investigation and any outside assistance such as hiring a mediator, coach or counsellor required are met by the organisation. The complaints procedures were extremely well documented and included time frames for each stage of the resolution process, the various ways in which the grievance could be resolved and an acceptance that all costs would be met by the organisation (see Appendix Two). As this organisation had a sexual harassment policy and a complaints procedure which was well communicated to staff in a policy manual and in a Code of Conduct publication which was readily available to all staff it was rated six on the analysis scale.

Company # 4 was a public sector education services provider employing 550 workers. The survey was completed by an employee who estimated that 65% of the workforce were female. She reported that there was a sexual harassment policy, although it was conveyed to employees on the internal intranet which was not easily accessible for regional employees. There were no notices on walls but at the respondent's insistence the People Development Services did agree to put on a session regarding sexual harassment. There was nothing specific in the employment agreement about sexual harassment but, in the words of the respondent, 'there is something about a fair and equal employer abiding by the State Sector Act' (private communication with Survey Respondent, Company # 4). Although it does not specifically mention sexual

harassment, the State Sector Act (1988) states among other matters, that its purpose is to

> (d) maintain appropriate standards of integrity and conduct among employees
>
> (e) ensure that every employer in the State services is a good employer
>
> (f) promote equal employment opportunities in the State services
>
> (Mazengarb, 1992:1405)

A copy of the sexual harassment policy and complaints procedure from the intranet was forwarded to me and is attached as Appendix Four. The entire document is concerned with sexual harassment. Definitions point out the kind of behaviour that does, and does not, constitute sexual harassment, along with the employer's responsibilities, and different methods of dealing with sexual harassment which leave the decision within the employee's control with regard to the resolution of the complaint. Both formal and informal procedures, internal and external, are discussed.

The survey respondent reported verbally that she had been subjected to incidents of sexual harassment which were not particularly serious but which were nevertheless demeaning and infuriating. She had discussed this with someone in a supervisory position in the organisation and felt she had been dismissed as being ridiculous and overreacting. She had considered making a formal written complaint but had decided against it because she felt it would be too stressful and might make the situation worse. Subsequently, on her insistence, the organisation had agreed to put on a training session regarding sexual harassment. This fact was added on her survey response (see Appendix Four) and seemed to assist her in feeling less aggrieved by the way she had been treated. Not long after receiving the mailed copy of her response I received an email informing me that she had suffered a mild heart attack and was on sick leave. As this organisation had a sexual harassment policy and a complaints procedure but these were not well communicated to staff it was rated five on the analysis scale.

Company # 5 was a public sector education provider employing 470 workers. The survey was completed by the HR manager who reported that 80% of the workforce were female. There were no sexual harassment policies or procedures operating in the workplace at this time, however there was a plan to develop guidelines for a policy and to have training workshops in 2005[17]. As this organisation had an intention of formulating a sexual harassment policy in the future it was rated one on the analysis scale.

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[17] At the time of completion of this thesis I could not confirm that these had occurred.

Company # 6 was a public sector research organisation employing 400 workers. The survey was completed by the HR manager (notably the only male respondent throughout the entire research procedure) who reported that 43% of the workforce were female. There was not a specific sexual harassment programme operating in the workplace although they did have a policy and complaints procedure for harassment which included a definition of sexual harassment and a list of six types of behaviours which would be construed as sexual harassment. The HR manager reported verbally that in his opinion having a policy which defined sexual harassment and included specific examples of behaviour which would be considered sexual harassment would encourage employees to engage in that particular behaviour. He reported, however, that other types of harassment could be a problem and was comfortable formulating a policy to counteract and deal with occurrences of those. He was convinced that discussing sexual harassment and giving specific examples of behaviours would actually encourage it. As an example he further stated that

> telling men they should not touch women below the waist or on the breast would almost certainly lead to a spate of men doing exactly what they had been told not to and as a consequence the number of personal grievances from female staff would rise markedly (private communication with survey respondent, Company # 6).

He was quite sure that his response to this survey would be of little interest as his organisation did not have a sexual harassment policy and had no intention of formulating one. I assured him that his comments were valuable and might help to explain why other organisations did not have sexual harassment policies in place. A copy of the harassment policy was forwarded to me and is attached as Appendix Five.

The largest organisation surveyed in the public sector had more than 8000 employees and the smallest 400. The percentage of female employees varied from 80% to 34.5%. Two out of the six had a female Chief Executive Officer (CEO). Four of the six had a sexual harassment policy while one other had a harassment policy but without specific mention of sexual harassment in place. The responses from the six public organisations are shown in the table below.

Table Two: Survey Responses For Public Organisations

No	No. of Employees	% of Females	CEO Gender	SH Programme	Response By	No. On Analysis Scale
#1	8000+	Unsure	Female	Yes	HR	7
#2	4000+	34.5%	Male	Yes	Employee	8
#3	1605	60.5%	Male	Yes	Employee	6
#4	550	65%	Female	Yes	Employee	5
#5	470	80%	Male	No	HR	1
#6	400	43%	Male	No	HR	2

Survey Responses for Private Organisations

Company *1 was a large private sector manufacturing organisation employing 550 workers. The survey was completed by the HR manager who reported that 25% of the workforce were female. There was no sexual harassment programme operating in the workplace and no intention of formulating one. As this company had no harassment policy at all it was rated zero on the analysis scale.

Company *2 was a large private organisation which is part of the accommodation, cafes and restaurants sector employing 550 workers. The survey was completed by the HR manager who said that a sexual harassment programme was operating in the workplace and that they were conveyed to employees in a policy manual. There were no notices on the wall or information given to staff verbally. In employment agreements staff are reminded that they should adhere to the policy manual. The harassment policy, which is part of the manual, states that:

> all employees have a responsibility to, at all times, maintain high standards of honesty and integrity in their conduct towards fellow staff and customers. It is the policy of (the employer) to provide a workplace free from harassment. This extends to, and includes, sexual and racial harassment (Policy manual, Company * 2).

This is followed by a definition of sexual harassment which states the types of behaviour from the employer or his representative which are understood to be sexual harassment. These include: requests for sexual intercourse, sexual contact or any other

form of sexual activity which contained implied or overt promises of preferential treatment; detrimental treatment or threats about present or future employment; the use of written or spoken words, or physical behaviour which is of a sexual nature, or which subjects the employee to behaviour which is unwelcome or offensive to that employee and which is either repeated or of such a significant nature that it had a detrimental effect on his/her employment, job performance, or job satisfaction. If these circumstances have occurred (whether by a co-employee, client or customer of the employer) then the employee has been sexually harassed. The section of the harassment policy which discusses employee responsibilities states that:

> any employee who believes that he/she or some other employee is being sexually, racially or otherwise harassed must promptly report that conduct to their immediate manager or if the circumstances are more appropriate, to the HR manager on the attached form (Policy manual, Company * 2).

Management responsibilities are defined as follows:

> all managers are responsible for ensuring that no harassment occurs within their area of authority. All complaints will receive immediate attention and will be reported to the HR manager. All managers will, upon the receipt of a verbal complaint of harassment encourage the employee to complete the Harassment Complaint Form. If the employee refuses the manager should record that refusal and forward the form to the HR Manager (Policy manual, Company * 2).

The harassment policy makes clear that:

> investigations of harassment will be conducted in a sensitive manner and to the extent possible will remain confidential, although an investigation may require conferring with parties and witnesses named by the complaining employee. An investigation will take no account of any evidence of the sexual experience or reputation of the complaining employee (Policy manual, Company * 2).

Finally in a section which contains the consequences of harassing behaviour it is stated that:

> harassment will be regarded as serious misconduct. If the investigation reveals that harassment has occurred prompt action sufficient to stop harassment, safeguard the employee and prevent any re-occurrence will be taken. This action may include disciplinary action up to and including summary dismissal (Policy manual, Company * 2).

These sections of the manual were emailed to me with the survey response and are attached as Appendix Six. As this company had a sexual harassment policy and a complaints procedure but neither were well communicated to staff it was rated five on the analysis scale.

> Company *3 was a large private sector retail organisation employing 200

workers. The survey was completed by the HR manager who reported that 30% of the workforce were female. There was no specific sexual harassment policy and only an extremely brief, simple harassment policy which stated that:

> any form of harassment is not acceptable. This includes harassment of your colleagues, managers, customers or suppliers. Harassment is where you say or do something that is unwelcome, and personally offensive to another person. Harassment can be as simple as a joke or a prank that may make someone feel uneasy and can include any bullying or threatening behaviour that makes someone else feel uncomfortable. Harassment can be based on race, gender and age amongst other things. If you experience harassment you should make it clear to the offending person that it is unacceptable. If the harassment continues you should report it immediately to your supervisor (Harassment policy, Company * 3).

The policy does mention that harassment can be based on gender but without an explanation or definitions of the type of behaviour in question. There was no mention of further measures or procedures to deal with complaints of harassment and once again employees were referred to their supervisor who may well be the harasser. Along with a dress code and grievance procedures, this policy was emailed to me and is attached as Appendix Seven. As this company did have a harassment policy but without a specific mention of sexual harassment it was rated two on the analysis scale.

Company * 4 was a small private sector retail organisation employing approximately eighty-five workers. The survey was completed by an employee who reported that 25% of the workforce were female. She chose to mail her survey response rather than send it electronically for privacy. The survey respondent was also one of the designated contact people for other employees to take complaints to if necessary. She reported that on paper there was a comprehensive sexual harassment policy and complaints procedure. However these had only been formulated after the manager had been charged with sexual harassment, found guilty but had kept his position. The complainant, on the other hand, had received compensation having proved her case but had resigned subsequently after finding her position untenable. The remaining and subsequent replacement female staff were aware there was little point in putting in a complaint since it was unlikely to change the manager's behaviour and would simply make their workplace even more intolerable. Further discussion with the survey respondent confirmed that the Manager continues to harass all of the female staff on a daily basis and staff turnover is high. Copies of the procedures were forwarded to me and are attached as Appendix Eight. There was a statement of organisational

commitment from the Managing Director which states that the company was 'committed to providing a safe work environment where individuals are respected and it will not tolerate harassment of any kind'. Included in the policy are a definition and examples of sexual harassment and harassing behaviour, options to take should harassment occur and explanations of the complaints process which would take place. There were guidelines for complainants, encouraging them to remember their rights and feelings and reassuring them that being sexually harassed was not their fault. There were also guidelines for managers, pointing out their responsibilities to ensure that the workplace was free from harassment, to inform new staff about the company's statement on harassment as part of their orientation and to make it clear to all staff that harassment would not be tolerated. According to the survey respondent the policies were not communicated in any way and it was likely that most employees have never seen them. She also stated that in this instance, since it was the manager who continued to harass the female staff, they considered that making a complaint would not make any difference to their working environment. The company, after all, did not live up to its commitment statement last time and therefore complaining would only make the situation worse. As this company had a sexual harassment policy and a complaints procedure but neither were well communicated to staff it was rated five on the analysis scale.

Company * 5 was a small private sector computer software organisation employing 14 workers. The survey was completed by an HR manager who explained that 40% of the workers were female and that a harassment guideline covering sexual harassment has been completed to final draft. In two weeks the guideline would be taken through the consultative process with all staff who would have an opportunity to comment on it. Following that the guidelines would be confirmed and placed on the intranet. Hard copies would be made available to all existing staff and would be signed off by all new staff as well. A copy of the proposed guidelines were forwarded to me and are attached as Appendix Nine. They contain a statement of commitment to staff supporting one another along with specific examples of harassment and detailed procedures explaining how complaints would be dealt with including time frames around the course of action chosen by the complainant. The HR manager reported that the company owners were also very keen to put an Employment Assistance Programme

(EAP) in place and would implement that as soon as the training has been carried out [18]. As this company had an intention of formulating a harassment policy it was rated one on the analysis scale.

Company * 6 was a small private sector organisation in the accommodation, café and restaurant type of industry employing six workers. The survey was completed by an employee who reported that 50% of the employees were female. There was no sexual harassment policy and no plans to introduce one. As this company had no harassment policy and did not express an intention of formulating one in the future it was rated zero on the analysis scale.

In the private sector numbers of employees ranged from 650 in the largest organisation to six in the smallest. The percentage of female employees varied from 55% to 25%. All six organisations had a male CEO / manager. Only two had some form of sexual harassment policy and another was in the process of developing one. The remaining three had no harassment policy at all. All but one forwarded copies of their policies and procedures as requested.

The responses from the six private organisations are shown in the table below.

Table Three: Survey Responses for Private Organisations

No	No. of Employees	% of Females	CEO Gender	SH Programme	Response provided by	No. on Analysis Scale
***1**	650	25%	Male	No	HR	0
***2**	550	55%	Male	Yes	HR	5
***3**	200	30%	Male	No	HR	2
***4**	85	25%	Male	Yes	Employee	5
***5**	14	40%	Male	No	HR	1
***6**	6	50%	Male	No	Employee	0

Key Points in Public Organisations

There was a considerable difference in the ratings on the analysis scale between the

[18] At the time of completion of this thesis I was unable to confirm that these measures had been implemented.

small and large organisations in the public sector. Rating scores ranged from one to eight. The three large organisations scored six and higher whereas only one of the small organisations actually had a sexual harassment policy and scored five. Another had a general harassment policy which did not specifically mention sexual harassment and therefore scored two, while the final one had plans to formulate a policy in 2005 and scored one. The larger organisations had better and more comprehensive policies and procedures which were adequate as defined in the previous chapter. The smaller ones did not reach the required standard. The organisation with the highest score on the analysis scale had the smallest percentage of female employees. Public servants are covered by a Code of Conduct but this was not always mentioned and all of the public organisations had a HR department. Three of the surveys were completed by the HR manager and three by employees.

Key Points in Private Organisations

As in the public sector there was a difference between the large and small organisations, however it was not as noticeable in the private sector since all of them had relatively low scores ranging from zero to five. The minimum rating on the analysis scale for an adequate sexual harassment policy which was communicated to staff was six. This means that none of the private organisations actually had an adequate sexual harassment policy. Only one of the three small private organisations actually had a sexual harassment policy which rated five on the analysis scale which means that although there was a policy, the staff were not informed of its existence. Another organisation had an intention of formulating a policy during 2005. In the larger organisations only one reached an analysis score of five. Four of the six private sector organisations had an HR manager who completed the survey responses. A comparison of the public and private organisations is shown in the figure below.

Figure One: Differences in Analysis Scores for Public and Private Organisations

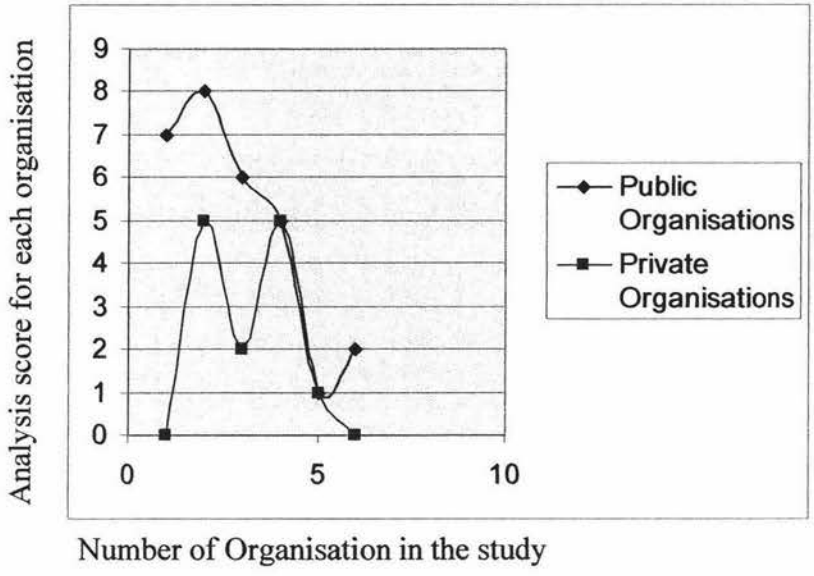

Figure one shows the differences between the public and private sectors and the quality of their policies. The rating of the policies and procedures uses a ten point scale. Three of the public organisations were at the adequate level as defined in the previous chapter with an analysis score of six. The rest of the public organisations and all of the private organisations were below the adequate level. The largest and the smallest private sector organisations did not have sexual harassment policies and procedures at all. None of the organisations reached the maximum of ten points on the analysis scale. Of the twelve organisations surveyed only two had a female CEO / manager. There was no discernable difference in policies that was significant with that factor. The public sector had higher percentages of women employees overall ranging between 80% to 34.5% whereas the highest percentage in the private sector was 55%. The scores ranged from zero to eight over all of the organisations surveyed. Of the twelve organisations surveyed only three had a sexual harassment policy which was well communicated to staff. Every policy and procedure examined was different; some were more comprehensive than others in particular areas. This was unexpected since the same information for the prevention of and dealing with sexual harassment, is available to all organisations through the Human Rights Commission, the Employers' Chamber of Commerce and various unions throughout the country.

Conclusion

This chapter has provided a detailed description of the responses to the questions asked in the survey questionnaires. This has enabled comparisons of the sexual harassment policies and procedures to be made between the large and small organisations in both public and private sectors. The quality of the sexual harassment policies and procedures for all of the organisations, where they existed, have been presented in tables with an analysis score given to each. This enabled the adequacy of the policies to be measured and reported. The fact that, of the twelve organisations surveyed only three had sexual harassment policies which were well communicated to staff, was a major concern. Even more alarming however, was the survey response which showed that even in the organisation which had the highest score on the analysis scale, sexual harassment was still evident. Furthermore the procedures for dealing with complaints of sexual harassment were not being followed as they were set down and as a consequence complainants were inadequately supported or assisted. Two other reports of sexual harassment came from survey respondents of organisations where sexual harassment policies were in place although not well communicated. This means that of the six organisations surveyed which actually had policies and procedures in place, three respondents reported sexual harassment. In each case these respondents were employees. This raises a question as to whether the overall responses to the survey questions would have been different if all the respondents had been employees. A further significant factor which has emerged from the survey responses is the fact that having sexual harassment policies and procedures in place, however strong, did not necessarily mean that they would be followed when a complaint was made.

The next chapter will provide an analysis of these research results. It will also look at the factors which may influence organisations to formulate sexual harassment procedures or conversely provide some explanations for organisations who choose to ignore sexual harassment altogether.

Chapter 5

Analysing the Survey Results

Introduction

The previous results chapter showed that whereas only half of the twelve organisations surveyed had any form of sexual harassment policy in place, a further three of these six organisations had policies and procedures which were not communicated to staff. As a result only three of the twelve organisations surveyed had policies and procedures which could be considered adequate in preventing sexual harassment. Furthermore, six of the organisations surveyed did not have policies at all. This is a very disappointing result when the literature shows the devastating effect sexual harassment has on women in the workplace (Herbert, 1989; Rubenstein, 1992; Levy and Paludi, 2002). This study asked whether there were adequate policies and procedures in place to prevent sexual harassment in the New Zealand workplace. The purpose of this chapter is to provide some explanations and analyses of the results of the present study. Why, for example, do some organisations formulate policies and procedures but not communicate them to staff? How can the lack of sexual harassment policies in other organisations be explained? A significant factor in the survey responses in the preceding chapter was the unsolicited reporting of sexual harassment in organisations which had policies and procedures in place. This, as well as other issues which were identified in the survey responses and the policies, will also be discussed in the light of feminist analyses of what factors contribute to adequate sexual harassment policies and procedures.

Are Adequate Polices in place?

Of the twelve organisations surveyed in this research, the only organisations found to have adequate policies in place to prevent sexual harassment were large organizations in the public sector area. This may well be attributable to the fact that there are statutory obligations for employers and employees, in the public sector, under the State Sector Act 1988. One of the general principles of this legislation is a requirement that 'recognition of the employment requirements of women' is necessary for the 'fair and proper treatment of employees' (State Sector Act 1988, Section 56 (1g)). The State Sector Act 1988 however, does not specifically mention sexual harassment and this allows some individual interpretations of the Act as in Company # 6. A Code of

Conduct is issued which covers the 'minimum standards of integrity and conduct that are to apply in the public service' (State Sector Act 1988, Section 57). These standards are then used as a basis for organisations to create their own personalised Code of Conduct which is given to new employees. The three large public organisations surveyed for this study mentioned this booklet and sent them as part of their policies and procedures. In each case there was a section discussing sexual harassment.

According to the literature, which supports the view that having a policy is the most important factor in creating harassment free workplaces, the three large public sector organisations certainly had adequate policies in place to prevent sexual harassment. In fact a considerable amount of the literature argues that having a strong, well-known policy against sexual harassment is the most critical factor in discouraging it (Pryor, LaVite and Stoller, 1993). Forceful policies and clear procedures, combined with training for dealing with and combating sexual harassment are understood to send a message to employees that the issue will be taken seriously and the penalties will be severe. Studies by Fitzgerald, Collingworth and Horned, (2001) have shown that a climate of zero tolerance for offensive behaviour in the workplace inhibits sexual harassment even by those with a propensity to do so. Pryor et al (1993) agree that even men most likely to sexually harass women will only do so when social norms permit such behaviour. Research by Pryor et al (1993) demonstrates that given the necessary opportunity, men with an inclination to sexually harass women are likely to do so unless appropriate environmental conditions are in place to put a 'brake' on these actions. Cleveland et al (1999:243) found that 'when these men are in work environments that tolerate, condone or facilitate sexual harassment or are in other ways sexualised, they will act on their harassing impulses'. If the employer has made it clear that sexual harassment will not be tolerated in an organisation, on the other hand, a well–publicised formal and informal complaints process encourages earlier and more frequent reporting which in turn discourages harassers and prevents sexual harassment (Foote and Goodman-Delahunty, 2005:124).

The Human Rights Commission (2001) also argues that all employers should have a written policy which informs employees that sexual harassment is illegal and that the organisation will not tolerate or overlook incidents of it. The Commission suggests that examples should be given of behaviour that constitutes harassment and assurances given that perpetrators will be disciplined. Policies should explain the procedures to follow should a complaint need to be made and these should then be communicated to

all employees and throughout the organisation. All new staff should have these policies and procedures included in their induction programmes. Tong (1984: 87) suggests that 'the broad concept of institutional liability, which encourages the development of internal grievance procedures and internal education programmes may be the best way of confronting and remedying cases of sexual harassment'. Reports in the Human Rights Commission (2000:3) study show that 'sexual harassment occurred more frequently in small organisations with no sexual harassment policies than in large organisations where policies often exist'. Other research indicates that the strength of the policies and procedures correlates with the reduction of sexual harassment in the workplace (Human Rights Commission, 2000). The fact that two of the six public organisations did not have sexual harassment policies and procedures when there is a legislative requirement for them to have them raises questions which will be addressed later in this chapter.

But Are Adequate Policies Enough?

An unexpected result of the survey questionnaire was the unsolicited reporting of sexual harassment. The survey respondent for one of the public sector organisations (company #2) reported that she had been sexually harassed. This was in the organisation with the highest score on the analysis scale, indicating that, of the twelve surveyed, it had the most comprehensive policies and procedures in place to deal with sexual harassment. It was also one of the organisations with a very low percentage of women employees at 34.5%. Furthermore it does seem unlikely that this is an isolated incident of sexual harassment since statistics show that in organisations where there are smaller percentages of female employees occurrences of sexual harassment tend to be higher (HRC, 2000; Gutek, 2001). Ninety-six percent of women in non-traditional, male-dominated workplaces for example, were found to have experienced some form of sexual harassment compared with 48% in more traditional domains with the harassment ranging from leering to actual sexual assault (Stanko, 1988).

An additional reason for suggesting that this is not an isolated incidence is that studies show that women working in male dominated organisations appear much more likely to report sexual harassment than those in traditionally female areas (Bimrose, 2004). This suggests that more harassment occurs in male dominated organisations. Supporting this view, Gutek (2001) argues that women working in male-dominated workplaces experience more sexual harassment because they are seen as deviating from

normal sex roles. In addition Konrad and Gutek (cited in Bimrose, 2004:118)) suggest that 'men in male-dominated jobs may feel that strongly masculine behaviours are expected, perhaps involving aggressive sexual overtures'. Beiner (2005:119) contends that women who participate in non-traditional occupations are 'seen as disrupting the masculine camaraderie that infuses the culture of the operation' and since this threatens the gender related self esteem of the men in their workplace they are therefore more likely to be sexually harassed. Sexual harassment then, 'reflects some degree of hostility of female "intrusion" into what was perceived as a male workplace' (Human Rights Commission, 2000:28). Women's presence is resented and perceived as a threat by male workers (Rubenstein, 1992:50). In these situations men tend to emphasise women co-workers' status as women over their status as workers. Doing this allows men to put women in their "proper" subordinate position (Welsh, 1999).

Conversely where women are working in predominantly female jobs their work roles become associated with feminine attributes. In these contexts it is less likely that women will perceive behaviour as sexual harassment less frequently because it is understood to be part of the job (Beiner, 2005). Nurses, for example are expected to be "nurturing" and waitresses are expected to be "sexy" (Welsh, 1999). This results in women under-reporting sexual harassment in female-dominated jobs. Studies show that employers can essentially create sexualised work environments by, for example, requiring female staff to wear skimpy uniforms (Beiner, 2005). Studies of women working in service occupations such as waitressing or tourism found that workers expect to deal with sexual advances from customers (Handy, 2002). Consequently they may only label those behaviours which are serious enough to deviate from the daily work experiences as sexual harassment. Tangri et al (cited in Beiner, 2005:115) argues that because 'women are taught to seek their self-worth in the evaluation of others, particularly men, they are predisposed to try to interpret male attention as flattery and less likely to define unwanted attention as harassment'. As a result it may not be that there is less sexual harassment in female-dominated organisations, but simply less reporting of it.

So what does all of this suggest about Company #2 and the efficacy of the sexual harassment policies within it, bearing in mind that it scored eight out of ten on the harassment scale? The fact that it has a relatively low percentage of female staff indicates that sexual harassment is more likely to occur within the organisation and therefore this instance of self-reported sexual harassment is unlikely to be an aberration.

It also indicates that the measure that was considered adequate for this research is not accurate, since it has not prevented sexual harassment in this workplace.

Further enquiries were made by this researcher to ascertain numbers of sexual harassment complaints over the past twelve months from the survey respondent who was also a contact person in Company #2. The response was that no complaints had been reported. The survey respondent said that this information did not surprise her since most female staff were aware that there was little point in putting in an official complaint because it would not be supported or acted on. Unfortunately the fact that there have been no complaints probably makes it appear to management that their sexual harassment policy and procedures are working which in turn leads to the conclusion that there is no sexual harassment occurring in the organisation. It could also be argued by management that a problem cannot be a particularly serious one if no action is taken by a complainant. In contrast Reinharz (1992:89) argues that 'the absence of a complaint is not evidence of the non-existence of a problem since targets of harassment are often seriously inhibited from complaining'.

Why not Communicate the Policy?

A further three organisations in this study had policies in place but did not communicate them to staff. This suggests that there must be other reasons for an organisation having a sexual harassment policy rather than to protect staff from unwanted sexual attention, if they are not going to inform them that a policy exists. The question of communicating the policies that organisations have in place is central to their efficacy. At the very least organisations should ensure that all employees have a copy of their policies, they should be included in any material given to new employees and posters should be placed in prominent positions throughout the workplace (Levy and Paludi, 2002). In one instance Company #4 had a particularly well-detailed policy but these were only available on the internal intranet. The principal reason for formulating a sexual harassment policy, one might assume, would be to discourage sexual harassment occurring in the workplace, or to deal with it effectively when it does occur. However this may not be the case. As has already been stated public organisations have a regulatory requirement to formulate policies and this may explain why the majority have them in place, but do not necessarily feel compelled to communicate them to staff. This may also explain the survey result from Company # 4 where despite the evidence of a sexual harassment policy and complaint procedures, albeit poorly communicated to staff, incidents of

sexual harassment were still reported in the survey results. These were not officially reported due to an unsupportive workplace culture of tolerance of sexual harassment. The regulatory requirement had not been met at all by company # 5 or # 6. The reasons for this are unknown and it could be a further research question for another study. There are three aspects to this query: why have these organisations not formulated sexual harassment policies; what are the checking procedures to make certain that public organisations do meet their regulatory requirements; and how many other organisations are also failing to meet these regulatory requirements?

A compelling reason for the private organisations to have policies but not necessarily communicate them may be found in New Zealand's employment law. Employers' motivation to introduce sexual harassment policies may be a response to their knowledge of potential legal liability when a Personal Grievance is taken by one of their employees (Samuels, 2003). Under the Employment Relations Act 2000, employers are responsible for the behaviour of all employees, customers and clients. This legislative requirement has prompted some organisations to formulate sexual harassment policies. Once a complaint has been made in writing, the employer must take all practicable steps to prevent a repeat of the alleged offence. If the sexual harassment is repeated, the employer becomes responsible. This primary responsibility means that employers should ensure all employees know that sexual harassment will not be tolerated. Having a policy can help the organisation avoid having to pay as much compensation to employees who file a personal grievance. The employer is mitigated if it appears he has taken all reasonable steps to prevent the harassment. According to the Human Rights Commission study (2000) these should include an operational sexual harassment programme, effective communication of that programme, and regular training for staff, particularly managers. In a booklet printed for the Canterbury Employers' Chamber of Commerce, it states that 'the existence of an effective programme or procedure will afford protection against sexual harassment complaints (Canterbury Employers' Chamber of Commerce: page5). This tends to corroborate the view that policies are, in some cases at least, formulated as a means of protection for the employer rather than employees.

The fact that an organisation has a sexual harassment policy then, may not necessarily mean that the employer is a strong supporter of an employee's right to a harassment free workplace or that the employer intends to act on the policies when there is a complaint. The employer may, after all be sympathetic to his employees harassing

behaviour and tacitly condone it by ignoring it. He may simply not care if sexual harassment does occur and choose to ignore it 'assuming harassment targets can fend for themselves' (Foote and Goodman-Delahunty, 2005:33). It may be that the only interests he is interested in protecting are his own. The real issue here is whether the employer is genuinely attempting to prevent sexual harassment in the workplace or simply trying to avoid liability for his employees', or his own, harassing behaviour (Beiner, 2005). This latter implication is supported in this study by the survey respondent for Company*4). In this case the policy and procedures proved to be among the most comprehensive of all the documents provided for both private and public sectors but because they were not communicated to staff the analysis score was five. However the survey respondent reported in writing that the sexual harassment policy had only been formulated after the manager had been found guilty of sexual harassment. This organisation had put comprehensive sexual harassment policies and procedures in place after being forced to pay compensation (see Appendix Eight). They had subsequently failed to check whether they were working or whether their female staff were still being harassed. This tends to support the assumption that as long as the organisation had put a policy in place to ensure they were less likely to be liable for compensation, or the amount of compensation would be at a lower level if another personal grievance was taken against them, it was of little or no importance whether the policy was actually effective. This also provides a possible explanation as to why staff were not informed of the existence of a sexual harassment policy in their workplace.

Why Would Organisations Choose not to Have a Policy at all?

The remaining six organisations surveyed for this research did not have a sexual harassment policy in place at all, although two of them did express an intention of introducing one in the future. This is a significant number when the issue is such a critical one for women in the workplace. The female workforce, particularly young women, is concentrated in sales and service-based work (Statistics New Zealand, 1998). Several occupations in fact, are highly segregated by gender with the ten most common jobs for women differing considerably from those of men. Women, for instance, made up 97.3% of all people working as secretaries in 1996 and 94.3% of those employed as nursing or midwifery professionals, whereas men accounted for 99.1% of all carpenters and joiners and a similar high proportion of mechanics and heavy truck drivers (Statistics New Zealand, 1998). Beiner (2005) suggests that management may decide in

the female gendered organisations that because the percentage of female workers is high, the risk of sexual harassment is low and therefore they have no need for a policy. This view could not be supported by this study as there was no correlation between a high percentage of female workers and the absence of a policy. In fact in two of the organisations where there were adequate policies the percentage of female workers was high. Davis (1993:9) argues that even in the organisations where men are relatively few in number, women are still in an extremely vulnerable position in the workplace because 'men occupy most positions of authority leaving women exposed to both male economic and sexual power'. Ten of the twelve organisations surveyed for this study had a male CEO which supports the statement Davis (1993) posits.

There was no sexual harassment policy in place, however, in the education services provider (Company #5) where the percentage of women in the workforce was 80% and the CEO was male. It seemed rather incongruous that a tertiary education provider did not have a plan of action for dealing with sexual harassment since it has been shown to seriously impede the progress of women's career advancement. As Riger (1991:499) states

> although sexual harassment is harmful to women in all occupations, it can be particularly devastating in educational institutions, in which the goal of the organisation is to nurture and promote development.

As previously stated the research data did not support the proposition that a high percentage of female workers in an organisation would be more likely to correlate with a lack of a sexual harassment policy. In fact only one of the six organisations without policies had more than 50% of female staff. This was the tertiary education provider Company #5. The other five organisations without sexual harassment policies had percentages of female workers which ranged from a high of 50% down to 25% which was the lowest percentage of all in the survey.

A further reason that organisations may choose not to formulate policies is because they believe that sexual harassment is a natural consequence of men and women working together. This is an example of the biological perspective of sexual harassment outlined previously in Chapter Two. Browne (2002: 192) argues that 'one of the inevitable results of sexual integration of the work force has been an expansion of opportunities for sexual interaction and, as a result, sexual conflict'. He believes sexual harassment to be the result of sexual miscommunication which, in some cases, may be caused by a woman's appearance. Browne (2002:194) argues that 'heavy use of

cosmetics is often taken, by both men and women, as a sign of lower levels of morality and may be interpreted as signalling receptivity to sexual advances '. Women therefore, in his view, invite and even welcome harassment by the way they dress or make themselves up. By looking provocative they are anticipating sexual attention from men and should not complain when it is forthcoming (Davis, 1993). In this way 'men frequently justify their behaviour by blaming women and absolve themselves by in their own eyes of responsibility for their actions' (De Lyon and Widdowson, 1989:175). Women are taught to believe that they must have encouraged or elicited the sexual harassment behaviour. MacKinnon (1979:55) argues that 'women are taught to identify with men's feelings, with men's evaluations of them and with their sexual attractiveness to men as a major component of their own identities and sense of self worth'. According to Tangri et al (cited in Beiner, 2005:115) this means that 'women are predisposed to try to interpret male attention as flattery, making them less likely to define unwanted attention as sexual harassment'. Thomas and Kitzinger (1997) argue that this is a typical consequence of a patriarchal society where women are taught to accept that their bodies and their presence are responsible for men's behaviour towards them. They are encouraged to see themselves as intrinsically wrong.

In addition, some organisations may choose not to have a sexual harassment policy because they believe that talking or reading about sexual harassment will encourage their employees to engage in the behaviour mentioned. In other words they consider that having sexual harassment policies and procedures may actually promote it. This explanation for not specifically mentioning sexual harassment in harassment policies was stated in the verbal response from the survey respondent who was the HR manager for the research organisation Company # 6. He reported that he believed speaking about sexual harassment would encourage its occurrence and was quite adamant about it. Nothing could be found in the literature to support this view and it would be interesting to obtain further evidence to discover whether this was an aberration or a widely held view of sexual harassment policies. He was the only male survey respondent and this raises the question as to whether this would have been a more frequent response if there had been more male survey respondents. Rienharz (1992:87) contends that 'gender is indeed a factor, among others, which affects respondent's answers to a survey'.

Small business owners may not have a sexual harassment policy in place simply because they have no idea how to access information about formulating one or consider

they do not have sufficient time to be concerned about it. This would help to explain why so few of the small organisations in this study had a policy in place. Four of the six organisations without sexual harassment policies were small. Two in the public sector and two in the private sector. According to Lana Hart of the Human Rights Commission (cited in Monk, 2004:19) small businesses often lack Human Resource expertise and are therefore frequently ill-equipped to deal with instances of harassment which means the problem can become rather widespread. This was not supported by this study however with three of the small organisations having an HR manager compared to four of the large. The Human Rights Commission (2000) study shows that the majority of sexual harassment complaints were made against small businesses but add that 92.5% of businesses in New Zealand are small and have less than ten employees (Statistics New Zealand, 1999). A further reason that small businesses might avoid putting policies in place could be connected to compliance costs. They may well see the administration of such policies as yet another unnecessary cost that they would prefer to avoid if at all possible.

Problematic Issues in the Survey Responses

Even in the organisations where the policies were not well communicated and were therefore inadequate, there were other problematic issues which arose from the survey responses and the policies forwarded. One problematic issue identified in the current research was the insistence in some of the policies that reporting incidents of sexual harassment should, in the first instance, be made to the manager of the organisation. This fails to take into account that, according to research by the Human Rights Commission (2000) managers themselves are responsible for a high percentage of the sexual harassment which occurs in the workplace. In their study of 284 complaints of sexual harassment made to the commission between 1995-2000, over half of the respondents were managers and of these, only one third were owners of their own business (Human Rights Commission, 2000:31). This suggests that many employees would be expected to put in a claim of sexual harassment to a manager who is also their harasser.

Evidence of this can be seen in two of the organisations' policies surveyed in this research. In the employee responsibilities section of the harassment policy of Company *2 it states that all employees who believe they, or any other employees, are being sexually harassed must promptly report that conduct to their immediate manager,

or if more appropriate, to the HR manager on the attached form. It seems most unlikely that employees would be prepared to report sexual harassment on a form to the HR manager if their immediate manager or anyone else in a superior position to them is the harasser. This would tend to suggest that the organisational commitment to ensuring that the policies were working was minimal and that little monitoring had been done to ensure that they were adequate or workable. This is confirmed in the management responsibilities section of the policy which states that managers are responsible for ensuring that no harassment occurs, that if it does they must encourage the employee to fill in the form, and if the employee refuses then that refusal should be recorded and reported to the HR manager. Further, the policy suggests that investigations of harassment will be conducted in a sensitive manner and will take no account of the sexual experience or reputation of the complaining employee (see Appendix Six). Having already used words like 'you must fill in a form or your manager will report you for not doing so' the policy suggests that 'investigations will be handled sensitively without consideration of your sexual experience or reputation'(Policy Manual, Company* 2). How many employees are going to make a complaint after reading those statements? Surely an organisation cannot expect employees to believe that a complaint will be handled in a sensitive manner when the policy is written in such an insensitive way. This organisation is part of the Accommodation, Cafes and Restaurants type of industry listed in the Human Rights Commission (2000) study where complaints of sexual harassment occurred most, accounting for 53 of the 284 complaints.

It is interesting to note that in 2003 the database of the Employment Relations Service listed 72% of employment agreements as containing stand-alone clauses for dealing with sexual harassment in the Accommodation, Cafes and Restaurants sector. This covered 66% of all employees and was the highest of all of the sectors (Employment Relations Authority Information, 2003). This sector then, has the highest number of sexual harassment policies contained in employment agreements and the highest number of complaints of sexual harassment. These statistics add weight to the implication that having policies and procedures in place are not the most critical factor in preventing sexual harassment in the workplace.

The other example in this study where the policy states that complaints must be made to a supervisor, who may well be the harasser, was in the private sector retail organisation Company *3. Retail organisations recorded the second highest number of complaints in the Human Rights Commission (2000) study so the fact that this one had

such a brief policy without mentioning sexual harassment was a cause for concern. With a small percentage of female employees meaning an increased likelihood of sexual harassment, along with the insistence that complaints be made to the supervisor, this organisation provided little protection for employees (Rubenstein, 1992). Studies by Fitzgerald, Collingworth and Horned (2001) confirm that organisations where most employees are male and there are few women, and where the duties and tasks are historically masculine in nature are more likely to have problems with sexual harassment.

It is evident that formal company policy and the personal behaviour of managers does not always match. This was confirmed by the survey respondent in the retail organisation Company *4 who reported that the manager continued to harass all of the female staff on a daily basis. The fact that he had been found guilty of a charge of sexual harassment had not led to a subsequent change in his behaviour. Foote and Goodman-Delahunty, (2005:33) contend that some managers 'may even overtly or covertly encourage harassers' while others intend to harass female employees themselves and have handpicked them expressly with that purpose in mind (Human Rights Commission, 2000). Recent research by Foote and Goodman-Delahunty (2005) shows a number of procedures that are controlled by managers are positively correlated with the incidence of harassment. These comprise 'a lack of knowledge about complaint procedures, an unprofessional atmosphere and the existence of sexist attitudes in the workplace' (Foote and Goodman-Delahunty, 2005:34). Managers may be understood to be tacitly condoning sexual harassment by ignoring it, discouraging complaints or participating in it. As Pryor et al (1993:80) point out

> the standards that are part of the official policies on sexual harassment for an organisation are not necessarily the standards embodied in management behaviour. In other words, management may publicly endorse the company policy condemning sexual harassment while personally practising it.

Providing employees with congruent management role models in words and actions is crucial to the prevention of harassment in organisations. Rhetoric and reality must not be separate. In other words, managers must say what they mean and mean what they say. A further reported issue which emerged from this study was the fact that in several of the surveyed organisations female staff were aware that putting in a complaint of sexual harassment would not make a difference. It would not stop the harassment; complaints were likely to be disregarded as trivial or complainants made to feel

ridiculous (Company #2; Company #4; Company *4). This was supported in studies by Fitzgerald, Collingwood and Horned (2001) and is not a surprise when the findings from the present study are considered. Women cannot be sure that the response accorded their complaint of sexual harassment will be treated in a supportive and sympathetic manner. Furthermore some survey respondents reported that they were convinced that making a complaint could have the effect of making it much worse. Beiner (2005:156) agrees that 'negative job outcomes may result more from retaliation and negative organisational responses, such as victim blaming, than from the sexual harassment behaviour itself'. Not only are women risking being treated as irrational and ridiculous by making a complaint of sexual harassment, they are also putting themselves in danger of being victimised by the harasser if the organisation does not take her complaint seriously and take action against him. Encouraging women to be more assertive in making sexual harassment complaints, with the expectation that it will lead to less harassment 'is insufficient and misguided without meaningful organisational protection from stigma and retaliation' (Fitzgerald, Swan and Fischer, 1995). Recent research by Fitzgerald et al (2001) shows, that assertive responses to sexual harassment, like confronting the harasser or filing a complaint, are not only ineffective but frequently make the situation even more difficult. They argue that although popular opinion insists that victims of harassment should immediately confront their harasser and report him to the appropriate authorities the reactions to such responses are not favourable. According to one study in the U.S.A. 60% of victims of sexual harassment ignore it believing that complaining will not resolve the problem but instead will cause further economic and psychological harm (Rubenstein, 1992).

Another reason for ignoring sexual harassment is that victims often blame themselves. Studies by Cairns (1997:91) found that in response to experiences of sexual harassment women frequently show a high intensity of confusion, self-blame and guilt. Jensen and Gutek (cited in Fitzgerald, Swan and Fischer, 1995:3) found that '25% of women attributed harassment in some way to their own behaviour which inhibited both reporting and seeking social support'. This is hardly surprising if complainants are subjected to a response similar to the survey respondent in the education provider organisation Company #4. Support for women's negative expectations when considering making a complaint of sexual harassment were evident in this study, in public and private organisations, both large and small.

The data gathered in this study raised significant questions regarding the extent

to which women's complaints of sexual harassment are taken seriously and whether the training of designated contact people or supervisors who might be the point of contact where there was not someone nominated in an organisation was adequate. Company # 2 provided a specific example of a complaint having been made where the initial response and the outcome were entirely unsatisfactory. The small education services provider (Company #4) also showed a similar inadequate response to the respondent's complaint of sexual harassment while the retail organisation (Company *4) had retained the services of their manager after one of the female staff had taken a personal grievance against him and won which made it quite clear to the remaining staff that he was more important to the organisation than they were. The complainant, a female staff member had subsequently resigned. This is a recognised consequence of sexual harassment as female staff feel compelled to leave their positions (Hadjifotiou, 1983; Human Rights Commission, 2001). Many women respond to sexual harassment by resigning from their jobs, some immediately, but the majority after a long period of constant harassment (McCafferty, 1995). Human Rights Commission statistics show that in 1994 92% of complainants had left their job by the time they made complaints to the commission (McCafferty, 1995). This method of dealing with having been sexually harassed has other consequences. Leaving a job for no apparent reason makes finding another one more difficult and changing employment frequently does nothing to enhance long-term employment prospects (Herbert, 1989).

Conclusions

The data gathered in this study raised several important questions. I have attempted to respond to them throughout this analysis chapter. Clearly there were considerable variations within and across the sectors when it came to providing explanations for the inadequacy of the sexual harassment policies in many of the organisations surveyed. This made reaching conclusions difficult. I had assumed at the beginning of the study that I would find a dearth of sexual harassment policies among the organisations researched for two main reasons. Foremost, prior experience with the research topic had indicated a great deal of ignorance among other organisations so I expected a similar response. Secondly, from my own feminist perspective, considering that sexual harassment is primarily a women's problem it is unlikely to have received as much attention as it would have had it been a male concern. The research findings bore out these core contentions. I had also assumed, quite wrongly as it turned out, that I would

simply recommend that policies and procedures should become a legal requirement and the New Zealand workplace would instantly become a lot safer for women, which was one of the aims of the study.

A key factor that emerged, although it was not directly addressed in my research question, was that having strong sexual harassment policies and procedures in place in organisations may not be the most critical factor in preventing sexual harassment in the workplace. Whereas I had taken for granted at the beginning of the study that having strong policies and procedures would be the most critical factor reported data suggests that women are still being harassed even where strong, well-communicated policies are in place. This suggests that even well communicated policies are ineffective if they are not implemented. Three of the survey respondents in this study self-reported that they had been sexually harassed. In each case a policy was in place. On the analysis scale one of these organisations had scored an eight, and the other two had scored five. In two instances formal complaints had been made. Both had been completely unsatisfactory. One of these had been made to a specifically designated contact person in the organisation who had talked her out of taking her complaint any further. This clearly implies that implementation of sexual harassment policies remains a critical issue in determining whether women are safe in the New Zealand workplace.

The purpose of this chapter has been to establish the extent to which adequate policies are in place to prevent sexual harassment in the New Zealand workplace. On balance, the findings of this study tend to show that the public sector does better at having sexual harassment policies than the private sector and within the public sector large organisations do better than small organisations. The fact that there is a statutory requirement for public sector organisations to incorporate policies which will maintain appropriate standards of conduct among employees has been explained as a probable factor in this finding. Whether the policies in place are adequate overall is another question. Only one quarter of the organisations surveyed in this research had adequate policies and the survey results tended to show that actually having policies may not be the most important factor in preventing sexual harassment. According to the literature it is essential that all organisations should have policies and procedures to deal with sexual harassment when it occurs. It is crucial however that these are supported by management, in word and deed, and penalties enforced when necessary. There is a considerable difference between expressing a desire to minimise sexual harassment in an organisation and actually implementing and enforcing a policy which will assist in

eliminating it altogether.

In this chapter I have explored the reasons why organisations choose not to formulate sexual harassment policies along with explanations for those who have policies but fail to communicate them to their employees. In the next chapter I will discuss the contribution the present study offers to the field of sexual harassment in the workplace and point to areas where further investigation could provide more insight into sexual harassment. Finally I will make recommendations in the light of the findings of this study which hopefully will lead to more equitable and safer workplaces for women.

Chapter Six
Conclusion

The key concern motivating the present research was whether women were safe in the New Zealand workplace. To this end the study asked whether workplaces in New Zealand had adequate policies in place to protect women from sexual harassment. This concluding chapter will highlight the major findings of this study in the light of what has previously been known about sexual harassment policies and procedures. Next it will offer recommendations to increase the safety and freedom from sexual harassment for women in the workplace. Finally it will point to areas that require further exploration.

Major Findings

This research asked whether adequate policies and procedures were in place in selected New Zealand workplaces to ensure women were protected from sexual harassment.The answer to the research question was not a straight-forward one. In some cases the answer was "yes", the organisation did have an adequate policy, and in others the answer was a definite "no". In other cases, where the organisation had a policy but did not communicate it, the answer was an "almost adequate". In several instances there were glaring examples of the policies being hopelessly inadequate. One of these was where staff were being instructed to immediately report harassment to their manager when the literature showed that the manager was frequently the harasser (Human Rights Commission, 2001).

A major finding in the study was that only half of the twelve organisations surveyed had any sort of sexual harassment policies in place. Of these, only three of these workplaces, all in the public sector, had policies and procedures that met the criteria for being adequate. None of the private sector organisations had adequate policies at all. This suggests that overall the sexual harassment policies and procedures in the organisations surveyed were generally inadequate. Women do not appear to be safe in the New Zealand workplace if these organisations are an example of a general trend which negates the importance of policies preventing sexual harassment.

A more significant finding which emerged from the research was that the adequacy, or not, of an organisation's sexual harassment policy might not be the major

factor in preventing harassment. The existence of a policy strongly discouraging sexual harassment, a complaints procedure to be followed when it does occur, and penalties befitting the seriousness of the behaviour may be crucial to decreasing the number of employees being sexually harassed at work, *but only if they are actually applied in practise* (Foote and Goodman-Delahunty, 2005). If harassment is not properly remedied, or appears to be tolerated, employees receive the message that it is acceptable behaviour (Beiner, 2005). The critical element then, of an effective policy, and an important determinant of whether employees are harassed at work, is the way in which complaints of sexual harassment are responded to and dealt with.

The key finding of this thesis is that implementation of the policies and procedures are the key to reducing the incidence of sexual harassment in the workplace. Colbert (1989:30) argues that 'having penalties in place for sexual harassment is a form of education in that people are made to realise that the behaviour is totally unacceptable'. But this statement is only true if the penalties are enforced and harassers are actually punished. Failure to punish sexual harassers silently condones the behaviour. A strong and consistently enforced policy shows an organisation's commitment to its employees and promotes a productive work environment. Implementation of policies implies a genuine commitment to a harassment free organisation (Bell and McLaughlin, 2001). If organisations are sincere in their desire to make workplaces harassment free they must be prepared to implement the procedures when a complaint is made and complainants must be informed of the remedies which will be used to address the harasser's behaviour. Harassers soon realise they will not be disciplined if the management appears to overlook or tolerate such behaviour.

Simply having a policy makes absolutely no difference to the safety and security of staff unless it is supported and enforced by the organisation, and put into practise by managers. In addition managers must be committed to the ideals of the policies if the organisation is to have a chance of successfully changing harassers' behaviours (Hanisch, 1996). Since the research shows that managers themselves are frequently harassers (Human Rights Commission, 2001) organisations must choose supervisory staff carefully and monitor staff relations regularly. Employees must be informed of the existence of the policy and educated about its meaning. The fact that organisations fail to implement their own sexual harassment policies and procedures helps to explain why they continue to house harassers and to be problem workplaces for women. It also explains why so few women actually put in complaints when they are

subjected to unwelcome sexual behaviour. They are clearly not going to be protected from the consequences of having made a complaint, which will almost inevitably lead to some kind of retaliation from the harasser. Research by the Human Rights Commission (2001) shows that harassers are frequently in a more powerful position than the complainant and therefore are in a position to make the workplace untenable in retribution for a complaint made against them.

The literature regarding sexual harassment understates the importance of the implementation of policies and procedures. Instead there is a major focus on simply having policies in place to deal with sexual harassment when, or if, it occurs. Literature suggests that the presence of a policy is enough to deter harassers and therefore minimise the amount of sexual harassment but the present study shows that this is not the case. The results of the present study are significant because they show that contrary to what the literature suggests, having sexual harassment policies in organisations is not necessarily sufficient to prevent sexual harassment.

Recommendations

The key recommendation based on the findings of the current study is that all organisations should be strongly encouraged *by law* to formulate sexual harassment policies and procedures. Such policies and procedures should become a legal imperative. The behaviour that constitutes sexual harassment should be defined and contained in all employment agreements along with basic procedures for resolving complaints in the same manner that 'a plain language explanation for the resolution of employment relationship problems (Employment Relations Act, 2000:54 (3)(a) iii) must be contained in all employment agreements. As has been discussed, however, just having a policy on paper is not enough.

For those organisations who have existing sexual harassment policies and procedures in place the following further recommendations are made:

1. *Sexual harassment policies and procedures should be effectively communicated to all staff.* The time for raising the issue of sexual harassment and the consequences of any employee found to have committed sexual harassment is in the induction stage. In one case in the present study it would have been as simple as providing every employee with a copy of the policy rather than only having it available on the intranet which was difficult for some staff to access.

2. *Immediate managers should be excluded as contact people for sexually harassed*

employees. An effective complaints system should include a procedure so that the complaining employee does not have to complain to their immediate supervisor if they are the alleged harasser, or they have allowed or condoned the alleged harassment. An alternative that allows employees to complain to a neutral, uninvolved person can preserve the integrity of the procedure.

3. *Clarity around time frames between the initial complaint and resolution should be instituted.* An investigation into the complaint should take place as promptly as possible, preferably within a week, but certainly no longer than a month. Even the absence of timely responses can communicate that the organisation is not taking a proactive stance towards sexual harassment.

4. *An on-call mediator who is independent of the organisation should be made available to assist resolution.* Agreement by the organisation to cover costs for complaint processes would show a commitment to a fair and equitable workplace. A grievance procedure should be developed and included in the written policy.

5. *Education to raise awareness of sexual harassment is vital*. It is pointless having a well-developed policy and procedures to deal with it if no one knows about it or understands what sexual harassment is.

6. *Training resources and the names of training consultants are available from the Human Rights Commission and from the Equal Employment Opportunities Trust.* Speakers are available to speak at meetings or training sessions.

7. *Regular evaluations of policy implementation should take place*. Warning signs such as a high turnover of employees may signal sexual harassment. Exit interviews may also be useful as they can be a good source of information for management.

8. *The roles and responsibilities of contact people and managers should be clarified and regular training should be given.* There should be no doubt about the expectations and roles of contact people and managers

9. *Managers should be targeted for sexual harassment prevention training and education and encouraged to implement robust policies at work.*

10. *Women's support groups should be established.* These groups provide an important way for women to take control for themselves rather than depending totally on male-dominated structures to counter the problem of sexual harassment.

11. *An 0800 phone number should be set up for employees to speak to a contact person while remaining completely anonymous*. This would allow them the flexibility to reveal as much or as little information as they wish. Employment Assistance Programme

(EAP) advisors may also be an option to assist employees with personal issues but if the organisation intended them to be used as sexual harassment contacts the Advisors would need to have been selected and trained appropriately.

Although not a specific recommendation the fact that women are more frequently harassment targets, but rarely carry out harassment, suggests that the mere presence of more women managers would reduce the occurrence of quid pro quo harassment (Bell and McLaughlin, 2001). Agreeing there is no substitute for leadership at the top Schultz (2003:60) states that 'where top management treats women as valuable players and places them in equal positions of responsibility and authority throughout organisations, others are likely to follow suit'.

Further Exploration

Research has been conducted by Pryor, LaVite and Stoller (1993) examining how the measurement of sexual harassment proclivities in men might be used in personnel decisions. Selection tests which screen out management applicants who are highly likely to sexually harass would be extremely useful to organisations if they were really serious about creating a harassment free workplace. The tests could also be used to 'target some individuals for intensive training' (Pryor, LaVite and Stoller, 1993:80).

Further research needs to be conducted into sexual harassment training programmes to discover whether they are successful in changing misogynist attitudes. Misogynist attitudes and hostility toward women, along with a commitment to traditional role arrangements between the sexes appears to be a factor that harassers have in common (Fitzgerald et al, 2001). There seems little point in spending resources on a programme which may not make a difference. It seems clear that sexual harassment is frequently misunderstood by employers and employees alike and this issue must be addressed first so that will enable women to enter the workforce on a more equal footing with their male counterparts.

Despite advances which have been made in developing an understanding of the behaviour, few inroads appear to have been made into combating the incidence of sexual harassment. One of the Human Rights Commission's recommendations is that 'qualitative research needs to be conducted on the reasons why sexual harassment occurs in order to better develop preventative strategies' (Human Rights Commission, 2000: 50). This need is supported by the current research which shows the negative impact of the behaviour on women in the workplace and young women in particular.

The overall and most urgent implication, however, is that education and policies on sexual harassment are urgently required in all sectors of New Zealand society, in workplaces, organisations and even schools. Strategies to help prevent and cope with sexual harassment are required before women enter the workforce in the first instance while support and encouragement for those affected now, should be endorsed by all.

In conclusion, my own learning has been dramatically enhanced by undertaking this study. When I began I assumed that I would discover that a large percentage of organisations did not have policies and procedures to deal with sexual harassment. The study would therefore be a straightforward process in that I would simply recommend that Government should legislate to ensure that all organisations formulate sexual harassment policies as part of their employer responsibilities. These could be included with employment agreements and women would be protected in the workplace because of the newly constructed policies. I was surprised to discover that the policies are not the most critical requirement in preventing sexual harassment. Implementation is a key factor. I suppose like others I had assumed that if an organisation formulated a policy then they were clearly being proactive about preventing sexual harassment in their workplaces. This is not necessarily so. This research has demonstrated that women are not safe in the New Zealand workplace and that the mere existence of strong policies and procedures is not sufficient to protect women from sexual harassment. In identifying the importance of implementation of adequate policies and procedures, this research offers a significant contribution to feminist scholarship that has the potential to make a real difference in the lives of working women in New Zealand.

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2 Z v A WEC 21/93, unreported 3 September 1993

3 NID Distribution Workers IUW v AB Ltd (1988) NZILR 761

4 A v Z (Unreported, 29 September 1992, Wellington Employment Tribunal) 3 ERNZ 392

5 A v Foodstuffs (South Island) Ltd. (1993) 1 ERNZ 81

6 Managh v Crawford (1996) 2 ERNZ 392

7 Managh v Wallington, unreported WEC 61/ 96

8 X v AB Co Ltd. Unreported, AT 189/94

9 J v M, unreported, AT 235/94

10 B v NZ Amalgamated Engineering Union Inc (1992) 2 ERNZ 554

11 Z v A (1993) 2 ERNZ 469

12 Lenart v Massey University, (1997) ERNZ 253

13 NID Distribution Workers Union v A B Ltd (1988) NZILR 761

14 Slogget v Taranaki Health Care Ltd. (1995) 1 ERNZ 553

16 Turks Poultry Farm Ltd v Adkins (1996) 1 ERNZ 374

Information regarding these cases can be found in :

LexisNexis, (2005) Employment Law Guide. 7th Ed. Jasmine Brown (Ed) Wellington: LexisNexis Butterworths N.Z.

Copies of the actual cases can be obtained from the Employment Relations Service Library, Department of Labour, Wellington.

Appendix One
Letter of Introduction and Survey Questionnaire

[redacted]

Email. [redacted]

To the Human Resources Manager

I really appreciate your help. I am a mature extramural student working on a thesis to complete an MA (Women's Studies) through the School of Sociology, Social Policy, and Social Work at Massey University.

My area of interest is the policies and procedures involving sexual harassment in various workplaces.

To assist me in this exciting research it would be appreciated if you could respond to a series of nine questions that will be asked of approximately twelve organisations, depending on the response.

It is expected the answers should only take around ten minutes. The names of the organisations will be kept confidential.

I would be very grateful if you would assist my project by taking the time to respond to the questions below, thank you.

Yours Sincerely,
Lynore Weeks.

[redacted]

My thesis is being supervised by Dr. Jenny Coleman and Dr. Richard Shaw

Email: J.D.Coleman@massey.ac.nz
Email: R.H.Shaw@massey.ac.nz

Survey Questions

Please respond under the question eg. 1. Approximately how many people work for your organisation?

1. Around 250

1. Approximately how many people work for your organisation?

1.

2. What percentage of those are female?

2.

3. Is the most senior manager eg. CEO. MD. GM. male/female?

3.

4. Are you a public or a private sector organisation?

4.

5. Do you have a sexual harassment preventative programme operating in your workplace?

5.

6. If yes---does it include policies, procedures and a complaints process?

6.

7. How are these (in question 6) conveyed to the employees?

7.

Are there notices on the wall?

7.

Are they given the information verbally- in team meetings, inductions?

7.

Included in their employment agreement?

7.

8. It would be appreciated if you could forward me copies of your policies and procedures (via email is fine). These copies will not be used for anything other than this thesis and will remain confidential.

8.

9. May I contact you again if I have any further queries?

9.

If you have any questions you would like to ask me please don't hesitate to contact me. Again, thank you very much for your time

Lynore Weeks

[redacted]

Appendix Two
Policy and Procedures for Company # 3

HR Policies - Employment Relationships

Updated 11.02.02

Procedure for Harassment Complaints

Purpose

The purpose of the harassment complaints procedure is to provide an appropriate process to address any form of harassment in the workplace.

The Department demands high standards of behaviour consistent with the Department's Values, the Public Service and NZIS Code of Conduct and other guides to appropriate behaviour.

Under these harassment procedures, the definition of what constitutes harassment or sexual harassment is wider than the legal definition.

Behaviour that the Department deems as harassment may not necessarily be able to form the basis of a complaint of harassment to the Human Rights Commission or a personal grievance for sexual harassment.

Harassment can take many forms. It can be the result of simple thoughtlessness, or a significant lapse of judgement. It can even be a premeditated intent to harm another.

The harassment complaint procedure allows flexibility so that varied situations may be dealt with appropriately. The Department encourages employees to use the harassment process as soon as possible after harassment arises.

An investigation carried out under the formal harassment process meets the investigation requirements of the disciplinary process. Where a disciplinary outcome occurs as a result of a harassment complaint, this will be carried out under the Disciplinary Guidelines process.

The existence of this harassment procedure does not prevent employees using other processes that may be more appropriate.

Examples of these situations are:

- where the person being harassed has left the Department
- where an employee is being harassed by a client who is not subject to our internal processes
- when a complaint has not been made, but the organisation is aware that harassment is occurring.

In these situations, either the disciplinary process or an alternative process may be used.

Definitions

Defining Harassment

Harassment is an unreasonable pattern of behaviour directed against the receiver, which has a detrimental effect upon him or her. It includes degrading behaviour ranging from verbal abuse or threats to actual physical violence. Harassment is an inappropriate expression of power. Racial harassment is included in this definition.

Harassment may occur:

- in the workplace
    - among co-workers
    - where a manager or supervisor uses their authority inappropriately
- when dealing with clients
- during work-related social situations.

Defining sexual harassment

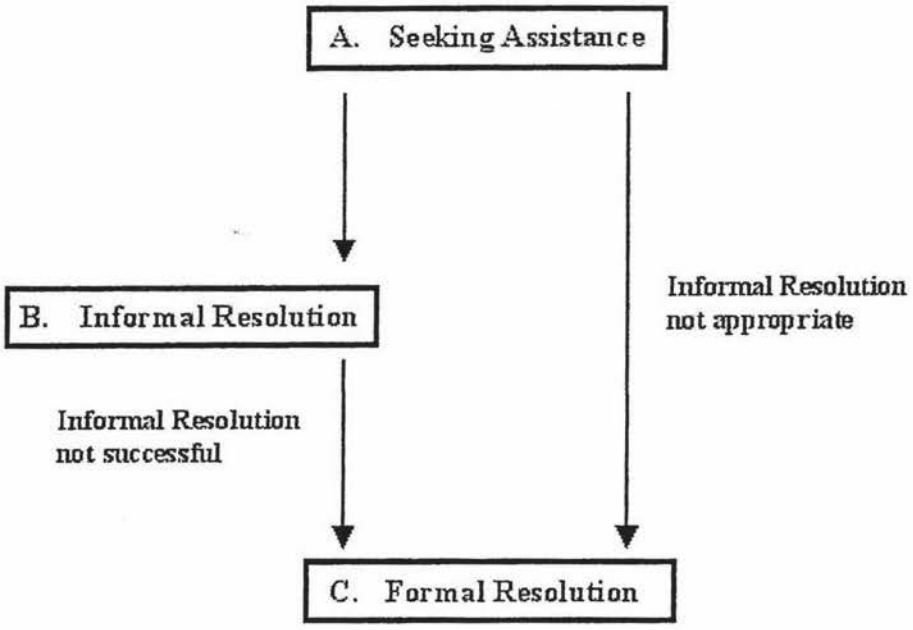
The Employment Relations Act defines sexual harassment as:

- verbal or physical behaviour of a sexual nature which is unwelcome or offensive to the receiver (whether or not it has been conveyed to the respondent) and which is either repeated or of such a significant nature that it has a detrimental effect on the employee's employment, job performance or job satisfaction: or
- where an employer or a representative of an employer makes a request for any form of sexual activity which contains an implied or overt:

- promise of preferential treatment, or
- threat of detrimental treatment, or
- threat about the receivers present or future employment status.

Sexual harassment may occur between members of the same or opposite sex.

Harassment Process



Harassment Procedure Index

Part A: Seeking Assistance

Obtaining information about the procedure and options within it.

Part B: Informal Resolution

Use when harassment is not of a serious nature and complainant feels able to approach the harasser either alone or with support. Outcomes include:

1. informal options pursued and matter resolved
2. matter not resolved - proceed to Formal Resolution Stage 1.

Part C: Formal Resolution

Informal resolution has not been successful.
Use formal resolution when:

- harassment is serious
- complainant fears reprisals
- a manager is involved.

Stage 1 - Establishing the Complainant's Case

- lodging a complaint
- interviewing complainant
- assessing complaint:

- harassment process not appropriate - identify alternative process
- harassment process continues to Stage 2

Stage 2 - Beginning the Investigation Process

- appoint investigator
- establish interview guidelines

Stage 3 - Establishing the Respondent's Case

- inform respondent of complaint
- interview respondent to establish level of agreement:
  - moving to resolution
  - proceeding with formal investigation

Stage 4 - Formal Investigation

- interview respondent
- identify and interview witnesses
- re-interview respondent/complainant
- evaluation of investigation material

Stage 5 - Finding and Resolution

- investigator's finding
- investigator's report
- resolution
  - finding - complaint has no substance
  - finding - complaint cannot be established
  - finding - complaint has substance
- personal files
- monitoring resolution

Seeking Assistance

Employees who feel they are being, or have been, harassed may approach any manager, Service HR, EAP Services or workplace chaplain for confidential advice and information about their options.

All discussions are confidential and the decision whether to seek informal resolution or make a formal complaint is the employee's alone.

Informal Resolution

Informal resolution is a low-key way of resolving harassment.

Where the harassment is settled through informal resolution there is no further action taken and no records are kept of the matter.

Informal resolution may not be appropriate if the complainant fears reprisals, if the harassment is advanced or if it concerns someone in authority.

Wherever possible, an employee who believes that he or she has been subject to harassment should raise their concern with the person responsible and seek informal resolution by:

- privately telling the person that their behaviour is offensive and must stop
- writing to the person in a sealed letter marked 'personal and confidential', advising that a complaint will be made if the behaviour does not stop
- speaking to the person in the company of a third party support person, e.g. the manager, Service HR, chaplain or colleague.

Where informal resolution is unsuccessful or is inappropriate, an employee may lodge a complaint of harassment to be addressed under the formal resolution process below.

Formal Resolution

This process is set out in the *Harassment Process diagram*.

The formal resolution process begins when an emloyee lodges a complaint.

The manager who receives the complaint is responsible for ensuring the harassment investigation process is set in motion. Service HR is available to assist with this and should be consulted.

Stage 1: Establishing the Complainant's Case

1.1 Lodging a Complaint

- Either a written or verbal complaint of harassment may be made to any manager. The complaint should include:
    - the identity of the alleged harasser (respondent)
    - where and when the alleged harassment occurred
    - the nature of the alleged harassment.
- The manager receiving the complaint must ensure that the complainant understands the Harassment Procedure.
- The complainant receives a copy of the procedure and has the opportunity to read through it and ask questions. It is important to ensure that the complainant understands the different options available for resolving the situation.
- Complaints must be dealt with in a timely manner and with sensitivity and confidentiality. Investigators must show respect for the rights of both complainant and the respondent.
- The complainant must be willing to provide full information to assist in resolving the complaint. All complaints should be formally acknowledged.
- Before conducting the initial interview, the manager should consider the complainant's need for privacy and support. The complainant may find it distressing to recall events and may take some time to recount his/her story.
- The manager should assure the complainant he or she will be provided with an appropriate environment to tell his or her story.
- The complainant should also be assured that the Department takes complaints seriously and will promptly address them. However, they should also be informed that the Department has a responsibility to thoroughly investigate complaints and obtain the respondent's version of events.

1.2 Interview Complainant

Whether the complaint is in writing or verbal, the complainant will be interviewed to gather information about the complaint.

The information gathered in the interview should include:

- the facts the complainant is alleging
- how the alleged harassment has affected the complainant
- whether anyone else can provide information about the alleged harassment, such as:
    - a person the complainant discussed the alleged harassment with
    - any witnesses to the alleged behaviour
    - any person who, because of their working or personal relationship with the complainant, or because of their physical location, might hold relevant information
    - any physical evidence of harassment, including email messages or other written material.

The complainant should be advised that his/her account of events must be questioned closely, to ensure fairness to both parties.

The information gathered in this interview will be used to:

- assess whether the complaint falls within the harassment complaints procedure
- write a report on the allegations so the respondent may respond. The written allegations will be verified with the complainant.

1.3 Assessment of Complaint

- Following the initial interview an assessment is made as to whether the complaint constitutes either harassment or sexual harassment as defined by the Department's procedure or by law.

- The interviewer, in consultation with Service HR, makes this assessment. It may also be necessary to consult with Legal Services and/or relevant Service managers.

- If the complaint does not fall within the scope of the harassment procedure, the allegations, if proven, may constitute some other form of misconduct. In this case other avenues such as the disciplinary procedure may be applied.

1.4 Outcome of Assessment of Complaint

- If the complaint does fall within the procedure and the interviewer believes that the self-help options may be of assistance, these options will be discussed with the complainant. This will ensure that consideration is given to resolving the matter as close to the source of the complaint as possible.

- If the formal resolution process is deemed appropriate, the complainant will be advised that the Department's harassment investigation procedure will proceed.

Stage 2: Beginning the Investigation Process

The investigation process aims to determine whether the complainant's allegations can be established and what actions are necessary to resolve the situation.
Based on the nature of the complaint, consideration should be given to:

- whether the parties need to be separated

- whether the respondent should be suspended (in serious cases only)

- arranging temporary relocation or leave during the investigation

- what can be done to reduce the possibility of the alleged behaviour recurring

- whether any harm to the complainant or respondent could occur

- ensuring a safe working environment

- what support the complainant and the respondent need during the process

- who should investigate the complaint.

The investigator may be the person who carried out the assessment, or another person who meets the investigator criteria. The person(s) may be external to the Department if this is necessary to provide expertise or impartiality.

2.1 Appointing an Investigator

Each Service Unit is responsible for assessing the complaint and assigning investigators to carry out the process.

When deciding who should investigate a complaint, consideration will be given to the potential investigators:

- familiarity with harassment issues and the Department's resolution process

- ability to be impartial

- availability to complete the task in the likely timeframe

- understanding of investigation processes.

An investigator may be either internal or external to the Department. The Department will maintain a list of suitable investigators.

If the investigator did not conduct the initial assessment interview with the complainant, the investigator may need to meet the complainant to discuss the complaint and to prepare for the interview with the respondent.

All interviews conducted with the complainant, respondent or witnesses, will initially be carried out separately in a suitably private environment.

Where there is more than one complainant or respondent, interviews will be conducted separately.

The information provided in these interviews will be recorded and verified with the interviewee. Disclosure of information will be on a need-to-know basis. Witnesses will be advised that evidence will be disclosed to the respondent and/or the complainant for their response.

Subsequent interviewing of the complainant and respondent together may be necessary. This tests the credibility of the parties or the accuracy of their memory of events. However, the decision to hold a joint interview involves many difficult issues and should only be made after receiving appropriate HR or legal advice.

Stage 3: Establishing the Respondent's Case

3.1 Inform Respondent of Complaint

Because disciplinary action, including dismissal, is a possible outcome where an allegation is proven, the respondent's rights in the harassment investigation process are the same as in the disciplinary procedure.

The respondent has the right to:

- know of the complaint
- know of the possible implications arising from the complaint
- be able to respond to the specific allegations being made
- know of their right to representation during the investigation process
- a fair and impartial investigation
- a fair outcome.

The respondent should be informed in private of the complaint and be:

- provided with a copy of the allegations
- advised of the identity of the complainant
- advised that the allegations, if proven, may constitute misconduct or serious misconduct and result in disciplinary action being taken
- given a copy of the harassment procedure
- informed about the possible processes applicable to the complaint with reference to the harassment procedure document
- offered support.

The respondent will be advised that the investigator assigned to the complaint will interview him/her to hear their response to the allegations. The respondent will also be advised that he/she may be represented in this interview.

A time will be arranged for the investigator to interview the respondent. Reasonable notice will be given to enable the respondent to seek advice and arrange representation.

3.2 Interview with Respondent

- The initial interview with the respondent is to determine whether there is broad agreement that the alleged events took place and whether there is broad agreement those events constituted harassment.
- The investigator will conduct an interview with the respondent to hear their response to the specific allegations and to establish whether the respondent agrees that the alleged events took place.
- If the respondent agrees the alleged events took place, the investigator will establish whether the respondent also agrees that the events constituted harassment or sexual harassment.
  The key features of sexual harassment are that the behaviour:
- was of a sexual nature, and
- was upsetting or offensive to the complainant at the time, and
- has been detrimental to the complainant since.

The key features of harassment are that the behaviour:

- formed an unreasonable pattern, and
- was directed against the complainant, and
- has been detrimental to the complainant since.

3.3 Moving to Resolution

Where there is general agreement that:

- the events took place, and
- the actions constituted harassment
- it is unlikely that further investigation is necessary.

A report should be compiled based on the interviews with the complainant and respondent, setting out the allegations and the response.

Where there is general agreement about the allegations, the matter may be resolved by mediation or a facilitated meeting. This approach may be appropriate where the harassment is minor and the complainant is not seriously harmed. This approach is unlikely to be appropriate for serious harassment, such as physical contact of a sexual nature.

The purpose of this approach is to provide a forum where the parties can exchange views and understand each other's point of view.

The investigator's report will be made available to the mediator/facilitator.

Resolution through mediation can include an agreement to:

- cease particular behaviours
- undertake counselling
- apologise
- develop protocols for appropriate working relationships.

If this approach successfully achieves resolution, the only record kept on the complainant and respondent's personal files will be the agreements reached at mediation.

Where mediation is not agreed or is unsuccessful, the investigator will compile a report based on the interviews with the complainant and the respondent. The report will make a finding on the complaint and a recommendation on actions to resolve the matter. Any recommendation for disciplinary action will be pursued through the disciplinary procedure.

3.4 Proceeding with Formal Investigation

Where it is not agreed that the alleged events took place (or that the actions constituted harassment) the investigation continues on a formal basis.

The formal investigation process seeks to establish what events occurred and seeks evidence to support or refute the allegations being made. The formal investigation will also examine whether the actions constituted harassment or, alternatively, whether the complaint might be considered exaggerated or vexatious.

The respondent and complainant may be re-interviewed along with other people who may have relevant information. The decision to continue the investigation will be made jointly by the investigator and Service HR and/or Legal Services.

Stage 4: Formal Investigation

4.1 Interview Respondent

The information, which should be sought from the respondent includes:

- which allegations he or she is denying
- any alternative explanation he or she has for the alleged behaviour
- his or her version of events
- why he or she believes the complainant would make a false complaint
- who else might provide information relevant to the investigation
- any physical evidence that may support the respondent's version of events.

The respondent should also be given the opportunity to respond in writing to the allegations if he or she wishes to do so. The respondent should be given a reasonable period of time to complete this response.

4.2 Identify and Interview Relevant Witnesses

Interviews with other relevant people and witnesses may be necessary to accurately establish the factual basis of the complaint. Relevant people will include those identified by both the complainant and the respondent. These people should be interviewed to verify or contradict events described by either the complainant or respondent. These people may also provide other relevant information, such as their observations of the working or other relationship between the two parties.

In interviewing these people, the investigator should state only that he or she is investigating a complaint of harassment, and not provide any details of the actual allegation or response. Issues to be covered include:

- whether the complainant spoke to anyone else about what was going on
- the nature of the respondent's and complainant's employment relationships with other employees
- whether any other employees members had encountered similar behaviour from the respondent

- whether anyone witnessed anything relating to the alleged incidents, or has any other information relevant to the investigation.

When interviewing witnesses it is important to establish clearly what they saw or heard, rather than their opinions.

It may be necessary to contact people who have left the organisation to probe their knowledge of the situation and possibly their reason for leaving.

4.3 Re-interview Respondent or Complainant

Where the witnesses provide information that is either beneficial or detrimental to the complainant's or the respondent's case, the complainant and/or respondent will need to be re-interviewed to seek their comments/explanations about any new allegations or inconsistencies.

4.4 Evaluation of Investigation Material

After the investigator has interviewed the complainant, respondent and witnesses, he or she will evaluate the evidence gathered.

For sexual harassment, this evaluation should determine, on the balance of probabilities, whether the alleged behaviour:

- occurred
- was of a sexual nature
- was upsetting or offensive to the complainant at the time, and
- has been detrimental to the complainant since.

For harassment this evaluation should determine, on the balance of probabilities, whether the alleged behaviour:

- occurred
- was an unreasonable pattern of behaviour
- was directed against the complainant, and
- has been detrimental to the complainant since.

It may be necessary to assess the reliability of the evidence.

It may be difficult to establish hard proof of what happened because harassment can take place when no one else is present.

Evidence of changes in behaviour and any unlikely inconsistencies between the allegation and response may enable the investigator to make a decision based on the balance of probabilities.

Where both the complainant and the respondent have made conflicting statements, the investigator may have to decide which person is more credible. If the investigator is unable to make a decision based on the evidence available, he or she will find that the complaint cannot be established.

Stage 5: Finding and Resolution

5.1 Investigator's Finding

The investigator will find one of the following outcomes:

- there is no substance to the complaint, because:
    - the alleged behaviour did not occur, or
    - the alleged behaviour did occur, but was not unwelcome or offensive to the complainant at the time, or
    - the alleged behaviour did occur, but it was not unreasonable behaviour directed at the complainant
- the complaint cannot be established, where there is some evidence that the behaviour complained of occurred, but the investigator is not confident in finding substance
- there is substance to the complaint and it is upheld.

5.2 Investigator's Report

The investigator's report will:

- set out the complaint
- set out the responses to the complaint

- include the evidence that supports or refutes the complaint
- include an assessment of the evidence and the investigator's finding.

The investigator may also make a recommendation on the actions required to resolve the matter.

The report will be available to both the complainant and the respondent for their comments. The investigator may then make changes to the report based on these comments. A final copy of the report will be available to the parties. All releases of reports will be subject to confidentiality agreements.

5.3 Resolution

The investigator's finding and report will determine the type of action necessary to resolve the complaint. Where misconduct or serious misconduct is involved and disciplinary action is contemplated, this will be carried out under the disciplinary guidelines. These guidelines provide further information on decision-making requirements.

If the respondent is cleared of the allegations:

- they will be advised in writing by the appropriate manager
- this letter should not go on the employee's personal file, unless as the result of a further recommendation (for example, where the case has received media attention)
- the complainant should be informed of the outcome of the investigation in writing by the Manager or Service HR
- appropriate disciplinary action may be taken against the complainant under the disciplinary process, if the investigation proves the complaint was maliciously false.

If the complaint cannot be established due to a lack of evidence:

- the respondent must be cleared of any allegations in writing from the appropriate manager. It may be appropriate to include in the letter a reminder of the Department's harassment policy. The letter should be delivered in person and in private by the local manager.
- the complainant should be advised by letter from the manager or Service HR of the outcome of the investigation. The letter should be delivered in person and in private. The letter should include a commitment to ensuring the safety and protection of the complainant from harassment.

If the complaint is found to have substance:

- the investigator's report and recommended actions are submitted to the manager who has the delegated authority to address the matter
- the manager decides on what action is necessary to stop the harassment and prevent it recurring. This could include disciplinary action. Disciplinary action is taken under the disciplinary procedures.
- every effort will be made to relocate the respondent rather than the complainant, if relocation is necessary. Employees will be protected from intimidation, victimisation or discrimination for filing a complaint or assisting in an investigation. Retaliating against an employee for complaining about harassment is a disciplinary offence that may lead to dismissal.

5.4 Personal Files

The matrix below is a guide to record keeping on personal files following the formal resolution of a harassment complaint.

Finding	Complainant	Respondent
No substance to complaint	• copy of letter advising outcome of investigation • copy of any action arising from a vexatious complaint • reference to the confidential file held by Service	• copy of letter advising outcome of investigation • reference to any actions arising from vexatious complaint relevant to the respondent
Complaint not established	• copy of letter advising outcome of investigation • any monitoring or other relevant action resulting from the complaint • reference to the confidential file held by Service	• copy of letter advising outcome of investigation • any monitoring or other relevant action resulting from the complaint • reference to the confidential file held by Service
Complaint has substance	• copy of letter advising outcome of	• copy of letter advising outcome of

	investigation • copy of any actions arising relevant to the complainant • reference to the confidential file held by Service	investigation • copy of any disciplinary action taken • reference to the confidential file held by Service
Mediation	• copy of any agreements reached at mediation	• copy of any agreements reached at mediation

5.5 Monitoring Resolution

The Manager and the Service will monitor the actions required to resolve the complaint.

Service Records

The Service will retain all records from harassment complaints. The guidelines for record-keeping under these Harassment Procedures aim to ensure that:

- adequate management information is available to support the Department's harassment prevention policy and procedures
- the privacy of individuals is protected where necessary.

Services will record:

- the name of the complainant
- the name of the respondent (alleged harasser)
- the nature of the alleged harassment
- the name of the investigator assigned to the case
- the evidence obtained to support or refute the allegations
- an assessment of the reliability of the evidence (if the assessment is available)
- whether the complaint was resolved informally or formally
- in the case of formal resolution, whether the complaint was upheld, not upheld or not established.
- the nature of any action taken.

Documents to be kept include:

- the written complaint
- the investigator's report
- the (General) Manager's decision
- any record of disciplinary action.

Confidentiality of Records

- Case files and general files relating to complaints of harassment will be kept secure. Access to those files will be restricted to employees involved in the process or monitoring it.
- To minimise the risk of sensitive personal information being accidentally disclosed, interviewers should not retain "personal" files or other information relating to harassment cases.

Retaining Records

- Records will be kept where formal complaints are made and investigated.
- In cases where it is impossible to determine if a complaint has substance, details of the allegations should still be kept so that the situation can be monitored.
- The period of time that records will remain on personal files depends on the seriousness of the incident and the finding/outcome of the investigation. The investigator may make a recommendation on the time that a record should remain on file subject to the behaviour not recurring.

- The Department needs to balance the conflicting interests of providing a work environment free from harassment and of allowing employees to put past incidents behind them.

Responsibilities

Services

Each Service will:

- ensure that their employees and managers are aware of the issue of harassment and sexual harassment and ensure they know the procedure for resolving these types of disputes and complaints
- meet the costs of the harassment procedure and any outside assistance such as hiring an investigator, mediator, facilitator, coach or counsellor.
- monitor actions arising from complaints
- retain securely the records resulting from harassment complaints that are formally investigated.

Complainant

The complainant is responsible for providing full information to assist resolving the complaints and to participate in the resolution process in good faith.

Timeframe

Harassment complaints need prompt action. The maximum time frames for completing stages of the complaints-resolution process are:

- one month between the complaint and the investigator's report
- two weeks between the investigator submitting his or her report and the manager's decision on disciplinary action.

If disciplinary action is to be implemented, this should be done as soon as possible.

Costs

The Service will meet all costs of the investigator, investigation and other assistance.

Reference

Harassment is unlawful under the following Acts:

Human Rights Act 1993 - Unlawful Discrimination
The Human Rights Act makes sexual harassment, racial harassment and inciting racial disharmony unlawful in relation to a variety of areas of public life, including employment (also unpaid work) and in relation to employee recruitment.

Employment Relations Act 20001
An employee who is sexually harassed at work may have grounds to pursue a personal grievance under the Employment Relations Act 2000. The employee may also have grounds where there is 'general' harassment or racial or other discrimination, to claim for unjustifiable action or dismissal, including constructive dismissal.

Harassment Act 1997
The Harassment Act offers both civil and criminal remedies for harassment that falls within the Act's definition of harassment.

Crimes Act
Harassment is unlawful under the Crimes Act if physical assault is involved.

Last update: Human Resources Forum May 2000
Approved by: Management Board May 2000

Appendix Three

Survey Responses for Company #4

Survey Questions

Please respond under the question eg. 1. Approximately how many people work for your organisation?

1. Around 250

1. Approximately how many people work for your organisation?

1. Approx 550

2. What percentage of those are female?

2. Estimation 60% – 70%

3. Is the most senior manager eg. CEO. MD. GM. male/female?

3. Female

4. Are you a public or a private sector organisation?

4. Public

5. Do you have a sexual harassment preventative programme operating in your workplace?

5. Yes

6. If yes---does it include policies, procedures and a complaints process?

6. All of the above

7. How are these (in question 6) conveyed to the employees?

7. A file on the internal intranet, which is not accessible with ease for regional employees

Are there notices on the wall?

7. No

Are they given the information verbally- in team meetings, inductions?

7. No but at my insistence they ("People Development Services") did agree to ~~a session~~ putting on a session.

Included in their employment agreement?

7. Something on the contract about "fair + equal employer abiding by State Sector Act (XXX)"

8. It would be appreciated if you could forward me copies of your policies and procedures (via email is fine). These copies will not be used for anything other than this thesis and will remain confidential.

8. ✓

9. May I contact you again if I have any further queries?

9. Yes

If you have any questions you would like to ask me please don't hesitate to contact me. Again, thank you very much for your time

Lynore Weeks

Ph. 03 3295433 Mobile:0272848111

Appendix Four

Policy and Procedures for Company # 4

SEXUAL HARASSMENT

1. POLICY

Sexual harassment is prohibited by sections 62 and 69 of the Human Rights Act 1993 and is grounds for a personal grievance under sections 103,108 and 117 of the Employment Relations Act 2000. The State Sector Act 1988 requires the School to be a good employer and to have EEO programmes in place. An essential component of any EEO programme is to have an anti sexual harassment programme. It also ensures the health and safety of their employees.

Sexual harassment in the workplace and school coummuity is unlawful and will not be tolerated by the School. It interferes with the rights of individuals to enjoy and benefit from the educational, social, recreational and employment opportunities offered by the School. Appropirate action will be taken against any employee who offends.

The Board supports a programme which will:

- Raise awareness in the School community of sexual harassment in its many forms
- Empower individuals with strategies to deal with sexual harassment
- Create a climate of trust within the School that encourages individuals to feel comfortable about sharing concerns with an appropriate person
- Provide support and appropriate action should sexual harassment occur

Sexual harassment refers to unwelcome or offensive verbal, written, visual or physical behaviour of a sexual nature, which causes another person detriment or distress.

2. DEFINITION

Sexual harassment is physical, visual, written or verbal attention of a sexual nature by one person (or group) to another person (or group). This attention is unwelcome or offensive to the recipient(s) and is so serious or persistent that it has a detrimental effect on the conditions of an individual's employment, work performance, work satisfaction or work opportunities.

It can also have a cultural element if the words or actions of people you work with are sexually offensive and have cultural overtones.

Cross-culturally, customs and certain behaviours are different. While behaviour may not be offensive in one culture, it can be perceived as being uncomfortable/offensive in another culture.
It should be noted that the School may choose not to investigate claims older than one year due to practical difficulties of locating witnesses and verifying the claim.

Sexual Harassment is not:
Occasional compliments, friendships which may or may not be sexual between consenting individuals, mutually enjoyed jokes, behaviour based on mutual attraction or developing relationships between consenting parties.

It is important for an employee to check their behaviour is not offensive. It is **unacceptable** to assume consent, because a person has seemingly "gone along with the behaviour" and not overtly expressed their objection.

Sexual harassment includes:
A range of behaviour/attention of a sexual nature. The following are some examples of sexual harassment:

- sexual or smutty jokes
- threatening a person's career or salary if sexual favour is refused
- displaying offensive pictures, posters, screen savers or graffiti
- offering career or salary opportunities in return for sexual favour
- repeated comments about a person's alleged sexual favours or private life
- derogatory statements or comments about a person's sexual orientation
- sexual assault and rape.
- Sex-orientated jokes, cartoons, posters or pin-ups
- Offensive questions, comments, abuse, jeering
- Unwanted and deliberate contact, touching, stroking, pinching or hand and body gestures
- Inappropriate questions and comments about one's private life
- Suggestive remarks
- Persistent unwanted social invitations
- Intruding on someone's personal space

As part of the School's commitment to preventing sexual harassment, no written or pictorial material of a sexual nature should be displayed or misused in the workplace. Sexual harassment is usually about the misuse of personal power or authority.

Who does it happen to?
It can happen to anyone:

- Women by men
- Men by women
- Between members of the same sex

Homosexual people (or those thought to be so) have also been subject to harassment due to attitudes towards different sexual orientation.

Individuals should not presume to know how behaviour of a sexual nature is perceived by others.

3. RESPONSIBITIES

The School
The School is committed to providing a safe working environment for all employees, free from sexual harassment. Under no circumstances will the School tolerate sexual harassment of employees by their colleagues or by customers or clients of the School. The School is also committed to providing sexual harassment education in the form of written guidelines for all employees. Sexual harassment can cause low staff morale, increase inefficiency, decrease productivity, increase absenteeism and contribute to staff turnover.

The School has arranged, through Workplace Support, to provide an independent group of trained contact people to be available if staff wish to discuss a sexual harassment concern. They may be contacted through the onsite representatives f[illegible]

The School also provides an informal and formal complaints procedure, to deal with complaints promptly and fairly. It is emphasised that all discussions and investigations will be conducted in the strictest confidence. The School's internal procedure does not bar the employee from taking a personal grievance or reporting the matter to the police.

Managers
Managers have an important role in ensuring sexual harassment does not occur in the workplace. This responsibility includes:

- Modelling positive behaviour
- Informing staff that sexual harassment is unacceptable
- Monitoring the workplace
- Ensuring that complaints are handled carefully and sensitively

Managers are expected to intervene if they become aware of or suspect inappropriate conduct.

Employees
Staff are expected to familiarise themselves with the procedures available to deal with complaints Employees are encouraged to use the School's Sexual Harassment procedures if they have a sexual harassment concern or complaint. The School assures staff of confidentiality and protection from victimisation.

If an employee feels he or she is being harassed. relevant information on available options may be obtained from the onsite representatives
or off site contacts . who will listen carefully and respond in strict confidence. No one, who does not wish to, will be required to make a complaint. If after speaking to an appropriate person, the complainant feels confident enough to approach the alleged harasser(s), they may approach the harasser(s) alone or with a contact person or manager. The complainant will inform the alleged harasser(s) that they do not like their behaviour and it must stop.

4. PROCESS AND PROCEDURES

The aim of these procedures is to:

- resolve the issues fairly and effectively
- eliminate the harassing behaviour
- prevent harassment from happening again
- resolve matters as close to the source as possible
- ensure the person who has been harassed is safe, able to continue working in a "normal" environment free from further harassment, and does not suffer any disadvantage as a result of taking action to stop harassment
- ensure the alleged harasser does not harass again.

It is the individual's decision as to whether they would like to make a formal complaint. Either or both parties may request Whanau or representaive support at one or all stages of the following process.

The process and procedures are

1. Self Help
The employee may:

- tell the person, or persons, in private that their behaviour is offensive and request that it stop;
- write to the person, or persons, about their behaviour, sealing and marking the letter "personal and confidential";
- speak to the person, or persons, in private, in the presence of the Manager Human Resources or a member of the Combined Management Team.

Since allegations of sexual harassment are extremely serious it is important to keep any information confidential to those directly involved.

2. Informal Intervention
The employee may approach a member of the Combined Management Team to intervene. This person must act quickly, discreetly and fairly, and ensure that all discussions and any investigations are conducted in strictest confidence and according to the procedures laid down by the School. It is the role of the Combined Management Team member to explain relevant procedures to the employee, and allow the employee to choose whether or not to proceed with this option.

The complainant may request the Workplace Support contact person to speak to the alleged harasser(s) on their behalf. Prior to meeting the alleged harasser(s), the complainant should express the outcome they desire to the chosen contact person. The contact person will relay the allegations to the alleged harasser(s) of the allegations and allow that person to reply.

If the alleged harasser(s) acknowledges that their behaviour was inappropriate then a solution between the parties may be reached.

If the alleged harasser(s) denies the allegation, the informal intervention will stop. The complainant may consider other alternatives.

3. Formal Complaint
a. Complaint to Manager in Writing
If self help or informal intervention have not worked or if the allegation is, in the employee's view, serious enough to warrant formal disciplinary action, the employee should submit a detailed written complaint to the Chief Executive Officer. Appropriate disciplinary action will be taken if investigation shows the complaint to be justified.

b. Complaint to Employee's Representative
As sexual harassment may be grounds for a personal grievance, the complainant may wish to discuss the complaint with his or her representative. The alleged offender may also have representation.

Anyone may discuss any issue relating to sexual harassment, big or small, in confidence with the specified employee, supervisor, manager or employee's representative and will not be victimised for doing so. Victimisation of a complainant (should it occur) will be treated very seriously by the School.

4. Mediation
This option involves the two parties consenting to meet in the presence of a trained mediator to discuss the complaint, in an attempt to find a mutually agreeable solution.
Mediation should only be attempted when there is mutual agreement on the main facts.

If the complainant requests this option, they will discuss the request with the contact person. The Sexual Harassment Co-ordinator will select an internal mediator, mutually agreeable to both parties.

5. Formal Complaints - Internal

Formal complaints are required to be in writing. The complainant will inform their;
a) Manager/senior manager as appropriate, and
b) Sexual Harassment Co-ordinator that they would like to make a formal complaint.

A written statement of the complaint will be provided to the alleged harasser(s). The School will investigate and resolve complaints as soon as it is possible to do so.

An indendent investigator will be appointed for formal sexual harassment complaints. This will generally be a member of CMT who is not associated with either of the parties and has not been involved in the allegations to date.

Upon receipt of a formal complaint the School will commence an investigation immediately in a timely and confidential manner, in accordance with the rights of natural justice eg fair standards. The investigation will be conducted impartially, promptly and fairly. Both parties will be informed in detail of the investigation process. This includes:

- Current employees, possibly ex-employees, of the School may be interviewed. There is also the possibility that people external to the School will be interviewed
- All allegations and counter allegations will need to be substantiated
- In the event that both parties present plausible explanations concerning the allegation/s, a decision will be made based on the **most probable** account of events
- An interpreter or support whanau may be present during the interview
- One or both parties may be placed on special leave with pay during the investigation.

All discussions and investigations into a complaint of sexual harassment will be conducted in strict confidence.

The complainant does not have to face the alleged harasser(s) to make an allegation. The complainant and respondent will be interviewed by the investigator separately and in private.

The complainant and alleged harasser(s) will be advised not to discuss the complaint openly. The complainant and alleged harasser(s) will be warned about defamation and victimisation.

In all cases where a complaint is substantiated, management will ensure that the harassment ceases immediately and that the complainant is not made to suffer in any way for having made the complaint. It is considered that this is management's responsibility.

A person making a malicious complaint will be dealt with under the School's Disciplinary Policy.

The investigating officer may interview witnesses or other relevant people referred to by the complainant and/or alleged harasser(s). The investigator will ensure that the actual allegations are not disclosed, but will inform the witnesses that a formal investigation is being carried out.

The procedure that will be followed when investigating a complaint will be:

a) The investigator will interview the complainant. The complainant will indicate the outcome they would like if the complaint is upheld.

b) The investigator will interview the alleged harasser(s).

c) Other people within and outside the School may be interviewed.

d) A written report is presented by the Investigator to the Grievance Committee (3 members of CMT who are not associated with either of the parties and have not been involved in the allegations to date).

e) The Grievance Committee will form an opinion based on the **balance of probabilities.**

f) A recommendation will be made to the Chief Executive Officer, who will make the final decision as to if the allegations are upheld. The complainant and alleged harasser(s) will be notified in writing of the decision.

g) The harasser will be invited to provide any information that should be considered in the final decision making process as to the issue of penalty.

h) The Chief Executive Officer will make the decision as to the appropriate penalty and then convey it to the harasser and the complainant.

(i) Should a complaint be considered to have substance the consequences for the harasser(s) could include any, or a combination, of the following:

- verbal or written warning
- transfer out of the complainant's work area if this is possible
- demotion
- attendance at a therapy group as a condition of ongoing employment
- dismissal

(ii) Compensation for the complainant should the complaint have substance, may include:

- reimbursement of sick leave or annual leave taken as a result of sexual harassment
- removal of any detrimental comments placed on the complainants personal file during the time of harassment where the complainants work performance has been affected by the harassment
- a written or verbal apology from the respondent
- payment of any doctor's fees or counselling fees up to a maximum cost of $300 incurred by the complainant as a result of stress/ill health.

This list is not exhaustive.

6. Formal Complaints - External

People have the right to choose an external mediator or external avenue for a complaint, eg Human Rights Commission, Police etc. If so, the employee can take proceedings under the Employment Relations Act or the Human Rights Act but not both.

Appendix Five

Policy and Procedures for Company # 6

Harassment Policy

Objective:

- To eliminate racial and sexual harassment from the workplace.

Summary:

- The Employer accepts the responsibility for ensuring racial and sexual harassment are eliminated from the workplace and that a system is required to respond if it does occur.

Applicable to:

- All Employees.

Key Points:

- The Employer will not tolerate any form of racial or sexual harassment. It is offensive and threatening, affects morale and the effectiveness of staff and the right of people to enjoy a good work environment.
- Sexual harassment is verbal, visual or physical material or behaviour of a sexual nature that is unwelcome or offensive to the recipient and is either repeated or of such a significance that it has a detrimental effect on that person.
- Racial harassment is verbal, visual or physical material or behaviour that expresses hostility against, or brings into contempt or ridicule, any other person on grounds of their colour, race or national or ethnic origin, and which is either repeated or of such significance that it has a detrimental effect on that person.
- Sexual harassment includes, but is not limited to, the behaviour types listed;
    - Sex orientated jibes or abuse
    - Offensive gestures or comments
    - Unwanted and deliberate physical contact
    - Requests for sexual activity which includes an implied or overt promise or threat concerning present or future employment
    - The use of posters/pictures of a sexual or intimate nature, obscene phone calls
    - Persistent and unwelcome social invitations, phone calls or mail
- Harassment may occur :
    - Among co-workers or peers, or
    - In dealing with the public, or

- When a supervisor uses a position and authority to take advantage of another employee or to potentially affect in any way the career, salary or job of that employee.

- Harassment is a form of employment discrimination and contravenes EEO policy, the Human Rights Act 1993 and the Employment Contracts Act 1991.
- Harassment complaints will be taken seriously and all Supervisors must take prompt action, including immediate advice to the Company's Human Resources Manager.
- Cultural differences in the interpretation of words, gestures or behaviour must be taken into account when investigating complaints.
- Where any complaint of harassment is received investigative procedures must follow these guidelines:(This takes into account the sensitive nature of sexual harassment and its potential effects on the complainant).
    - Any complaint should be referred either by the Complainant or fellow staff member to their General Manager or the Company's Human Resources Manager.
    - A person with tact and sympathy, from either within the Company or from outside, will be appointed to inquire into the circumstances.
    - Any inquiry will be attended to promptly and all the necessary facilities will be provided.
    - The complainant's wishes in respect of privacy or confidentiality, and whether the police should be involved, will be taken into account.
    - The complainant will be interviewed to obtain her/his point of view of events.
    - Any witnesses will be interviewed to obtain their view of events
    - The person complained of will be interviewed to obtain her/his view of events.
    - The primary aim of the investigation is to resolve the complaints, establish if counselling for either or both parties is required and to decide if disciplinary action is required.
    - Full records will be kept of all interviews in the event of further action being required, details of which may need to be disclosed to the other party(s), especially if disciplinary procedures are to be followed.

Appendix Six

Survey Responses and the Policy and Procedures for Company * 2

Survey Questions

Please respond under the question eg. 1. Approximately how many people work for your organisation?

1. Around 250

1. Approximately how many people work for your organisation?

1. 550

2. What percentage of those are female?

2.55%

3. Is the most senior manager eg. CEO. MD. GM. male/female?

3.MALE

4. Are you a public or a private sector organisation?

4.Private sector

5. Do you have a sexual harassment preventative programme operating in your workplace?

5. yes

6. If yes---does it include policies, procedures and a complaints process?

6. yes

7. How are these (in question 6) conveyed to the employees?

7. Policies manual

Are there notices on the wall?

7. No

Are they given the information verbally- in team meetings, inductions?

7. No

Included in their employment agreement?

7. To adhere to the policy manual - yes

8. It would be appreciated if you could forward me copies of your policies and procedures (via email is fine). These copies will not be used for anything other than this thesis and will remain confidential.

8. 32.0 HARASSMENT POLICY

All employees have a responsibility to, at all times, maintain high standards of honesty and integrity in their conduct towards fellow staff and customers of the It is the policy of the to provide a workplace free from harassment. This extends to and includes sexual and racial harassment.

Harassment in the workplace may be defined as overt or implied behaviour towards an employee which is, and is perceived by that employee, to be objectionable.

32.1 SEXUAL HARASSMENT DEFINED:

"Sexual Harassment

1. An employee is sexually harassed in his/her employment if the employer or a representative of the employer:

(a) makes a request of that employee for sexual intercourse, sexual contact, or other form of sexual activity which contains:

(i) an implied or overt promise of preferential treatment in that employee's employment; or
(ii) an implied or overt threat of detrimental treatment in that employee's employment; or
(iii) an implied or overt threat about the present or future employment status of that employee; or

(b) By:

(i) the use of words (whether written or spoken) of a sexual nature; or
(ii) physical behaviour of a sexual nature - or subjects the employee to behaviour which is unwelcome or offensive to that employee (whether or not that is conveyed to the employer or representative) and which is either repeated or *of* such a significant nature that it had a detrimental effect on that employee's employment, job performance, or job satisfaction.

2. An employee is also sexually harassed in his/her employment (whether by a co-employee or by a client or customer of the employer), if the circumstances described in this clause have occurred."

32.3 EMPLOYEE RESPONSIBILITIES

An employee who believes that he/she or some other employee is being sexually, racially or otherwise harassed must promptly report that conduct to their immediate manager, or if the circumstances are more appropriate, to the Human Resources Manager on the attached form.

32.4 MANAGEMENT RESPONSIBILITY

All managers are responsible for ensuring that no harassment occurs within their area of authority. All complaints will receive immediate attention and will be reported to the Human Resources Manager.

All managers will, upon the receipt of a verbal complaint of harassment encourage the employee to complete the Harassment Complaint Form. If the employee refuses the manager should record that refusal and forward the form to the Human Resources Manager.

32.5 INVESTIGATIONS INTO ALLEGATIONS

Investigations into allegations of harassment will be conducted in a sensitive manner and to the extent possible will remain confidential. An investigation may require conferring with parties and witnesses named by the complaining employee. An investigation into an allegation of sexual harassment will take no account of any evidence of the sexual experience or reputation of the complaining employee.

32.6 CONSEQUENCES OF HARASSMENT

Harassment will be regarded as serious misconduct. If the investigation reveals that harassment has occurred prompt action sufficient to stop harassment, safeguard the employee and to prevent any re-occurrence will be taken. This action may include disciplinary action up to and including summary dismissal.

9. May I contact you again if I have any further queries?

9. Yes

If you have any questions you would like to ask me please don't hesitate to contact me. Again, thank you very much for your time

Lynore Weeks

[redacted]

[redacted]

Appendix Seven

Dress Code and Harassment Policy for Company * 3

1. Standards of Dress and Behaviour

It is important that you are always clean, neat, well groomed and business like in your appearance. You will be expected to dress and behave in a way that gives customers confidence in the Company brand and the service they receive. While Company does have some general guidelines for acceptable dress, grooming and behaviour, it is not possible to cover all circumstances. Therefore, the Joint Venture Operator or senior manager at your branch will determine what is, and is not acceptable.

General Guidelines:

- Your hair should be clean, well groomed and worn in a style suitable for work
- Your clothing should be clean and fresh, and your personal hygiene of a high standard
- Men should be freshly shaved before starting work. Beards and moustaches should be neat and trimmed
- When used, cosmetics and jewellery should suit the workplace
- No facial or tongue jewellery is allowed

During meal or refreshment breaks you should eat food and drink away from customer areas.

any contact with your colleagues, customers or suppliers you must be courteous, pleasant and ɜndly and act in a way that will enhance the image of Company. The language you use should be propriate to the workplace. Yelling, swearing, abusive or obscene language is not acceptable.

To make sure you offer good service to customers and that you are fair to your colleagues, time spent talking to friends or family while at work has to be strictly limited. Personal use of Company telephones, fax machines, e-mail, internet or other equipment, including your own mobile phone, must be strictly limited. Remember Company pays for all calls made from the business.

On occasion you may be asked to attend work functions or events such as customer or supplier events, or staff functions. It is important to remember that you represent Company, and the same standards of dress and behaviour apply as at work. Where alcohol is served, you should limit your drinking so that you are able to maintain a high standard of behaviour at all times. You must also make your own arrangements in advance to get home from the event safely.

2. Harassment

Any form of harassment is not acceptable. This includes harassment of your colleagues, managers, customers or suppliers. Harassment is where you say or do something that is unwelcome, and personally offensive to another person. Harassment can be as simple as a joke or a prank that may make someone feel uneasy and can include any bullying or threatening behaviour that makes someone else feel uncomfortable. Harassment can be based on race, gender and age amongst other things.

If you experience harassment you should make it clear to the offending person that it is unacceptable. If the harassment continues you should report it immediately to your Supervisor.

- If mediation does not resolve the problem, either of us can refer the problem to the Employment Relations Authority for investigation.
- The Authority can direct us back to mediation, or can investigate the problem and issue a decision.
- If either of us is not happy with the Authority's decision, we can refer the problem to the Employment Court (The court may also tell us to go back to mediation)

Personal Grievances

A personal grievance may arise where you feel you have been unfairly treated or unjustifiably dismissed.

If you wish to raise a personal grievance, then you must raise it within 90 days of when the problem happened or within 90 days of when you became aware of the problem. A personal grievance can only be raised outside this timeframe with the agreement of Company, or in exceptional circumstances.

If the problem is about your legal minimum entitlements, you may ask a Labour Inspector to enforce your rights under minimum rights legislation, such as Minimum Wage Act or the Holidays Act.

Appendix Eight

Survey Responses for Company * 4

Survey Questions

Please respond under the question eg. 1. Approximately how many people work for your organisation?

1. Around 250

1. Approximately how many people work for your organisation?

1. 80 - 90

2. What percentage of those are female?

2. 25 %

3. Is the most senior manager eg. CEO. MD. GM. male/female?

3. Male

4. Are you a public or a private sector organisation?

4. Private

5. Do you have a sexual harassment preventative programme operating in your workplace?

1/2004

5. Yes

6. If yes---does it include policies, procedures and a complaints process?

6. Yes

7. How are these (in question 6) conveyed to the employees?

7. I don't think they have ever been seen them and they were done in 1996 after our manager was charged with sexual harassment but kept his job!

Are there notices on the wall?

7. NO

Are they given the information verbally- in team meetings, inductions?

7. not that I'm aware of.

8. It would be appreciated if you could forward me copies of your policies and procedures (via email is fine). These copies will not be used for anything other than this thesis and will remain confidential.

8. Fine

9. May I contact you again if I have any further queries?

9. Yes

If you have any questions you would like to ask me please don't hesitate to contact me. Again, thank you very much for your time

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10.0 EMPLOYEE INFORMATION

Policies and Procedures for Company * 4

10.2 Harassment

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10.0 EMPLOYEE INFORMATION

10.2 Harassment

10.2.1 POLICY

is committed to providing a safe work environment where individuals are respected and it will not tolerate harassment of any kind.

- No employee should tolerate harassment and should not hesitate to use the complaint procedures outlined.
- Employees who engage in harassment of other . personnel, clients or customers will be disciplined and may be dismissed.
- ; committed to preventing the harassment of its employees by its suppliers or customers when it becomes aware of any occurrence.

Managing Director

10.0 EMPLOYEE INFORMATION

10.2.2 HARASSMENT ... WHAT IS IT?

◆ **Sexual**

- Verbal behaviour
- Visual and written materials
- Physical behaviour

where such behaviour is unwelcome or offensive to the person experiencing it, whether or not they tell the alleged harasser that they don't like it.

Sexual Harassment Includes

- Personally offensive verbal comments
- Sexual or smutty jokes
- Offensive hand or body gestures
- Offering benefits in return for sex
- Displaying offensive pictures or posters
- Leering (suggestive staring) at a person
- Unwelcome/offensive telephone calls at work or home
- Indecent exposure
- Threatening a person's career or salary if sexual favours are refused

Sexual Harassment DOES NOT Include

- Occasional compliments
- Behaviour based on mutual attractions
- Developing friendships

◆ **Racial**

- Treating another in a patronising way or with contempt because of their race
- Display of racist cartoons, posters, etc
- "Jokes" which portray a race or nationality as inferior in any way
- Name calling, nicknames made on the basis of a person's race, colour or accent

where such behaviour is hurtful or offensive to the person experiencing it.

◆ **Age-based**

- Implying a person's opinion or work is not of value because of their age
- Linking an older person's age with disability.

Harassment should not be confused with consenting relationships, romance or mutually enjoyed jokes between employees.

Sexual harassment is personally offensive and threatening.

10.0 EMPLOYEE INFORMATION

10.2.3 WHAT SHOULD I DO IF I BELIEVE I AM BEING, OR HAVE BEEN HARASSED?

SELF HELP

can you stop it yourself?

Harassment Stops

YES NO

INFORMAL INTERVENTION

get someone else to help

Harassment Stops

YES NO

FORMAL COMPLAINT

reported, investigated and decided

Harassment Substantiated

Harassment Unsubstantiated

If you believe you are being or have been harassed, you have 3 options available

10.0 EMPLOYEE INFORMATION

10.2.3 WHAT SHOULD I DO IF I BELIEVE I AM BEING, OR HAVE BEEN HARASSED? continued

Self Help

You may be able to put a stop to the harassment yourself by:

- approaching the harasser (either by yourself or with someone)
- informing them of the behaviour which you felt was harassment
- telling them clearly that such harassment is unwelcomed
- telling them it must stop.

Informal Intervention

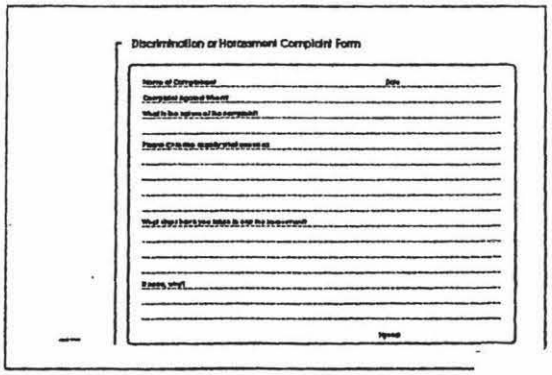
If the 'self help' approach did not put an end to the harassment, or you did not want to use the self help approach, there is an informal process you may use:

- approach one of the contact people listed in this policy or your supervisor or manager or any other person in the company you feel comfortable with;
- tell them of your concern, including who the harasser is, when it occurred and what the behaviour concerning you is;
- that person will approach the alleged harasser and inform them of your concern and attempt to resolve the matter by acting as a 'go between' or a mediator between you and the alleged harasser.

Formal Complaint Process

If neither of the above options have been used or they did not resolve the matter, you should make a formal complaint to the company.

- To make a formal complaint you must complete a formal complaint form and give it to a contact person, your manager or the Human Resources Manager.
- A written response to your complaint will be obtained from the alleged harasser, which will be given to you.
- Your manager will then meet with you and obtain further details and your response to the alleged harasser's response;


Discrimination or Harassment Complaint Form

- Your manager will then meet with the alleged harasser to obtain their version of events

10.0 EMPLOYEE INFORMATION

10.2.3 WHAT SHOULD I DO IF I BELIEVE I AM BEING, OR HAVE BEEN HARASSED? continued

- The manager will make a written report of the investigation and give a finding of whether the complaint is substantiated or unsubstantiated.
- If you wish to appeal that decision you must advise the Human Resources Manager. The Harassment Review Committee (HRC) will then review the manager's decision and if necessary undertake further investigations. The HRC comprises the Company Director, the Human Resources Manager and the company's legal adviser.
- If the complaint is substantiated the company will implement disciplinary procedures against the harasser. If the complaint is unsubstantiated appropriate steps will be taken to ease the working relationship between you and the alleged harrasser.
- If you are not satisfied with the outcome of this process you may lodge a formal complaint to the Human Rights Commission or bring a personal grievance under the Employment Contracts Act. You should seek legal advice before doing so.

Remember YOU have rights and feelings

Actively demonstrate a commitment to providing a harassment free work place

10.0 EMPLOYEE INFORMATION

10.2.4 WHO SHOULD I CONTACT?

Whether you choose any of the options, you should approach a contact person for advice, information and assistance in progressing your concern or formal complaint.

In many cases early intervention can help a person resolve the problem themselves.

Contact people can:

- provide you with support to work through the problem
- help write a letter or facilitate a role play to deal with the situation
- outline the advantages and disadvantages of your options

You can be assured that the contact people will keep the information you tell them completely confidential. They will only pass the information on if you consent to that happening.

The people you should contact are one of the following:

- [illegible]

or your supervisor, or manager.

10.0 EMPLOYEE INFORMATION

10.2.5 GUIDELINES: For Complainants

- **Remember Your Rights**
- Speak up if you are subjected to harassment.
- Remaining silent will not make the harassment stop. By complaining about harassment, you will not only help yourself, but also help colleagues who have been harassed and are afraid to speak.
- The Company has a responsibility to maintain an environment free from harassment, so they will support and aid you.
- You can make a further complaint if you are being victimised as a result of your original complaint.
- Do seek support.

- **Remember Your Feelings Too**
- You are not alone. Harassment can happen to anyone in the work place.
- Do not accept remarks which trivialise your complaint.

- **It is NOT Your Fault**
- You might feel guilty. This is not unusual but is totally inappropriate. Remember, you did not bring the harassment upon yourself.
- Talk privately to good friends or relatives. It is important that you have a good support system for yourself. You will need it. (Avoid discussing the harassment with co-workers who have no genuine need to know about it).
- Consider finding out about avenues, including courses, that are available to increase your confidence to cope with this or similar situations.

10.2.6 GUIDELINES: For Managers

◆ **It is your responsibility to**

- Ensure the work place is free from harassment.
- Make it clear to all staff you do not tolerate harassment in the work place.
- Inform new staff about the Company's statement on harassment as part of their orientation.
- Act immediately should complaints regarding harassment be made to you.
- Contact the Human Resources Manager if you are not the best person to handle the complaint, of if you would like guidance and help.
- Ensure that any complaint brought to you by your staff is followed through immediately.

◆ **Act Promptly**

You may be asked to assist in any one of the three options available to any employee who feels they have been harassed:

(a) **Self Help:** In this situation you may simply offer support and advice to the employee concerned to let them help themselves with the problem.

(b) **Informal Intervention:** In this situation you are required to act as a facilitator, "go between" or mediator between the employee and the alleged harasser.

- First, find out whether the person who has been harassed wishes:
  - to talk to you alone in confidence
  - to have another person present when talking to you
  - to talk with someone else
  - not to discuss the matter at all.
- If the complaint is for sexual harassment, given the nature of the complaint, it is vital that the complainant feels comfortable and supported by you.
- It is also important that you should feel comfortable and you may wish to involve the Human Resources Manager if you would like their guidance and help. This must first be discussed with the complainant.
- Find a quiet, private place and set aside sufficient time to hear the person's story in full.

(c) **Formal Complaint Process:** Upon receiving a formal complaint form you must:

(i) **Advise the Human Resources Manager** that a complaint has been made;

(ii) **Obtain a written report** from the alleged harasser (give them the employee's complaint form).

(iii) **Interview the complainant.** When interviewing the complainant, it is important to obtain the facts, but it must be remembered that the complainant may be distressed or emotional.

Ensure that you listen carefully and allow time for a general discussion before focusing on specific details. Provide positive feedback that ensures the complainant feels you are accepting and respecting of their information and feelings.

10.2.6 GUIDELINES: For Managers continued

- **The Following Information Needs to be Noted**
- Who was involved?
- What was said or done?
- What did the complainant do and/or say in response?
- When and where did the event(s) take place?
- Has this happened before?
- Were there witnesses?
- What comments do they have in response to the alleged harasser's report?
- What does the complainant want to see happen now?
- Outline the options available.

- While the investigation is in progress, you need to ensure that the complainant does not continue to be harassed. It may be necessary to separate the work areas of the complainant and the alleged harasser. If separation is deemed advisable in the particular circumstances of the complaint, then it is the alleged harasser who is moved, or if the complainant is the one to be moved it is only done at their express request, otherwise, the Company risks victimising the complainant.

(iv) **Interview the alleged harasser.**

- **They have the right:**
  - To be told who the complainant is
  - To be told the nature of the complaint
  - To respond to the complainant
  - To have a support person at interview, including a lawyer, if requested
  - To seek guidance from an employee organisation or other representative
  - To be advised that disciplinary action may be taken if the complaint is found to have substance
  - To decide to take a personal grievance if they consider they have been disadvantaged by unjustifiable action on the part of the employer.
- Explain what you have been told and ask for his or her account of events.
- The situation may be addressed informally by the person complained about admitting that the interaction took place as stated, and by agreeing to stop the harassing behaviour. If this occurs, inform the complainant and reassure them that the situation will be monitored to ensure harassment has ceased completely.
- Advise them that if the complaint is substantiated and if the situation warrants it, disciplinary procedures in the case of serious misconduct may have to be instituted.

10.2.6 GUIDELINES: For Managers continued

(v) **Further Investigation:**

Speak to any witnesses to the behaviour and seek their comments.

(vi) **The Decision:**

Having investigated both sides of the story and spoken to any other witnesses, you need to conclude as to whether the complaint has been substantiated (in part or in whole). You must complete a report and give it to the Human Resources Manager.

(vii) **Appeal:**

The employee or the alleged harasser may appeal the decision by requesting the Human Rights Commission review it.

Ensure the Complainant does not continue to be harassed

Find a quiet private place and set aside sufficient time to hear the person's story

Privacy and Confidentiality are Essential

10.0 EMPLOYEE INFORMATION

10.2.7 GUIDELINES: For Contact People

You have been selected and have agreed to be a contact person for employees who have a concern about harassment.

This is a very important role in the company and is one which you must treat with utmost sensitivity, respect and confidentiality.

You may be asked to assist in any one of the three options available to an employee who feels they have been harassed.

(a) **Self Help:** In this situation you may simply offer support and advice to the employee concerned to let them help themselves with the problem.

(b) **Informal Intervention:** In this situation you are required to act as a facilitator, "go between" or mediator between the employee and the alleged harasser. See "Guidelines for Managers" on how you should interview both parties and assist in the resolution of the problem.

(c) **Formal Complaint:** If you are given a formal complaint form by an employee you should offer advice and assistance in completing it and then give the form to the Human Resources Manager. The employee may also need your advice and support through the complaint's process. You should ensure the employee concerned is aware that you will not have any involvement in the decision as to whether the complaint is substantiated.

10.0 EMPLOYEE INFORMATION

10.2.8 DISCIPLINARY COURSES OF ACTION

- **In the event that a complaint is found to be justified, some of the following range of disciplinary measures may be taken against the harasser**
- Disciplinary counselling interview - notation on personnel file, warning and/or reprimand
- Public or private, written or verbal apology
- Anti-harassment awareness training
- Transfer to another position
- Demotion
- Dismissal.

- **In any of the above cases, a notation will be placed on the harasser(s) file for a period of three years**
- At the end of that period the notation will be removed unless there has been repeated action
- Where a complaint is made, investigated or substantiated, the harasser's personal file should contain a summary of the nature of the complaint, the outcome and the penalty if disciplinary action has been taken.

- **In the event of a complaint being found to be malicious or vexatious**
- The same disciplinary measures and action listed above will also be employed.

- **In the event a complaint is not substantiated**
- No record will be placed on staff member's files
- Confirmation of the finding will be made to both the complainant and the alleged harasser.