

Have you been sexually harassed?

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**Submission to the
National Workplace Sexual Harassment Inquiry**

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Have you been sexually harassed?

Thank you for the opportunity to make a submission to this inquiry. We do so as members the Department of Psychology and Public Health, CQUniversity, and as the authors of *Sexual harassment: the employer's guide to causes, consequences and remedies* (Business and Professional Publishing). We are solely responsible for the views and content in this submission.

This submission considers the recent attempts by the *Australian Human Rights Commission* and *The Australian Bureau of Statistics* to determine the incidence of sexual harassment in Australia. We will show that extant survey methodologies suffer from several significant flaws (e.g., they are internally and externally inconsistent), resulting in a situation where the incidence of sexual harassment is estimated to be somewhere in the range of 20-85%. Although it might be higher, or possibly lower.

Our primary submission is that existing incidence data are flawed, but that this can be rectified in future studies.

1. What is sexual harassment

According to a recent study Australian Human Rights Commission (AHRC; 2018), 85% of Australian women have been sexually harassed at some point in their lifetimes. This is considerably higher than the 53% of women who reported being harassed in a 2016 survey for the Australian Bureau of Statistics (ABS; 2017), and the 20% in a 2008 survey by the AHRC (2008). These differences either reflect a profound change in the extent of sexual harassment, or, as seems more likely, they reflect different methodological approaches.

While few (if any) would dispute that sexual harassment is prevalent in Australia, determining *how prevalent* hinges on one seemingly simple issue: what is sexual harassment?

This should be an easy issue to resolve. According to the Sex Discrimination Act 1984 (Australian Government, 2016):

A person sexually harasses another person if:

(a) the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed, or

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

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated. (p.37)

Well, perhaps not that easy. The above definition contains some apparent ambiguities. For example, what is the difference between an “unwelcome advance” and an “unwelcome request for sexual favours”? In addition, the “circumstances” governing the interpretation of a “reasonable person” include:

- a) the sex, age, sexual orientation, gender identity, intersex status, marital or relationship status, religious belief, race, colour, or national or ethnic origin, of the person harassed;
- b) the relationship between the person harassed and the person who made the advance or request or who engaged in the conduct;
- c) any disability of the person harassed;
- d) any other relevant circumstance. (p.37)

These complexities notwithstanding, some key points to bear in mind in understanding the types of harassment are that the behaviour has to be *unwelcome* and *sexual*, and that the offender (assuming them to be a *reasonable person*), should have anticipated that their actions would have been offensive, humiliating or intimidating.

In the 2018 AHRC survey, prior to being asked about their experiences of sexual harassment behaviours, respondents were offered a simplified version of the definition, specifically:

Sexual harassment is an unwelcome sexual advance, unwelcome request for sexual favours or other unwelcome conduct of a sexual nature which, in the circumstances, a

reasonable person, aware of those circumstances, would anticipate the possibility that the person would feel offended, humiliated or intimidated. (p.23)

After which survey respondents were then asked, “Have you ever personally experienced sexual harassment?”, which the AHRC acknowledge was an almost entirely meaningless question. The respondents were then asked: “At any time or anywhere, have you ever experienced any of the following behaviours in a way that was unwelcome?” (p.109) and the incidence of sexual harassment experiences generated by collating the responses (i.e., saying “yes” to any question signifies having been sexually harassed). The list of behaviours included 16 items:

1. Unwelcome touching, hugging, cornering or kissing
2. Inappropriate staring or leering that made you feel intimidated
3. Sexual gestures, indecent exposure or inappropriate display of the body
4. Sexually suggestive comments or jokes that made you feel offended
5. Sexually explicit pictures, posters or gifts that made you feel offended
6. Repeated or inappropriate invitations to go out on dates
7. Intrusive questions about your private life or physical appearance that made you feel offended
8. Inappropriate physical contact
9. Being followed, watched or someone loitering nearby
10. Requests or pressure for sex or other sexual acts
11. Actual or attempted rape or sexual assault
12. Indecent phone calls, including someone leaving a sexually explicit message on voicemail or an answering machine.
13. Sexually explicit comments made in emails, SMS messages or on social media
14. Repeated or inappropriate advances on email, social networking websites or internet chat rooms
15. Sharing or threatening to share intimate images or film of you without your consent

16. Any other unwelcome conduct of a sexual nature that occurred online or via some form of technology.

The incidence of harassment was then calculated by tallying the responses to these 16 items. Responses to the problematic “Have you ever personally experienced sexual harassment?” question were essentially ignored.

There are some obvious ambiguities here, such as the obvious overlap between items. To take one example, consider: what is the difference between “Unwelcome touching, hugging, cornering or kissing” (item 1) and “Inappropriate physical contact” (item 8)? Similar problems of content overlap apply to items 2 and 9; 4 and 12; and 4 and 13 and quite possibly others. While some might care to argue that these items are distinct (we would enjoy reading any such defence), it is highly unlikely that the survey respondents would have been able to make any distinctions.

Simply put, these categories were not clearly thought out: they are not mutually exclusive. This is a profound methodological error.

The relationship between these behaviours and the earlier simplified definition is curious. Two of the items (1 & 16) reinforce that the behaviour had to be “unwelcome”, the remainder did not. Three of the 16 items refer to the behaviour as offensive (items 4, 5 & 7). None of the items use the words “humiliate” or “intimidated”, even though they were in the simplified definition. Instead, the word “inappropriate”, that was not part of the simplified definition (nor is it present in the legal definition), was used in four items (2, 3, 6 & 14). Furthermore, the words “indecent” (items 3 & 12) and “intimate” (item 15) are terms that may or may not be sexual.

If one ventures even further into the research, matters get only more complicated. The ABS survey from 2016 defined sexual harassment as follows:

Sexual harassment is considered to have occurred when a person has experienced or been subjected to one or more selected behaviours which they found improper or unwanted, which made them feel uncomfortable, and were offensive due to their sexual nature. (para 2).

The sexual harassment behaviours in this survey were as follows (our numbering):

1. receiving indecent phone calls
2. receiving indecent texts, emails or post
3. indecent exposure
4. inappropriate comments about body or sex life
5. unwanted touching, grabbing, kissing or fondling
6. distributing or posting pictures or videos of the person, that were sexual in nature, without their consent
7. exposing the person to pictures, videos or materials which were sexual in nature that the persons did not wish to see.

Once again, the lack of coherence between the ABS definition and behaviours isn't obvious, with some behaviours meriting the inclusion of reinforced conditions (e.g., behaviour 5: “*unwanted* touching, grabbing, kissing or fondling”), whilst others attract new conditions (e.g., behaviour 1: “receiving *indecent* phone calls”). The term “indecent” (behaviours 1, 2, & 3) may have both sexual and non-sexual interpretations. It is also worth pondering whether a person who witnesses a behaviour (is that what is meant by the word “experienced” in the ABS definition?), but is not be the recipient, also sexually harassed?

A major difference between the 2016 ABS and 2018 AHRC surveys is that the reasonable person standard is missing in the ABS definition, so too are several behaviours (including major omissions such as unwelcome sexual advances, unwelcome requests for sexual favours, rape and sexual assault).

Asking “Have you been sexually harassed?” clearly hinges on how the term is defined. Many Australian women have been sexually harassed but determining *how many* is problematic. Unless we want to believe that sexual harassment has increased four-fold in the last eight years, the incidence is possibly somewhere between 20% and 85%. But then again, it might be higher, or it might be lower. It all depends of what question you ask. Current surveys appear to have been designed to maximise “Yes” responses, thereby generating a high overall incidence figure that in reality tells us very little.

2. Towards a solution

The solution begins by first developing a coherent definition of sexual harassment. The current legal definition incorporates terms that reflect decades of research and theoretical input, and while it has not been designed with survey research in mind, it must be our starting point. One of the first things to note is that the definition does not include “Actual or attempted rape or sexual assault” (item 11 from the AHRC survey). Those offences have their own definitions and their inclusion in surveys as types of ‘sexual harassment’ is indefensible. In both data collection and reporting, these offences must be clearly distinguished from sexual harassment. The same restriction applies to bullying behaviours.

We can now focus on behaviours that clearly fall under most existing interpretations of sexual harassment. First, we have behaviours that involve sexual extortion (*quid pro quo* behaviours). Research tells us that there is a clear agreement that such behaviours are unequivocally categorised as sexual harassment (e.g., the views of males and females concur). The “reasonable person” standard is effective in such situations.

Second, we have unwelcome sexual conduct. This includes the most pervasive forms of sexual harassment, sometimes referred to in the research literature as “hostile environment”. The reasonable person standard is less effective in such situations, with clear differences between the views of men and women. Consequently, in survey research greater care is required in establishing that a behaviour meets the legal standard of sexual harassment. The person being harassed must view the conduct as *unwelcome* (a subjective assessment), and also, with regard to the circumstances, a *reasonable person* would have anticipated that the behaviour would be interpreted as (a) offensive, (b) humiliating, or (c) intimidating. Without at least one of those three conditions being met, a behaviour might not merit the designation of sexual harassment (e.g., it may have been a misunderstanding).

The need to develop a measure of sexual harassment in Australia that is both valid and reliable has been an ongoing concern for several decades (e.g., Engelberg-Moston & Moston, 1997). Unfortunately, many surveys adopt a ground zero approach, and offer up new definitions making comparisons across time, situation and populations, spurious. Sexual harassment is a serious problem in Australia and it is time for researchers to get serious about how to define and measure it.

Whilst acknowledging the inherent difficulty of such a move, we propose that that term “sexual harassment” be abandoned and replaced with a series of distinct offences or behaviours that will more closely align with both legal definitions and public perceptions.

- Rape and sexual assault
- Sexual extortion
- Sexual discrimination
- Bullying
- Unwanted romantic relationships

Adopting such categories would help to clarify survey construction and remove much of the confusion that is now attached to the label “sexual harassment”. This would help to eliminate the current confusion and trivialisation of sexual harassment, whereby an explanation and single solution is sought for a widely diverse set of behaviours, ranging from sexual assault through to unwanted romantic relationships.

Authors

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