



## **NOTICE TO NSW RACING INDUSTRY**

### **HARASSMENT/BULLYING**

Harassment, Sexual Harassment, Bullying and Discrimination are unlawful and are not tolerated in the Racing Industry. It is fundamental that the industry and its participants recognise and value the diversity of others, and ensure that the workplace and racing environment are free from harassment, sexual harassment, bullying and discrimination. This in turn provides clarity about who we are as an Industry, as employers and our normal expectations of each other. A safe, harmonious, respectful, inclusive environment also contributes significantly to the Industry's aim to achieve a culture of performance excellence.

Racing NSW wishes to remind all employees and licensed persons of harassment and bullying policies, procedures and practices in the NSW Racing Industry.

Discrimination, harassment, bullying and victimization are unacceptable and unlawful forms of behaviour. Everyone has the right to work in an environment that is free of harassment and victimisation.

Racing NSW, as the regulatory body for racing in NSW, provides support services to promote working environments, free of unacceptable conduct. These services include the following:

- ◆ Assistance to employers to develop Harassment/Bullying Policies
- ◆ Contact with Industry Representatives
- ◆ Contact with TAFE counsellors
- ◆ Availability of course material for trainees and apprentice jockeys
- ◆ Contact with independent bodies eg. Safework NSW, Anti-Discrimination Board, Human Rights Commission.

If you have any information regarding any adverse conduct relating to bullying, harassment or sexual harassment you can contact any of the Racing NSW personnel or other authorities listed on the back of this brochure under the heading – Who Can You Contact?

**Racing NSW will not tolerate bullying or harassment in the NSW racing industry.**

Our Stewards will enforce the rules of racing and will refer complaints to relevant authorities, which may include the police where appropriate.

Harassment can take many forms whether verbally, physically, inappropriate use of social media including facebook, snapchat, instagram or writing or displaying harassing material.

Racing NSW Stewards have the power to penalise any person who harasses or bullies anyone or acts in contravention of the Sex Discrimination Act.

### **WHAT IS HARASSMENT?**

**Harassment is any form of behaviour that:**

- **You do not want**
- **Offends/humiliates/intimidates you**
- **Targets you because of sex, pregnancy, race, marital status, disability, sexuality, age.**

### **WHAT IS SEXUAL HARASSMENT?**

**Sexual harassment is any unwanted, unwelcome or uninvited behaviour of a sexual nature that makes a person feel humiliated, intimidated or offended.**

Sexual harassment can take many different forms and may include physical contact, verbal comments, jokes, propositions, the display of offensive material or other behaviour, which creates a sexually hostile working environment.

**Examples of sexual harassment include:**

- (a) subjecting a person to an unsolicited act of physical intimacy; or

- (b) making an unsolicited demand or request (whether directly or by implication) for sexual favours from a person; or
- (c) making a remark with sexual connotations relating to a person; or
- (d) engaging in any other unwelcome conduct of a sexual nature in relation to a person, where the person engaging in the conduct described in paragraphs (a), (b), (c) or (d) does so:
  - (i) with the intention of offending, humiliating or intimidating the other person; or
  - (ii) in circumstances where a reasonable person would have anticipated the possibility that the other person would be offended, humiliated or intimidated by the conduct.

The conduct described in paragraphs (b), (c) and (d) includes, without limitation, conduct involving the internet, social media, a mobile phone, or any other mode of electronic communication.

**Sexual harassment can involve behaviour that would also be an offence under the criminal law.** For example, physical assault, indecent exposure, sexual assault, stalking or obscene communications.

**Sexual harassment is not** behaviour based on mutual attraction, friendship and respect. If the interaction is consensual, welcome and reciprocated, it is not sexual harassment.

### **WHAT IS BULLYING?**

**Bullying means repeatedly acting unreasonably towards a person, which behaviour creates a risk to health and safety. Acting unreasonably includes victimising, humiliating, intimidating or threatening.**

Reasonable management action that is carried out in a reasonable way is not bullying.

**Some examples of bullying include:**

- abusive or offensive language or comments
- aggressive and intimidating behaviour
- belittling or humiliating comments
- practical jokes or initiation
- unjustified criticism or complaints.

The Principal Racing Authority (or the Stewards exercising powers delegated to them) may penalise any person who in their opinion is guilty of workplace harassment or bullying of a person while the latter is acting in the course of his duties when employed, engaged or participating in the racing industry.

### **WHAT IS DISCRIMINATION?**

**Discrimination may be direct or indirect. Direct discrimination occurs when a person is treated less favourably than another person due to a specific attribute or characteristic.** The protected attributes and characteristics found in EEO legislation include sex, age, disability or impairment, industrial/trade union or employer association membership or activity, non-membership or activity, employment activity (e.g. enquiries about employment entitlements), lawful sexual activity, relationship status, marital status, physical features, political beliefs or affiliation or activity, pregnancy or potential pregnancy, transgender status, race, colour, national extraction or social origin, religious beliefs or activity, religious appearance or dress, sexuality, gender identity, gender history, sexual orientation, intersex status, breastfeeding, parental or carer status, profession, trade or occupation or calling, association, association with someone with a protected attribute, irrelevant medical record and irrelevant/spent conviction.

The motive for the less favourable treatment is irrelevant.

Indirect discrimination occurs when a person with one of the specified attributes or characteristics cannot comply with a policy or condition, with which the majority of persons not having that attribute or characteristic or having a different attribute or characteristic are able to comply (and that policy or condition is unreasonable).

### **COULD BULLYING or HARASSMENT AFFECT YOU? YES!**

**Everybody** who is engaged in activities related to the NSW Racing Industry must be aware of their responsibilities and rights with regards to bullying and harassment

**Everybody** includes employers; full-time, part-time and casual employees; contractors;

trainees and students who are engaged in activities in all areas of the racing industry in NSW.

### **HOW CAN IT AFFECT YOU?**

Bullying and harassment can have a serious and damaging effect on your life.

It can:

- affect work performance and opportunities;
- create a hostile or unpleasant work environment;
- make you insecure and fearful;
- affect your studies and future career.

### **WHEN AND WHERE CAN BULLYING and HARASSMENT HAPPEN?**

Bullying and harassment is not just unlawful during working hours or in the workplace itself. The behaviour is illegal in any work-related context. Bullying and harassment in employment is prohibited in the following circumstances:

- *recruitment and selection* – for example, during job interviews;
- *the course of employment* – for example, at the workplace, during working hours, at work-related activities such as training courses, conferences, field trips, work functions and office Christmas parties;
- *termination of employment* – for example, where an employee is dismissed for objecting to bullying and harassment or resigns because of intolerable bullying and harassment;
- *any other circumstance* that could arise in the context of relationships such as bullying and harassment of an employee by a fellow employee, regardless of when or where it occurs.

### **WHAT ARE YOUR RIGHTS?**

- Everyone has the right to work in an environment which is free of bullying and harassment
- Sexual harassment is against the law
- Harassment, Sexual harassment, Bullying and Discrimination are against the Rules of Racing
- Confidential complaint procedures are available.

### **WHAT DOES THE LAW SAY?**

**Sexual harassment is prohibited in Australia** by the Federal *Sex Discrimination Act* and anti-discrimination laws in all States and Territories. The *Sex Discrimination Act* prohibits sexual harassment and other forms of discrimination in areas such as employment, the provision of services, education and accommodation.

Sexual harassment is a legally recognised form of sex discrimination. Sexual harassment can be a breach of an employer's common law duty to take reasonable care for the health and safety of employees. Harassment, bullying and discrimination can also be against the law. All can also be a breach of occupational health and safety legislation.

### **WHAT DO THE RULES OF RACING SAY?**

**Stewards are empowered to investigate allegations of harassment, sexual harassment, bullying and discrimination and to lay charges and impose penalties under certain Rules of Racing, including:**

#### **AR 228 Conduct detrimental to the interests of racing**

A person must not engage in:

- (a) conduct prejudicial to the image, interests, integrity, or welfare of racing, whether or not that conduct takes place within a racecourse or elsewhere;
- (b) misconduct, improper conduct or unseemly behaviour;
- (c) improper or insulting behaviour at any time towards a PRA, the Stewards, a Club, or any official, employee, contractor or agent of any of them in relation to the relevant person's functions, powers or duties;
- (d) publishing or posting on any social media platform or channel any material, content or comment that is obscene, offensive, defamatory, racist, threatening, harassing, discriminatory or abusive to or about any other person involved in the racing industry;
- (e) conduct which threatens, disparages, vilifies or insults another person ("other person") on any basis, including but not

limited to, a person's race, religion, colour, descent, national or ethnic origin, special ability/disability, or sexual orientation, preference or identity, while the other person is acting in the course of his or her duties in the racing industry.

### **AR 233 Other misconduct offences**

A person must not:

- (a) breach a policy, regulation or code of practice published by Racing Australia or a PRA;
- (b) engage in workplace harassment or bullying of a person while the person is acting in the course of his or her duties while employed, engaged in, or participating in the racing industry;
- (c) engage in sexual harassment of a person employed, engaged in, or participating in the racing industry.

### **WHO IS RESPONSIBLE?**

#### **Are individual persons responsible? YES.**

- Persons, including employers, employees and contract workers are personally liable for their own acts of sexual harassment
- A person is personally liable for any act of victimisation
- A person is personally liable for causing, instructing, inducing, aiding or permitting another to discriminate (including discrimination involving harassment, bullying or sexual harassment).

#### **Are employers responsible? YES.**

- An employer is **vicariously liable**\* for any acts of harassment committed by employees or agents in connection with their duties unless "all reasonable steps" were taken by the employer to prevent harassment occurring.
- Lack of awareness that an employee or agent bullied, harassed or sexually harassed another will not discharge an employer's vicarious liability.

**\*Vicarious liability** is an employer's legal responsibility for wrongs committed by employees in the course of work.

### **WHAT ARE EMPLOYEES' RESPONSIBILITIES?**

- **Employees should be aware of and understand both their rights and their responsibilities. This means they should also be aware of, and comfortable with, all available avenues for complaint and support**
- **An employee must not engage in any act of victimization, bullying or harassment**
- **An employee must not cause, instruct, induce, aid or permit another person to commit an act of sexual harassment.**

All staff have a responsibility to: comply with the organisation's harassment policy; offer support to anyone who is being harassed and let them know where they can get help and advice (they should not, however, approach the harasser themselves); \*maintain complete confidentiality if they provide information during the investigation of a complaint. Staff should be warned that spreading gossip or rumours may expose them to a defamation action.

### **WHAT ARE EMPLOYERS' RESPONSIBILITIES?**

**Every employer, regardless of business size, is legally required to take all reasonable steps to prevent all forms of harassment if they wish to avoid liability.**

- There is no exemption in the *Sex Discrimination Act* for small business. Employers in all small businesses, whatever the size, will be vicariously liable for acts of sexual harassment committed by employees unless all reasonable steps were taken to prevent it occurring.
- Allowing bullying, harassment or sexual harassment to remain unchecked can expose employers to the cost, inconvenience and damaging publicity of legal proceedings and compensation claims.
- Employers are not only liable for their own acts of harassment. They can also be held legally responsible for sexual harassment by their employees unless all reasonable precautions were taken. It is the employer's responsibility to prove that all reasonable steps were taken. Employers must actively implement precautionary

measures to minimise the risk of harassment occurring.

- It is recommended that employers develop and promote a written policy on harassment, which includes both internal and external complaint procedures. When developing a strategy to address harassment, it is recommended that employers consult with relevant parties including staff, unions, employer organisations, industry and professional associations, the Human Rights and Equal Opportunity Commission and/or State and Territory anti-discrimination agencies.

### **HOW TO MAKE A COMPLAINT**

Seek a complaint channel that you both trust and feel comfortable with. First consult your employer's harassment policy procedures and investigate internal complaint channels. External complaint channels include:

- Racing NSW Executives and Managers
- Racing NSW Stewards
- TAFE Counsellors
- SafeWork NSW
- NSW Anti-Discrimination Board
- Human Rights Commission

### **WHO CAN YOU CONTACT?**

#### **Racing NSW**

General Enquiries: Mr Pete Sweney  
Racing NSW  
Level 7, 51 Druitt St  
Sydney NSW 2000  
Phone: (02) 9551 7573

Confidential Enquiries:

- Stewards' Department/Investigator  
(02) 9551 7500
- Phillip O'Brien Safety and Welfare Officer  
(02) 6332 4186

#### **TAFE Counselling Services**

Apprentice jockeys and trainees enrolled at TAFE, can phone their local TAFE campus and ask to speak to the counsellor. See this page for a phone number in your region.

The Chairman of Stewards in your region will also ensure confidentiality.

#### **Dubbo Region**

Chairman of Stewards (02) 6885 2111

#### **Tamworth Region**

Chairman of Stewards (02) 6762 2035

#### **Port Macquarie Region**

Chairman of Stewards (02) 6581 1476

#### **Grafton Region**

Chairman of Stewards (02) 6642 7661

#### **Queanbeyan Region**

Chairman of Stewards (02) 6241 3888

#### **Wagga Wagga Region**

Chairman of Stewards (02) 6921 6244

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### **SAFework NSW**

Provides policies, support and guidance for employers and employees  
Phone: 13 10 50

<http://www.safework.nsw.gov.au/>

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### **NSW ANTI-DISCRIMINATION BOARD**

For employers: The ADB provides information, support and training services

For employees: The ADB can provide information and confidential counselling services.

Toll Free: 1800 670 812  
Sydney: (02) 9268 5555  
TTY: 133 677

<http://www.antidiscrimination.justice.nsw.gov.au/>

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### **AUSTRALIAN HUMAN RIGHTS COMMISSION**

For employers: The AHRC provides information, support and training services

For employees: The AHRC provides information and confidential counselling services

Phone: (02) 9284 9600  
Complaints Infoline: 1300 656 419

<https://www.humanrights.gov.au/>

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## NSW DEPARTMENT OF COMMUNITY SERVICES -

Child Protection Helpline 132 111

[www.community.nsw.gov.au](http://www.community.nsw.gov.au)

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## RAPE CRISIS CENTRE

Toll Free: 1800 424 017

Sydney: (02) 9515 6111 (24hrs)

[www.nswrapecrisis.com.au](http://www.nswrapecrisis.com.au)

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**WayAhead** – This service has an extensive database of community contact names and numbers

Toll Free: 1300 794 991

<https://wayahead.org.au/>

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## CENTRAL SYDNEY SEXUAL ASSAULT SERVICE

This service provides telephone counselling.

Phone: 1800 211 028

<http://www.health.nsw.gov.au/kidsfamilies/protection/Pages/health-sas-services.aspx>

This website provides phone numbers for regional sexual assault services

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## LIFELINE

This service provides out of hours support

Phone: 131 114

<https://www.lifeline.org.au/>

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## HEADSPACE

A national youth mental health foundation that helps young people between 12 and 25 who are going through a tough time.

Phone: (02) 9114 4100

<https://headspace.org.au/>

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## MENTAL HEALTH LINE

24-hour support service across NSW that can connect you with a mental health professional

Phone: 1800 011 511

<http://www.cclhd.health.nsw.gov.au/ourservices/MentalHealth>

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## RACING MATES

Established by Racing NSW, empowering mates to look out for mates.

Racing Mates has appointed Ambassadors who are available as a port of call when industry participants are in need of a mate.

Ambassadors can provide a crucial link between those in need and the required support.

Visit [www.racingmates.com.au](http://www.racingmates.com.au) for further information.

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❖ **Please Note: Contact information correct at time of publication.**