
Is Harassment Horsing Around?

Racing Industry Information Booklet

March 2019



**SEXUAL
HARASSMENT.
KNOW WHERE
THE LINE IS.**



Harassment - is not welcome here

Speak out – against harassment

Together – we can beat harassment

Table of Contents

Is Harassment Horsing Around?	3
Introduction	3
Harassment –is not welcome in the NSW Racing Industry	3
What do the Rules of Racing say?	3
Harassment – What is it?	4
Harassment is:	4
Sexual Harassment is:	4
Examples of sexual harassment include:	4
Sexual harassment can involve	4
Sexual harassment is NOT.....	5
False ideas about sexual harassment.....	5
Bullying is:.....	5
Examples of bullying include:	5
Discrimination is:	5
Examples of discrimination include:	6
What do the laws say?	7
NSW legislation.....	7
Child Protection.....	7
Federal Legislation	7
Questions about harassment	8
When and where can harassment happen?.....	8
Who gets harassed?.....	8
Why does harassment happen?	8
Could harassment affect you? YES	8
What are the effects of harassment?	9
Harassed person/s	9
Employer/organisation.....	9
Who is responsible?.....	10
Are individual persons responsible? YES	10
Are employers responsible? YES	10
Vicarious liability – what does it mean?	10
Are employees and participants responsible? YES	10
Liability of individual persons	11
Together we can beat harassment	12

Employers and employees - preventative measures.....	12
The best policy you can have is a preventative one.....	12
Reasonable steps include	12
Employers and employees – remedial measures.....	13
What support services are available?.....	14
Racing NSW	14
Independent bodies	14
Anti-Harassment Policy and Procedures – The benefits	15
Horsing around!.....	15
Attachment 1 – False ideas and Facts about Sexual Harassment	16
Attachment 2 – Anti Discrimination Board NSW Statistics	17
Sexual harassment complaints by grounds and area 2015/16.....	17
Attachment 3 – Anti-discrimination laws in NSW.....	18
NSW Legislation.....	18
Federal Legislation.....	18
Attachment 4 – Examples of Harassment.....	20
Attachment 5 – Case Studies	21
Attachment 6 – Real-life complaints to ADB	22
Attachment 7 – Sample Anti-Harassment Policy	23
Attachment 8 – Who can you contact?	30

Is Harassment Horsing Around?

Introduction

Harassment - is not welcome in the NSW Racing Industry

Racing NSW has initiated these documents as a preventative measure to remind all employees and licensed persons of workplace bullying and harassment policies, procedures and practices in the NSW Racing Industry.

What do the Rules of Racing say?

Racing NSW will not tolerate discrimination or harassment (including bullying or sexual harassment) in the NSW racing industry.

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

Stewards are empowered to investigate allegations of harassment including sexual harassment 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.

Racing NSW Stewards have the power to investigate and if warranted penalise any person employed or connected to racing in NSW who acts in contravention of State and/or Federal Discrimination laws and/or the Rules of Racing. Penalties can include a monetary fine, suspension or disqualification from racing.)

Harassment – what is it?

Harassment is:

Any form of behaviour that an employee, participant, job applicant, or anyone who receives goods or services from an organisation:

- Does not want; and
- Offends, humiliates, intimidates them; and
- Is either sexual, or targets them because of their race, sex, pregnancy, marital status, age, disability, homosexuality, or transgender.

Harassment is a form of discrimination and is **against the law** under anti-discrimination laws.

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, inappropriate use of social media, the display of offensive material or other behaviour, which creates a **sexually hostile** environment.

Examples of sexual harassment include:

- Uninvited touching, uninvited kisses or embraces;
- Smutty jokes or comments; making promises or threats in return for sexual favours;
- Displays of sexually graphic material including posters, pinups, cartoons, graffiti or messages left on notice boards, desks or common areas;
- Repeated invitations to go out after prior refusal;
- “Flashing” or sexual gestures; sex-based insults, taunts, teasing or name-calling; staring or leering at a person or at parts of their body;
- Sexually explicit conversation;
- Persistent questions or insinuations about a person’s private life;
- Offensive phone calls, letters, email messages or computer screen savers;
- Stalking

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

False ideas about sexual harassment

Refer to:

Attachment 1 – False Ideas and Facts about Sexual Harassment

Attachment 2 – Anti-Discrimination Board NSW Statistics update

Bullying is:

- 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
- inappropriate use of social media

Discrimination is:

Discrimination can involve:

- 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).

Some examples of discrimination include:

- verbal or written abuse, humiliation, denigration or ridicule;
- isolation or exclusion from groups or activities;
- different treatment at work unexplained by performance (demotion, or refusing promotion or advancement, repeated changes to shifts, rosters or working hours)
- inappropriate use of social media

Discriminatory conduct under the various State and Federal laws occurs by:

- treating a person less favourable on one or more of the prohibited grounds covered by legislation; or
- imposing an unreasonable condition on a prohibited ground which some people or group are less able to meet than others.

Prohibited grounds include:

- Sex
- Race or ethnic origin
- Age
- Disability (mental or physical) or impairment
- Marital or relationship status
- Sexuality, gender identity, gender history
- Family responsibility
- Pregnancy or potential pregnancy
- Adherence or non adherence to particular religious or political beliefs
- Engaging or not engaging in political or religious activities
- Physical appearance

AREAS OF DISCRIMINATION

These types of discrimination are unlawful in five main areas:

- Employment
- provision of goods and services
- State education, including schools, TAFEs and universities (sexual harassment and race discrimination are also unlawful in private education)
- provision of accommodation
- registered clubs.
- *Carer's responsibilities discrimination is only against the law in employment.*

What do the Laws say?

Harassment including sexual harassment are **unacceptable** and **unlawful** forms of behaviour.

Harassment at work is **against the law** in every State and Territory in Australia.

Generally harassment is only against the law if it happens because of one or more of the grounds of discrimination listed in the anti-discrimination laws operating in the State you are working in. However, **some kinds of harassment** may be additionally covered by the Rules of Racing or other kinds of laws, eg. Human rights and equal opportunity, workplace health and safety and criminal laws.

Laws that apply at work in NSW

NSW legislation

Anti-Discrimination Act 1977

Industrial Relations Act 1996

Child Protection

NSW Children and Young Persons (Care & Protection) Act 1998

If you have **reasonable grounds to suspect** that a child (under the age of 16) or young person (between 16 and 18 years of age) - or a group of children or young people are at risk of harm you may make a report to:

NSW Department of Community Services (DoCS)

- Telephone 132 111
- Web: www.community.nsw.gov.au

Federal legislation

Racial Discrimination Act 1975

Sex Discrimination Act 1984

Disability Discrimination Act 1992

Fair Work Act 2009

Work Health and Safety Act 2011

Refer to:

Attachment 3 – Anti-Discrimination laws which apply at work in NSW

Questions about harassment, bullying or discrimination (*'harrasment'*)

When and where can harassment happen?

Recruitment and selection – eg. during job interviews;

The course of employment – eg. 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 – eg. where an employee is dismissed for objecting to harassment or resigns because of intolerable harassment;

Any other circumstances that could arise in the context of relationships such as sexual harassment of an employee or participant by a fellow employee or participant, regardless of when or where it occurs.

Who gets harassed?

Anyone may be subject to harassment at some time. Harassment is often directed at people who are different in some way from the people who are the main group in a workplace or situation, for example, a different sex, sexuality, nationality or appearance from the majority of workers there.

Harassment is often about one person (or group of people) using power over another person (or group of people) wrongly. But harassment can also happen when there is no direct power relationship. It may simply create a hostile environment between workers or participants on the same level.

Harassment is not restricted to the young and beautiful nor to one level of an organisation – workers can harass each other and employees can harass their managers.

Why does harassment happen?

- Lack of understanding by employers of their role and responsibilities.
- Lack of understanding by employees of their role and responsibilities.
- Lack of appropriate organisation workplace anti-harassment policy and procedures
- Lack of understanding by any participant of appropriate behaviour and community standards

Could 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 harassment, including sexual harassment, bullying and discrimination.

Everybody includes: employers; full-time, part-time and casual employees; contractors; trainees, students and participants who are engaged in activities in all areas of the racing industry in NSW.

What are the effects of harassment?

Harassment can have **bad effects** on everyone at work and on the organisation as a whole – good employers, managers, employees and participants **want to eliminate harassment at work and elsewhere.**

Employees who harass or support harassment may **suffer loss of reputation or the termination of employment** where circumstances justify this.

Harassed person/s

- May affect work performance and opportunities
- Create a hostile or unpleasant environment
- May feel humiliated, frightened or sick
- May suffer mental health issues

Employer/organisation

- Poor morale leading to – absenteeism, reduced work output and high staff turnover
- May increase worker’s compensation claims – for employee stress related illnesses
- Exposure to the cost, inconvenience and damaging publicity of legal proceedings and compensation claims
- **Non-compliance may jeopardise your licence or participation under the Rules of Racing**

Refer to: Attachment 4 – Examples of harassment
--

Who is responsible?

Are individual persons responsible? – YES

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

Are employers and officials responsible? – YES

Vicarious liability – what does it mean?

Federal/state anti-discrimination law provides that an employer may be **legally responsible for discrimination and harassment** that occurs in the workplace or in connection with a person's employment unless it can be shown '**reasonable steps**' have been taken to reduce this liability.

This legal responsibility is called '**vicarious liability**'

An employer is **vicariously liable** for any acts of harassment committed by employers or agents in connection with their duties unless **all reasonable steps** were taken by the employer to prevent harassment occurring.

Employers are **not only liable for their own acts of harassment**, they can also be held **legally responsible** for harassment by their employees unless all reasonable steps were taken.

Lack of awareness that an employee or agent harassed another **will not discharge** an employer's **vicarious liability**. It is the employer's responsibility to prove that all reasonable steps were taken.

Maintain **complete confidentiality** during the investigation of any complaint.

Are employees and participants responsible? – YES

Employees and participants must be aware of and understand both their rights and their responsibilities. This includes being aware of, and comfortable with all available avenues for complaint and support

All employees must **NOT**:

- Engage in any act of **victimisation** or **bullying**
- **Cause, instruct, induce, aid or permit** another person to commit an act of harassment (including sexual harassment)

All employees have a **responsibility to**:

- Comply with the organisation's anti-harassment policy
- Offer **support to anyone who is being harassed** and let them know where they can get help and advice

They should not approach the harasser themselves

- Maintain **complete confidentiality** if they provide information during the investigation of a complaint

Be warned – spreading gossip or rumours may expose employees to a **defamation action**.

Liability of individual persons

The **vicarious liability** provisions of the legislation do **not preclude individual persons** from being **held primarily liable** for their own discriminatory or harassing behaviour in the workplace or in connection with their employment.

Accessory liability attaches to a person who has caused, instructed, aided or permitted another person to sexually harass a person unlawfully.

Refer to:

Attachment 5 – Case Studies

Attachment 6 – Real-life complaints to ADB

Together – we can beat harassment

Harassment (including sexual harassment, discrimination and bullying) is **no trivial matter** for employers or employees.

Employers and employees - preventative measures

The best policy you can have is a preventative one.

REMEMBER

Employees must be aware of and understand both their rights and their responsibilities. This includes being aware of, and comfortable with all available avenues for complaint and support.

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

Reasonable Steps include:

- Develop a written Workplace Anti-Harassment Policy that **prohibits harassment**
 - ◆ in consultation with staff and relevant unions.
 - ◆ Small employers may want to work together to develop an appropriate policy
- Regularly distribute and promote the policy the all staff levels, including part-time and casual workers. Constantly let your employees know that harassment will **not be tolerated**
- Train your managers, supervisors and foremen on their role in ensuring that the workplace is free from harassment. Ensure they **model appropriate standards** of professional conduct at all times
- Ensure all staff are **informed of their role** in ensuring that the workplace is free from harassment including:
 - ◆ The organisation's policy and procedures
 - ◆ What to do if they see or hear of others being harassed at work
 - ◆ Making sure they **don't encourage or engage** in harassment themselves
 - ◆ What will happen if they are **accused** of harassment
- Ensure that managers and supervisors discuss and **reinforce the policy** with staff. Verbal communication of the policy is particularly important in workplaces where the **literacy of staff** may be an issue
- Provide the policy and other relevant information on harassment to new staff as a standard part of induction
- Periodically **review the policy** to ensure it is operating effectively and contains up to date information
- Display posters on notice boards in common work areas
- **Remove offensive**, explicit or pornographic calendars, literature, posters and other materials from the workplace
- Initiate a policy **prohibiting** inappropriate use of social media and computer technology, eg. facebook, snapchat, instagram, email, screen savers and the Internet.

Employers and employees - remedial measures

- Implement an internal **system for dealing with complaints** of harassment

- Ensure the anti-harassment policy provides **employees with advice** on what to do if they are harassed. Employees should be given information on:
 - ♦ How **to deal with** the harassment themselves.
 - ♦ Employees should **not be pressured** into pursuing this option and should only confront the harasser directly if they feel confident enough to do so’
 - ♦ Speaking with their supervisor, manager or other contact officer who has **responsibility for dealing** with harassment;
 - ♦ Lodging a **formal** complaint through:
 - the organisation’s **internal** complaint/grievance procedures
 - approaching an **external** organisation such as: Racing NSW Contact Officers, Racing NSW Stewards, TAFE Counsellors, NSW Anti-Discrimination Board, Human Rights Commission and others listed at the end of this booklet.
- Subject to the size of your organisation – appoint harassment contact officers of both sexes who are responsible for:
 - ♦ Providing employees with **information on harassment** and clarifying any questions or concerns they may have
 - ♦ Providing **confidential advice** on the options that are available for dealing with harassment
 - ♦ Providing **advice to an individual** who wishes to confront the harasser themselves
- Harassment contact officers are **usually not involved** in the investigation or resolution of formal complaints.
- Provide employees who have been harassed with **access to counselling services**. The costs should be fully borne by the employer.
- Provide employees who have harassed **with information and training** to ensure the harassment does not occur again.

Refer to: Attachment 7 – Sample Anti-Harassment Policy

What support services are available?

REMEMBER – Racing NSW as the regulatory body for racing in NSW is committed to promoting work environments, **free from harassment** (including **sexual harassment, discrimination and bullying**).

Racing NSW

Racing NSW provides the following services:

- Assistance to employers to develop Anti-Harassment Policies
- Contact with Racing NSW designated managers and Stewards Department
- Contact with Regional Chairman of Stewards
- Contact with Industry Representatives (apprentice jockey mentors)
- Contact with counsellors if required
- Availability of course material for trainees and apprentice jockeys

If you have any information regarding adverse conduct relating to workplace harassment (including sexual harassment, discrimination and bullying) you can contact any of the Racing NSW personnel or other authorities listed on the WHO CAN YOU CONTACT attachment.

Independent bodies

The following independent bodies are able to provide information, advice and support:

- SafeWork NSW – WEB - <http://www.safework.nsw.gov.au/> SafeWork NSW provides policies, support and guidance for employers and employees
- Anti-Discrimination Board NSW – WEB - <http://www.antidiscrimination.justice.nsw.gov.au/> The ADB investigates and conciliates complaints of discrimination, harassment and vilification. The Board is impartial in this process. It does not take sides. The Board tries to help both parties involved come to an agreement about how the problem can be resolved.
 - ◆ It informs and educates the people of NSW, employers and service providers about their rights and responsibilities under anti-discrimination law.
 - ◆ It makes recommendations to the government about amendments to anti-discrimination law.
- Australian Human Rights Commission – WEB: <https://www.humanrights.gov.au/>
 - ◆ Under the legislation administered by the Commission, it has responsibilities for inquiring into alleged infringements under three anti-discrimination laws - the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984*, and the *Disability Discrimination Act 1992*. Matters which can be investigated by the Commission include discrimination on the grounds of race, colour or ethnic origin, racial vilification, sex, sexual harassment, marital status, pregnancy, or disability.

Attachment 8 – WHO CAN YOU CONTACT - Outlines support services available to both employers and employees regarding harassment in the workplace (including sexual harassment, discrimination and bullying matters).

Anti-Harassment Policy and Procedures – The benefits

There are **some compelling reasons** for organisations **to establish and implement** an anti-harassment policy: An anti-harassment policy will help:

- Employees and other workplace participants know what harassment is and that it **is intolerable and unacceptable behaviour** in the workplace
- **Prevent harassment** by making it clear that action will be taken if it is found to occur
- Inform people about **steps they can take** if they are being harassed
- Inform people about **how to respond if they witness or hear** of harassment occurring
- Inform people about how **allegations of harassment** are investigated fairly and appropriately

It is an **effective deterrent** to harassment in the work environment. Removing discrimination and harassment **benefits everyone** and helps to make sure that:

- The best person gets each job
- The right people are developed or trained in the right things
- The best people are promoted
- Each employee is able to reach their full potential no matter what sex, race, age and so on, they are.
- Everyone is able to work in a non-threatening, non-harassing and therefore less stressful environment – making the business more productive and profitable
- Staff turnover is reduced
- Your customers and clients are happier with your services
- Workers' compensation claims do not increase
- You don't end up in court fighting costly discrimination or harassment claims

Horsing around!

REMEMBER - harassment laws do not mean we cannot have **fun at work**. They just mean we cannot have fun at **other people's expense**, in ways that interfere with them being able to get on with their work in comfort and safety.

You and the people you work with

HAVE A RIGHT TO A WORKPLACE FREE OF DISCRIMINATION AND HARASSMENT!

Attachment 1 – False ideas and Facts about Sexual harassment

There are many false ideas about sexual harassment which impact on people's ideas about what **behaviour is acceptable** in the workplace. Here are some of them:

False idea

1. **Sexual harassment only affects a small number of women**
2. **Men are never the victims of sexual harassment**

Fact

Many surveys have shown that sexual harassment at work is widespread around the world. In one Australian Study, 24 per cent of women and 4 per cent of men said they had experienced sexual harassment at work.

False idea

3. **Women should ignore sexual harassment when it occurs**

Fact

Mostly women do ignore it, but this doesn't work. One survey in Australia showed 23 percent of those reporting sexual harassment first ignored the unwanted attention and another 13 percent pretended not to notice. In 75 percent of these cases, the harassment continued or even got worse.

False idea

4. **The man is often only joking. It's just that women have no sense of humour**

Fact

A joke is only a joke when both people think it is funny. If the behaviour offends the woman, it is not a joke. It's harassment.

False idea

5. **You can't stop men and women being attracted to each other**

Fact - Sexual harassment has nothing to do with mutual attraction and genuine expressions of affection between people. When a man harasses a woman, sexually, that doesn't mean that he likes her.

Attachment 2 – Anti Discrimination Board NSW Statistics

Complaints received by ground and area 2017-18

	<i>Emp</i>	<i>Gds & Servs</i>	<i>Acc</i>	<i>Educ</i>	<i>Clubs</i>	<i>Qual bods</i>	<i>Racial vil</i>	<i>Hom vil</i>	<i>Trans vil</i>	<i>Other</i>	<i>Total</i>	<i>%</i>
Disability	78	107	7	23	6	1	-	-	-	13	235	24.1
Victimisation	91	21	0	11	0	0	0	3	0	3	129	13.2
Race	48	46	16	5	5	1	-	-	-	6	127	13.0
Sexual harassment	98	10	0	2	0	0	-	-		0	110	11.3
Sex	62	16	7	3	3	0	-	-	-	8	99	10.2
Age	30	24	5	1	1	0	-	-	-	2	63	6.5
Carer's responsibilities	35	0	0	2	0	0	-	-	-	0	37	3.8
Aiding an unlawful act	10	17	1	1	0	0	0	1	0	0	30	3.1
Racial vilification	-	-	-	-	-		19	-	-	-	19	2.0
Homosexuality	9	5	1	0	0	0	-	-	-	1	16	1.6
Marital/domestic status	8	4	2	0	0	0	-	-	-	2	16	1.6
Homosexual vilification	-	-	-	-	-			13	-	-	13	1.3
Transgender	1	7	0	0	1	0	-	-	-	0	9	0.9
Transgender vilification	-	-	-	-	-		-	-	4	-	4	0.4
Other	4	2	1	0	0	0	-	-	-	14	21	2.2
Not specified	10	9	3	0	3	0	-	-	-	21	46	4.7
Total	484	268	43	48	19	2	19	17	4	70	974	100

%	49.7	27.5	4.4	4.9	2.0	0.2	2.0	1.7	0.4	7.2	100	
---	------	------	-----	-----	-----	-----	-----	-----	-----	-----	------------	--

Attachment 3 – Anti-discrimination laws in NSW

MOST COMMON COMPLAINTS

As the table on page 17 shows, the most common complaints received in 2017-18 were on the grounds of disability discrimination, victimisation, race discrimination and sexual harassment.

There were 235 complaints of disability discrimination, which is an increase from 2016-17. Disability discrimination complaints accounted for almost 25% of total complaints.

NSW Legislation

Name of law	Grounds of discrimination and harassment at work which are against the law	Organisation which looks after this law
Anti-Discrimination Act 1977	<ul style="list-style-type: none"> • Sex • Pregnancy • Marital status • Age • Homosexuality – actual or presumed • Race (including colour, descent, nationality, ethnic or ethno-religious background) • Disability – past, present, future, actual or presumed, physical, intellectual, psychiatric or long-term illness • Transgender status – actual or presumed carer’s responsibilities. <p>It is also against the law to discriminate against someone because their relatives, friends or associates have any of these characteristics (except for carer’s responsibilities), or because you think they are homosexual or transgender or have a disability, even if it isn’t the case. Sexual harassment is also against the law.</p>	Anti Discrimination Board of NSW (ADB)
Industrial Relations Act 1996	<p>Dismissals that are harsh, unreasonable or unjust. All the grounds of discrimination that are against the law under the <i>NSW Anti-Discrimination Act</i> are likely to be covered by this.</p> <p>In addition, terms and conditions of awards and agreements would not discriminate on grounds covered by the <i>NSW Anti-Discriminations Act</i>.</p>	NSW Industrial Relations Commission

Federal legislation

Name of law	Grounds of discrimination and harassment at work which are against the law	Organisation which looks after this law
Racial Discrimination Act 1975	<ul style="list-style-type: none"> • Race • Colour • Descent • National or ethnic origin (or that of a relative or associate) 	Australian Human Rights Commission
Sex Discrimination Act 1984	<ul style="list-style-type: none"> • Sex • Marital status • Pregnancy • Family responsibility (dismissal only) • Sexual harassment 	Australian Human Rights Commission

Disability Discrimination Act 1992	<ul style="list-style-type: none"> • Physical, intellectual, psychiatric, sensory, neurological or learning disabilities • Physical disfigurement • Presence in the body of disease-causing organisms (eg. HIV (or that of a relative or associate) 	Australian Human Rights Commission
Fair Work Act 2009	<ul style="list-style-type: none"> • Unfair dismissal • Bullying • Dispute settlement • Award Wage / Employment issues 	Fair Work Commission
Work Health and Safety Act 2011	<ul style="list-style-type: none"> • Discrimination leading to dismissal, unfair treatment, demotion, other 	Australian Industrial Relations Commission
Fair Work Act 2009	<ul style="list-style-type: none"> • Race • Colour • Sex • Sexual preference • Age • Physical or mental disability • Marital status • Family responsibilities • Pregnancy • Religion • Political opinion • National extraction or social origin for dismissals from employment, terms of awards and enterprise agreements 	Fair Work Commission

Attachment 4 - Examples of harassment

Let's look at some examples of behaviour at work that could be harassment.

Behaviour	Type of harassment
unwanted sexual propositions	sexual
display of obscene material in the workplace or on social media	sexual
hostile comments that women can't or shouldn't do a particular job, because they are not strong enough or they are too emotional, etc	sex-based
jokes or hostile comments about people who look different, have an accent, or belong to a particular culture or religion eg about the food they eat or about their customs	racial
playing practical jokes on a person with a disability, such as hiding crutches or putting things in the way of a person who is blind	disability
humiliating and dangerous treatment of new trainees or apprentices as part of workplace 'initiation rites'	age
offensive language or comments, unjustified criticism	bullying
constant statements about older workers losing their mental faculties	age
deliberately excluding someone from workplace activities, withholding information that is needed for work	bullying
negative comments about the dress, speech and physical mannerisms of homosexual people or people you think are homosexual	homosexuality
threats and acts of violence against homosexual people	homosexuality
calling a transgender person names like 'it'	transgender
ridiculing the appearance of a transgender person	transgender

Can you add any other examples of harassment of particular groups that you may have seen or experienced?

Note:

Some types of harassment can be **criminal offences** as well as being against anti-discrimination laws, for example, obscene phone, mail or social media messages, sexual assault, and physical assault including assault of others in work pranks, such as in initiation rites for apprentices /younger workers.

Attachment 5 – Case Studies

Case Study 1

Damien is a new worker with a trainer and is invited out with the boys to the local topless bar. He declines stating he “has other interests”. Over the following weeks Damien finds himself increasingly left out of conversations and thinks the others are making jokes about him. He finds a pornographic image of two men on the wall beside his locker.

- ◆ What are Damien’s options to get the behaviour to stop?
- ◆ What are the responsibilities of the trainer in relation to the behaviour?

Case Study 2

Kerry is 15 years old and an apprentice jockey. She is living out of home for the first time and tells you (her supervisor) that she is feeling ‘lonely’ and a bit scared at work. At first the guys at work were ‘really nice’, paying Kerry a lot of attention as she was the only girl. She particularly liked Grant, one of the other jockeys.

Now she tells you that Grant has ‘forced’ her into things she doesn’t want to do and the other guys are making jokes & comments about her.

- ◆ As Kerry’s supervisor, what are your responsibilities?
- ◆ Who may be found liable if a formal harassment complaint is lodged with the ADB or other Authority?

Case Study 3

Jan is a receptionist at a race club and makes a complaint about one of the grounds keepers. After initially asking her out, which was declined he now continually calls her frigid loudly at the desk.

Her supervisor asks Jan to call him if the behaviour continues. On the next occurrence she is unable to locate her supervisor.

- What should Jan do now?

Case Study 4

Rowan has started work as a barrier attendant. One of the senior barrier attendants keeps criticising Rowan for small things and uses offensive language. He also doesn’t share information when Rowan asks him about proper procedure.

- What type of behaviour is Rowan being subjected to?
- What are the responsibilities of the Supervisor if he overhears the conduct or if Rowan asks that it stop?

Attachment 6 – Real-life complaints to ADB

Case 1

A young woman lodged a complaint of sexual harassment against her former employer. She said there had been a fair amount of general sexual banter and comments in the office and she had tolerated this, but she became uncomfortable when her manager made comments directly to her in an isolated situation. The complaint was resolved when the employer agreed to pay the woman financial compensation to cover the wages she had lost before she found other employment.

Case 2

A club employee said that he had been racially harassed for some time by his supervisor. The club had no anti-harassment policy and no grievance procedure. The complaint was resolved when the man was paid financial compensation and the club agreed to develop a harassment policy and educate staff about their rights and responsibilities. Also, the supervisor was demoted.

Case 3

A woman who worked for a local council complained that a co-worker had talked about women in a derogatory way and brought in men's magazines that he knew would upset her. She said that when she complained to her manager he dismissed her grievances. The complaint was settled when the council agreed to send the man and their manager for training on harassment and bullying prevention, to monitor the situation for a certain time, and to work with the woman to produce guidelines for workplace behaviour. She was concerned about being victimised following the complaint so it was specifically agreed that she would not be moved to a different work site.

Case 4

After being harassed by her supervisor, a woman with a physical disability was dismissed from her job. The complaint was settled when the company agreed to pay her substantial compensation, to give her a good reference and to remove false records from her personnel file that said that her work performance was poor.

Attachment 7 – Sample Anti-Harassment Policy

When developing your Organisation's Policy, please refer to the preventative and remedial measures outlined on pages 12 and 13.

If you are a small business, consider working with other similar small businesses when developing your Anti-Harassment Policy and Procedures.

Setting the Policy: An outline programme on anti-harassment in your workplace

Any programme, whether big or small should have the following:

- Co-ordinator / specified employee (Harassment Contact Officer): a programme co-ordinator to whom complaints may be taken
- Policy Statement: A statement from the head of your Organisation
- Organisation Complaints Procedure: An established and publicised complaint procedure
- Education and promotion: Education for employees about their rights and responsibilities and promotion of the policy and procedures

This is a SAMPLE ONLY

Policy Statement

Racing NSW requires all organisations involved in the NSW Thoroughbred Racing Industry to achieve and maintain workplaces that are free from all forms of harassment, sexual harassment, discrimination and bullying.

The [*Organisation name*] has a high standard of professional behaviour for all managers and employees, and, in line with such standards, takes its obligations with respect to harassment seriously.

[*Organisation*] will not tolerate any workplace behaviour that constitutes discrimination or harassment (including sexual harassment or bullying). Appropriate action will be taken against employees who offend.

If an employee feels he or she is being treated unfairly or harassed, relevant information on available options may be obtained from _____ [*specified employee – Harassment Contact Officer (HCO)*] who will listen carefully and respond in strict confidence. No one who does not wish to will be required to make a complaint.

Principles

To prevent or deal with harassment in the workplace [*Organisation*] has in place Anti-Harassment Policy and Procedures based on the following principles:

- management has responsibility to ensure the workplace is free of harassment;
- employees have the responsibility to ensure that they do not engage in harassing behaviour, nor cause, instruct, induce, aid or permit another person to commit an act of harassment (including sexual harassment, discrimination or bullying);
- good people management practices;
- fostering standards of ethical behaviour and conduct that contribute to a productive and customer focused workplace;
- prompt action to be taken when harassment occurs; and
- employees are to treat each other and their customers fairly and with respect and sensitivity.

What is discrimination?

Discriminatory conduct under the various State and Federal laws occurs by:

- treating a person less favourable on one or more of the prohibited grounds covered by legislation; or
- imposing an unreasonable condition on a prohibited ground which some people or group are less able to meet than others.

Prohibited grounds include:

- Age
- Religion, engaging or not engaging in religious activities
- Marital Status, Relationship Status
- Political beliefs, affiliation or activity
- Family responsibility
- Parenthood
- Sex
- Pregnancy or potential pregnancy
- Sexuality, gender identity, gender history
- Race
- Disability or Impairment
- Irrelevant medical record
- Physical features

Industrial/trade union or employer association membership or activity, non-membership or activity

What is harassment?

Harassment is a form of discrimination under the various State and Federal laws.

Harassment is any form of behaviour that an employee, job applicant, or anyone who receives goods or services from [*insert Organisation name*]:

- Does not want; and
- Offends, humiliates, intimidates them; and
- Is either sexual, or targets them because of their race, sex, pregnancy, marital status, age, disability, homosexuality, or transgender.

Harassment is a form of discrimination and is **against the law** under anti-discrimination laws.

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:

- Uninvited touching, uninvited kisses or embraces;
- Smutty jokes or comments; making promises or threats in return for sexual favours;
- Displays of sexually graphic material including posters, pinups, cartoons, graffiti or messages left on notice boards, desks or common areas;
- Repeated invitations to go out after prior refusal;
- “Flashing” or sexual gestures; sex-based insults, taunts, teasing or name-calling; staring or leering at a person or at parts of their body;
- Sexually explicit conversation;
- Persistent questions or insinuations about a person’s private life;
- Offensive phone calls, letters, email messages or computer screen savers; stalking.

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 that is based on mutual attraction, friendship and respect.

If the interaction is consensual, welcome and reciprocated it is not sexual harassment.

Bullying is:

- Repeated behaviour that is unreasonable, by an individual or a group towards a person that creates a risk to health and safety.
 - It is behaviour that a reasonable person, having regard to all of the circumstances, would anticipate to be humiliating, intimidating, undermining or threatening, and which causes a risk to health and safety. There is no requirement that bullying be intentional.
-
-

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
- inappropriate use of social media

No discrimination or harassment

[*Organisation*] recognises that you cannot do a good job or be fully productive if you feel that someone at [*Organisation*] is treating you unfairly, discriminating against you or harassing you, because of your sex, race, age and so on. [*Organisation*] will not tolerate any type of discrimination or harassment (including sexual harassment) in its workplace.

It is also against the law for any employee to discriminate against or harass a job applicant or another employee.

This means that there is to be no discrimination or harassment in the workplace of [*Organisation*] on any prohibited ground, including, but not limited to, those specifically listed below.

- Sex
- Race or ethnic origin
- Age
- Disability (mental or physical) or impairment
- Marital or relationship status
- Sexuality, gender identity, gender history
- Family responsibility

- Pregnancy or potential pregnancy
- Adherence or non-adherence to particular religious or political beliefs
- Engaging or not engaging in political or religious activities
- Physical appearance

What to do if someone is treating you unfairly or harassing you

If you feel someone is treating you unfairly or harassing you, we encourage you to contact _____ [*specific HCO*] as soon as possible, for assistance and advice on available options. The HCO will listen carefully and respond in strict confidence. No one who does not wish to will be required to make a complaint.

Please be assured that [*organisation*] you will not be victimised for speaking out. Every endeavour will be made to ensure that no one at [*organisation*] victimises you for either supporting someone else's complaint or for putting in your own complaint.

Victimisation of a complainant (should it occur) will be treated very seriously by [*Organisation*].

OPTIONS

Self Help

- start keeping notes of what harassment is happening to you and when
- check [organisation's] workplace policy and procedures
- tell the person, or persons, in private that their behaviour is offensive and request it to stop;
- speak to the person, or persons, in private, in the presence of [*specific HCO*]

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

Internal Procedures

Informal intervention

You may approach a member of management or _____ [*specific HCO*] to intervene. This person will 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 [organisation].

Formal Complaint

If self help or informal intervention has not worked or you feel they are inappropriate, and in your view, the allegation is serious enough to warrant formal disciplinary action, you should submit a written complaint to your Manager or _____ [*specific HCO*].

Appropriate disciplinary action will be taken if investigation shows the complaint to be justified.

External Support

If you would feel more comfortable approaching an external organisation for assistance and advice the following services are available to you:

The NSW Thoroughbred Racing Board provides the following support services:

- Contact with designated Racing NSW designated personnel and Stewards Department
- Contact with Regional Chairman of Stewards
- Contact with Industry Representatives (apprentice jockey mentors)
- Contact with TAFE counsellors (for trainees and apprentice jockeys attending Apprentice School)

Other Independent Bodies include:

- SafeWork NSW
- Anti-Discrimination Board of NSW
- Human Rights Commission

Refer to the attached WHO TO CONTACT list for details.

If you treat someone else unfairly or harass them

If [*Organisation*] becomes aware that you have been responsible for treating another employee unfairly or for harassing them, you may be disciplined.

Further if [*Organisation*] finds out that you have been responsible for victimising someone because they have complained about discrimination or because they have supported someone else's complaint, you may be disciplined.

Signed [*Head of Organisation*]

Attachment 8 – Who can you contact?

Seek an advice and / or complaint channel that you both trust and feel comfortable with. First consult your employer's Anti-Harassment Policy Procedures and investigate internal support channels. External advice and complaint channels include:

- ◆ Racing NSW designated personnel
- ◆ Racing NSW Stewards
- ◆ TAFE Counsellors
- ◆ SafeWork NSW
- ◆ Anti-Discrimination Board NSW
- ◆ Human Rights Commission

CONTACT DETAILS:

Racing NSW

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

Confidential enquiries:

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

Chairman of Stewards

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

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

SAFework NSW

Provides policies, support and guidance for employers and employees

Phone: 13 10 50

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

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/>

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/>

NSW DEPARTMENT OF COMMUNITY SERVICES -

Child Protection Helpline 132 111

www.community.nsw.gov.au

RAPE CRISIS CENTRE

Toll Free: 1800 424 017

Sydney: (02) 9515 6111 (24hrs)

www.nswrapecrisis.com.au

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

Toll Free: 1300 794 991

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

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

LIFELINE

This service provides out of hours support

Phone: 131 114

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

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/>

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>

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 for further information.

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