



Harassment and sexual harassment

Are harassment and sexual harassment against the law?

Yes. In NSW, it is against the law for you to be harassed because of your:

- sex;
- pregnancy;
- breastfeeding;
- race (including colour, nationality, descent, ethnic or ethno-religious background);
- age;
- marital status;
- homosexuality (actual or perceived);
- disability (actual or perceived, past, present or future);
- transgender status (actual or perceived); and
- carers' responsibilities (actual or presumed) in **employment** only).

What is harassment?

In terms of anti-discrimination law, harassment is any form of behaviour that:

- you do not want;
- offends, humiliates or intimidates you; and
- targets you because of your sex, pregnancy, breastfeeding, race, age, marital status, homosexuality, disability, transgender (transsexual) status or carers' responsibilities.

What is sexual harassment?

In terms of anti-discrimination law, sexual harassment is any form of sexually related behaviour that:

- you do not want; and
- in the circumstances, a reasonable person would have expected you to be offended, humiliated or intimidated.

What types of behaviour could be harassment or sexual harassment?

Depending on the circumstances, each of the following kinds of behaviour may be harassment:

- material that is racist, sexist, sexually explicit, homophobic (anti-gay) and so on that is displayed in the workplace, circulated on paper or by email, or put on a computer or fax machine or on the internet, or in someone's workspace or belongings;
- verbal abuse or comments that put down or stereotype people because of their sex, pregnancy, breastfeeding, race, age, marital status, homosexuality, disability, transgender status or carers' responsibilities;
- offensive jokes based on sex, pregnancy, race and so on;
- offensive gestures based on sex, pregnancy, race and so on;
- ignoring, isolating or segregating a person or group because of their sex, pregnancy, race and so on;
- staring or leering in a sexual manner;
- sexual or physical contact, such as slapping, kissing touching or hugging;
- intrusive questions about sexual activity;
- sexual assault (also a crime under the Crimes Act);
- unwelcome wolf whistling;
- repeated sexual invitations when the person invited has refused similar invitations before; and
- initiation ceremonies that involve unwelcome sexual, sexist, racist and so on behaviour.

In some cases, a single act may be enough to amount to harassment.

Anyone can be harassed, including people of any age or race, women or men. Harassment is often about one person (or a group of people) using power inappropriately over another person or group of people. But harassment can also occur between people when there is no power relationship. It may simply create a hostile environment.

It is also against the law for a person to be harassed because of their relationship to, or association with, a person of a particular sex, race, age, marital status, homosexuality, disability, transgender status or carers' responsibilities, or a person who is pregnant or breastfeeding.

But harassment is only against the law if it happens in one of the following circumstances

- **in employment** — when you apply for a job, or at any time during your employment;
- **when you get, or try to get, most types of goods or services** — for example, from shops, pubs and entertainment places, banks, lawyers, government departments, doctors, hospitals;
- **when you rent, or try to rent, accommodation** — for example, a unit, house, commercial premises, hotel room, motel room, caravan...;
- **when you apply to get into, or are studying in, any State education institution** — State school, college, TAFE, university....

In general harassment is only against the law if it is done by someone aged 16 or over.

In addition, **sexual harassment** and harassment because of your **race** are against the law in **private** educational institutions;

- **when you try to enter or join a registered club, or when you're inside one** — a registered club includes any club that sells alcohol or has gambling machines;
- In addition, sexual (but only sexual) harassment is against the law if it happens in any of the following circumstances:
 - **when buying or selling land;**
 - **when taking part in a sporting activity.** This includes people involved in organised sporting competitions, coaching or being coached in organised sporting competitions or officiating at an organised sporting event; and
 - in the administration of NSW State laws and programs.

If you are harassed somewhere else (for example, in your home or on the street), contact a local chamber magistrate or the police for advice and help.

What are my rights at work?

Our statistics show that most harassment that is against the anti-discrimination laws happens to people in employment.

The law says that your employer must not harass you or any other employee at work. It also says that they must do their best to make sure that there is no harassment in their workplace.

This means that they must do their best to make sure that your supervisor doesn't harass you, that your workmates don't harass you, and that customers, clients and any other people you have to deal with at work don't harass you. They must do this whether you are permanent, full-time, part-time or casual.

Of course, if you are happy with a particular type of behaviour or you want to have a relationship with someone you work with, that is your business — as long as it doesn't interfere with your work or any standards of workplace behaviour that your employer has set. If you don't mind the behaviour then it's not harassment.

Victimisation is also against the law

It is against the law for anyone to hassle or victimise you or treat you unfairly because:

- you have complained to your employer or another person about harassment;
- you have complained to the Anti-Discrimination Board; or
- you have supported someone with a harassment complaint, or acted as a witness in a harassment case.

You can lodge a separate complaint of victimisation with the Anti-Discrimination Board if you have been victimised because of a harassment complaint.

What can I do if I'm harassed or sexually harassed?

Read through this factsheet to check that what's happened seems to be against the law. If you aren't sure if it's against the law, phone us to check on your rights.

If what's happened seems to be against the law, you can try talking to the person or organisation that you think is harassing you. The organisation may have a policy on these issues and/or a process in place to deal with grievances, and you may be able to address your problem through these channels. You can also get help from other sources such as trade unions.

If you have been assaulted you can also complain to the police and ask them to charge the person who did it.

If talking to the person or organisation involved doesn't work, or isn't appropriate, you may decide to make a complaint to the Anti-Discrimination Board. It won't cost you any money for the Board's staff to help you, and you don't need a lawyer.

Making a complaint

If you want to make a complaint, it must be in writing and it is best if it is signed by you. You can either send us a completed discrimination complaints form, or write a letter to the President of the Anti-Discrimination Board, explaining what happened and why you think you have been harassed or sexually harassed. Our addresses and phone numbers are at the end of this factsheet.

You can write to us in any language, or in Braille. If you need assistance to make a written complaint, phone the Board and we can help you or refer you to an organisation that can help you.

We also accept complaints on your behalf from your lawyer, or organisations such as unions and other representative bodies. However the complaint must make it clear that you agree with the complaint being made and you must be named in the complaint. In some circumstances you may also be required to show that you consent to the complaint being made on your behalf.

If you want to make a complaint on behalf of a child or a person with a disability, contact the Board for more information.

For us to be able to accept a complaint, the events involving harassment or sexual harassment must have occurred in the twelve months before the complaint is received by the Board. If you make a complaint about events that occurred more than twelve months before you lodge your complaint, the Board may refuse to investigate your complaint.

If your problem is urgent (for example, you think you are about to lose your job), tell us this in your letter and we will get back to you in time to do what we can to help.

What happens after you make a complaint?

We have the legal power to investigate your complaint, and if it's against the law, to try to conciliate it. This means that we will try to help you and the person or organisation you are complaining about reach a private settlement that you both agree on. The Board is impartial in this process and does not take sides.

Any settlement will depend on the circumstances of your case, and on what you and the other parties are willing to offer and accept. It could be an apology, financial compensation, transfer to another position, the person who harassed you being transferred, reprimanded or sent on a training course about harassment, and so on.

We treat all complaints confidentially, but we will need to inform the organisation or person you are complaining about of the complaint. We will not release information about your complaint to anyone else except with your permission or if we are required to by law.

Most complaints are conciliated. If yours isn't, you may go to the Equal Opportunity Division of the Administrative Decisions Tribunal, which is like a court. It provides a legal judgment that must be followed. However, very few cases need to go to the Tribunal and in some circumstances it's possible to ask the Tribunal to keep your details confidential.

Examples of harassment complaints we have handled

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 comments made by her manager were directed to her personally in an isolated situation. The manager did not deny making the comments. The employer agreed to pay the woman financial compensation to cover some of the wages she lost before she found other employment.

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 for employees to use if they were harassed.

Our involvement led to demotion of the supervisor, financial compensation for the man and the development of a new harassment policy for the club's employees. All staff were told about the new policy and what their rights and responsibilities were with regard to harassment.

Two women said that they were sexually harassed at work. After speaking to one of our officers and finding out what the law said, they decided to talk to their manager themselves.

When they did this, the manager agreed to introduce policies and grievance procedures for all staff to help prevent anyone else being harassed.

After being harassed by her supervisor, a woman with a physical disability was dismissed from her job. She contacted the Board, and we organised a conciliation. 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.

The Anti-Discrimination Board of NSW

(open weekdays 9am-4.30pm)

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