



Harassment and sexual harassment

What does the law say about harassment?

Anti-discrimination law defines harassment as any form of behaviour that:

- you do not want;
- offends, humiliates or intimidates you; and
- creates a hostile environment.

In NSW, it is against the law to harass you because of your:

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

It is also against the law for you to be harassed because of the sex, pregnancy etc of any of your relatives, friends, work colleagues or associates. For example, you could be harassed because your husband comes from another country, or because you have a friend who is homosexual.

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

What does the law say about sexual harassment?

Anti-discrimination law defines sexual harassment as:

- unwanted sexual advances, or unwelcome requests for sexual favours; or
- other unwelcome conduct of a sexual nature; and
- in the circumstances, a reasonable person would have expected you to be offended, humiliated or intimidated by this behaviour.

See the next page for information about the types of behaviour that can constitute harassment.

When does this law apply?

The law against harassment and sexual harassment generally applies in five main areas of public life.

The exception is harassment because of carer's responsibilities, which is only against the law in employment.

The areas in which the law applies are as follows:

- **in employment** – when you apply for a job, when you are at work and when you leave a job. This also covers bodies which issue licences to perform particular jobs;
- **when you get or try to get most types of goods or services** – for example, from shops, banks, lawyers, government departments, the police, public transport, local councils, doctors, hospitals and other medical services, hotels, sporting venues and entertainment venues;
- **when you apply to get into or study in any State educational institution**, which includes any government school, college or university. Sexual harassment and harassment because of your race are also against the law in private educational institutions.;
- **when you rent accommodation** such as houses, units, flats, hotel or motel rooms, caravans or commercial premises; and
- **when you try to enter or join a registered club, or when you get services from one.** A registered club is a club that sells alcohol or has gambling machines.

Sexual harassment is also against the law if it happens in any of the following circumstances:

- when buying or selling real estate;
- when taking part in sport – this covers people taking part in organised sporting competitions, coaching or being coached in organised sporting competitions and 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), you may be able to get assistance from a local chamber magistrate or the police.

What types of behaviour could be harassment?

It's important to understand that if a person finds a particular behaviour offensive, humiliating or intimidating, and it relates to their sex, race, age etc as described on the previous page, then it is harassment. This is irrespective of how the harasser or anyone else perceives the behaviour. People may have different ideas about what is offensive, and within reason, it is up to them to define what they find unacceptable.

Anyone can be harassed, including women or men, and people of any age or race. Harassment may be an ongoing pattern of behaviour, or it may be just a single act. It may be perpetrated by a person in a position of power over the victim, for example their supervisor at work, or it may occur where there is no power relationship, for example among work colleagues.

Depending on the circumstances, any of the following could be harassment if it relates to a person's sex, race, age etc:

- material that is displayed in the workplace (for example on a noticeboard), circulated on paper, sent by fax or put in someone's workspace or belongings
- material put on a computer, sent by email, or put on a website, blog or social networking site;
- verbal abuse or comments;
- offensive jokes;
- offensive gestures;
- ignoring, isolating or segregating a person or group – for example not inviting someone to a work event that everyone else is invited to;
- initiation ceremonies that involve unwelcome behaviour.

What types of behaviour could be sexual harassment?

Depending on the circumstances, any of the following could be sexual harassment:

- staring or leering in a sexual manner;
- unwelcome wolf whistling;

- comments about a person's physical appearance or sexual characteristics;
- sexual or physical contact, such as slapping, kissing touching, hugging or massaging;
- displaying or circulating sexual material, for example on a noticeboard or by email;
- repeated sexual invitations when the person has refused similar invitations before; and
- initiation ceremonies involving unwelcome sexually related behaviour.
- intrusive questions about sexual activity;
- sexual assault (also a crime under the Crimes Act).

What are my rights at work?

Most harassment that is against the anti-discrimination laws happens at work.

Your employer must not harass you at work, and they must also take "all reasonable steps" to make sure that there is no harassment in their workplace. Your employer must do their best to make sure that you are not harassed by your supervisor, your workmates or your customers or clients. They must do this whether you are full-time or part-time, permanent or casual.

In this context, all reasonable steps may include:

- having a clearly defined policy that harassment is not acceptable, and procedures for addressing harassment when it occurs;
- making sure all employees know about this policy, what constitutes harassment and the procedures for addressing it; and
- ensuring that the policy and procedures are followed.

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 OK — 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.

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

First you need to work out if what has happened to you seems to be against the anti-discrimination law. If you are not sure after reading this factsheet, phone our Enquiry Service for more information. If you have been assaulted,

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

If what's happened to you does seem to be against the anti-discrimination law, you should try talking to the person or organisation involved. The organisation may have a policy on these issues or a process for dealing 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 don't feel able to talk to the person or organisation, or you talk to them but it doesn't solve the problem, you can make a complaint to the Anti-Discrimination Board. It won't cost anything to make a complaint, and you don't need a lawyer.

If what has happened to you is not against the law, there may be other ways you can solve the problem. Refer to our factsheet *How to deal with discrimination, unfair treatment or harassment* or phone our Enquiry Service for advice.

Making a complaint

Your complaint must be in writing. You can make a complaint by completing our discrimination complaint form, which is available on our website or from our Enquiry Service. Another option is to write to the President of the Anti-Discrimination Board, explaining what happened and why you think you have been harassed. Our addresses and phone numbers are at the end of this factsheet.

You can write to us in any language, or in Braille, and we will have your complaint translated free of charge. If you need assistance to write your complaint down, phone us and we will help you or refer you somewhere else for help.

We also accept complaints made on your behalf by organisations such as trade unions and representative community groups (for example an ethnic community association). In this case you must be named in the complaint and it must be clear in the complaint that you agree with it being made. You may also be asked 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 who cannot make their own complaint, contact us for more information.

The Board can only accept a complaint if the harassment occurred in the twelve months before we receive the complaint. If you make a complaint about events that

occurred more than twelve months before we receive it, we may not investigate the complaint.

If your problem is urgent (for example you are about to lose your job or housing), make this clear in your complaint and we will try to help you quickly.

What happens after you make a complaint?

We will generally investigate your complaint to make sure that what has happened to you is against the law. If this is the case, we will try to conciliate your complaint. This means we will try to help you and the person or organisation you are complaining about to reach a private settlement that you both agree on. The Board is impartial in this process and does not take sides.

The settlement will depend on the circumstances of your case, on what the other parties are willing to offer and what you are willing to accept. It could be an apology, financial compensation, being moved to another work location, an education program about discrimination and harassment in your workplace, and so on.

We treat all complaints confidentially, but we have to inform the organisation or person you are complaining about of the complaint. This is so we can give them a fair chance to respond to your 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. Very few cases need to go to the Tribunal and in some circumstances you can ask for your details to be kept confidential.

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.

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 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.
- 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.
- 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.
- 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.

The Anti-Discrimination Board of NSW

Enquiries

Phone (02) 9268 5544
Toll free number 1800 670 812
(if you are calling from outside Sydney)
Email: adbcontact@justice.nsw.gov.au

Complaints

Phone (02) 9268 5544
Toll free number 1800 670 812
(if you are calling from outside Sydney)
Email: complaintsadb@justice.nsw.gov.au

Telephone interpreter service

Phone 13 14 50

Website

www.antidiscrimination.justice.nsw.gov.au

Parramatta

Level 7, 10 Valentine Avenue, Parramatta NSW 2150
PO Box W213, Parramatta Westfield NSW 2150
Phone (02) 9268 5555 Fax (02) 9268 5500

Wollongong

84 Crown Street, Wollongong NSW 2500
PO Box 67, Wollongong NSW 2520
Phone (02) 4267 6200 Fax (02) 4267 6261

Newcastle

Suite 5, Level 5, 400 Hunter Street,
Newcastle NSW 2300
PO Box 1077, Newcastle NSW 2300
Phone (02) 4903 5300 Fax (02) 4929 7952

For more detailed information on making a complaint and the complaint process refer to our website and select 'Making a complaint', or ask for our factsheet on *Complaining to the Anti-Discrimination Board*.