

FOR FURTHER INFORMATION

This document should be used as a component of the other sexual harassment documents available which include:

- *NSW Guidelines for Athletes and Sports Officials in Defining Sexual Harassment*; and
- *Resolving Sexual Harassment Complaints in NSW Sporting Organisations*.

In addition training will be provided by the Women's Sport Unit for Contact and Grievances Officers.

Copies of the sexual harassment policy are available as a template on disk from the following organisations:

- Women's Sport Unit
NSW Department of Sport and Recreation (02) 9923 4234
- Sports Management Advisory Service (02) 9552 4415
- The NSW Sports Federation
(02) 9746 5071
- Womensport and Recreation NSW
(02) 9958 6019

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SEXUAL HARASSMENT POLICY AND GUIDELINES FOR THE NSW SPORT AND RECREATION COMMUNITY



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- The Australian Sports Commission for their advice and feedback on the documents;
- The Human Rights and Equal Opportunities Commission; and
- The Sexual Harassment Steering Committee which included representatives from:
NSW Basketball;
NSW Cricket;
NSW Institute of Sport;
NSW Sports Federation;
Sports Medicine;
NSW Touch; and
Womensport and Recreation NSW

for all their advice and feedback on the documents.

PART I OF SERIES



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FOREWORD

“Sexual harassment has emerged as a major concern for the sport and recreation community both in Australia and overseas. Not only does sexual harassment undermine the performance, self esteem and personal goals of people involved in sport, but it also can have damaging consequences for sporting organisations.

The NSW Government amended the NSW Anti-Discrimination Act 1977 in July 1997 to prohibit sexual harassment in sporting activities. These amendments recognise that not only is sexual harassment illegal, but that all people involved in sport have the right to be treated fairly and with respect.

These Sexual Harassment Policy and Guidelines have been developed to assist State Sporting and Recreation Organisations establish their own sexual harassment policies, and to implement grievance procedures should complaints arise. The Policy and Guidelines should be used as part of a wider program to discourage and prevent sexually harassing behaviour.

I believe the Policy and Guidelines will be of great benefit to sporting organisations in increasing awareness about the issues in sexual harassment. I encourage the full and wholehearted implementation of measures to prevent sexual harassment in sport.”



GABRIELLE HARRISON, MP
NSW Minister for Sport and Recreation

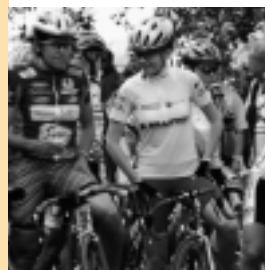


INTRODUCTION

Sport plays a major part in the lives of many Australians who are often participants or spectators. For many people sport is a source of personal achievement and national pride. For some, however, the sporting experience is marred by the presence of harassment that creates an environment that is neither welcoming nor enjoyable.

Legislation and policy developments have discouraged sexual harassment in areas of public life, such as employment and education. However, it is not until recently that it has been recognised as a problem in sport. Legislation and policies have now been developed to deal with the problem.

Sporting organisations are recognising the importance of developing clear guidelines on preventing sexual harassment, and of sending the message that sexual harassment will not be tolerated under any circumstances.



Activities associated with sport and recreation involve varied relationships and power dynamics. These may involve athletes, coaches, trainers, administrators, teachers, sports managers, parents, spectators, officials, physicians, dietitians, psychologists and other sports specialists.

Sexual harassment can occur in situations where an imbalance of power and authority exists between individuals, or simply when a hostile environment is created.

Many relationships in sporting activities are characterised by close physical proximity. These relationships often require that a psychological power and trust be placed in one person by another. If that trust is abused, great harm can result, especially in instances where many of the athletes are young and particularly vulnerable. Young athletes who feel a loyalty to their coach, for example, may not report sexual harassment.

INTRODUCTION CONTINUED

The cost of sexual harassment is high. For an athlete it may result in a loss of self esteem, reduced performance or ultimately, force someone to leave the sport they love. For a person against whom a complaint is made, it could mean disciplinary action or loss of employment. For an organisation, it could mean loss of productivity and reputation. It may also represent legal liability and monetary costs.

State Sporting Organisations will be aware that they will be required to adopt a policy on sexual harassment, or adopt the Department's policy on sexual harassment, as a part of funding agreements under the Sports Development Program.

The Sexual Harassment Policy and Guidelines should form part of a coordinated set of policies related to appropriate behaviour in sport such as the 'Australian Coaching Councils Coach's Code of Ethics', or the 'National Junior Sport Policy'.



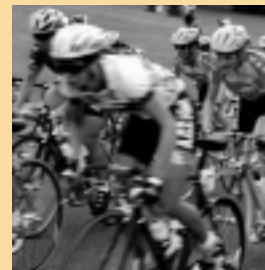
SEXUAL HARASSMENT AND THE LAW

Put simply, sexual harassment is unlawful. It is covered by the Commonwealth Sex Discrimination Act 1984 and the NSW Anti-Discrimination Act 1977. This includes situations such as employment or the provision of services, for example, coaching.

Recent amendments to the NSW Anti-Discrimination Act 1977 have resulted in the grounds for discrimination being extended to cover sexual harassment in sporting activities. Section 22I of the Act now states:

- (1) It is unlawful for a person engaged in a sporting activity to sexually harass another person engaged in a sporting activity.**
- (2) For the purposes of this section, a person is engaged in a sporting activity if:**
 - a) the person is involved in an organised sporting competition**
 - b) the person is coaching a person or team, or is being coached, for the purposes of an organised sporting competition**
 - c) the person is carrying out an activity relating to the administration of a sport or an organised sporting competition**
 - d) the person is officiating at an organised sporting competition or carrying out related duties or functions**
 - e) the person is officially involved in a function relating to a sport or an organised sporting competition.**

Employers are required by State and Commonwealth legislation to take every reasonable step to prevent sexual harassment. If they fail to do so, they may be legally responsible for the behaviour.



WHAT IS SEXUAL HARASSMENT?

Sexual harassment is behaviour that has a sexual element, that is unwelcome. It is behaviour that can be reasonably expected in the circumstances in which it occurs to offend, humiliate or intimidate the person or group to whom it is directed.

Sexual harassment may involve physical contact; it may be verbal or non-verbal, explicit or implicit. In essence, it can take many different forms including, but not limited to:

- uninvited touching, massaging, kissing, embracing
- demeaning jokes and comments
- propositions, promises or threats in return for sexual favours
- non verbal behaviour such as whistling, sexual staring and leering
- displays of sexually explicit or offensive material (posters, graffiti)
- sex-based insults, taunting, name-calling, innuendos
- persistent or intrusive questions about an individual's personal life
- repeated requests to go out, especially after prior refusal
- offering sexual favours
- engaging in behaviour which is sexually embarrassing, humiliating or intimidating
- offensive communications (letters, faxes, e-mail messages, screen savers etc)

It does not matter what the intention, if it is **unwelcome** and, in the circumstances, gives reasonable grounds for a person to feel offended, humiliated or intimidated, then it is an act of sexual harassment, and should stop.

It is important to understand that sexual harassment is not as much about sex or sexual attraction as it is about one person exercising power over another.

For the most part, power continues to be held or assumed by men, and for the most part, sexual harassment is perpetrated by men against women. Sometimes, men are subject to sexual harassment by women or other men, and sometimes women are sexually harassed by other women.

Relationships of a sexual nature are as common in sport and recreation as they are in other environments and, when based on consent which is freely given, should not be construed as sexual harassment. There are however, good reasons to discourage sexual relationships which are marked by a disparity in authority and maturity, as the imbalance can raise concerns about the extent to which authority may influence consent.

Sexual harassment needs to be distinguished from acts such as indecent exposure, sexual assault, child abuse, stalking or obscene phone calls and letters. These are criminal offences and should be reported to the police.

EXAMPLES OF SEXUAL HARASSMENT IN SPORT

The following are some examples involving sexual harassment:

When a coach sexually intimidates an athlete. For example, when a coach unnecessarily and continually holds an athlete in the process of "explaining a correct technique".

When an athlete's selection on a team is dependent on compliance with an implied sexual proposition by a selector.

When team acceptance or initiation requires an athlete to perform demeaning physical acts of a sexual nature.

When an athlete proposes sexual favours as a way of influencing decision-making.

When an employer demands sexual favours from an employee during the course of employment. This includes during normal working hours and at work-related activities such as training courses, conferences, field trips, work functions and office parties.



CASE STUDIES OF SEXUAL HARASSMENT AND ORGANISATIONAL LIABILITY

SCENARIO:

Maliha is a sports physiotherapist whose work can involve intimate physical contact with her patients. She is also often required to travel nationally for athletic events and competitions. Although the physiotherapist/athlete relationship is for the most part one of respect, particularly in a traditional clinic context, behaviour can relax when the clinic moves to a hotel room. At the end of a winning day, a male athlete takes advantage of a professional visit, and uses the situation to sexually intimidate Maliha.

ISSUES:

- Abuse of professional relationship
- Assumption of sexual interest
- Inappropriate demand for sexual favours in social context



SCENARIO:

Lee worked part-time for the XYZ Sports Club Inc. where she was sexually harassed by her boss, the Club's volunteer treasurer. The behaviour included intrusive sexual comments and fondling and followed his promise to recommend to the Board that her role be expanded. When her efforts failed to stop his behaviour, Lee contacted the Club's president with her concerns and asked to meet to discuss them with him. Instead of a meeting, Lee had a call from the president advising that her boss had denied the behaviour, that she should not return to the office and her belongings would be sent to her. On investigation, the Human Rights and Equal Opportunities Commission found that the Club, having failed to take steps to prevent sexual harassment, was vicariously liable for the conduct of its agent (the treasurer) and was required to pay damages to the complainant.

ISSUES:

- Abuse of power by virtue of authority
- Promise of reward for sexual favours
- Employer did not meet obligation to prevent sexual harassment

SCENARIO:

Mary played in a mixed sports team in a lower grade competition.

In a particular match Mary believed she was subjected to sexual harassment by way of a touch on the genital area that she claimed was premeditated by two male players.

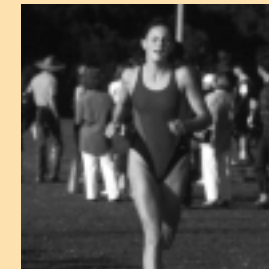
A complaint was originally lodged with the local association and then the state association who conducted a hearing.

As no Sexual Harassment policy existed the matter was heard under the general charge of "misconduct - in that they engaged in conduct that is not in the spirit of the game".

A prolonged hearing was conducted with the Panel finding that the complaint was not proved.

ISSUES:

- No formal Sexual Harassment policy
- No established grievance procedures
- Lack of legal knowledge on issues
- Evidence to support the claim



SCENARIO:

Robert volunteered to be an official for an upcoming athletics event with his local athletics club where he was sexually harassed by the female volunteer coordinator. The behaviour included sex-based insults and innuendos, intrusive questions about his personal life, and repeated requests to go out. Robert asked the behaviour to cease as he felt intimidated and humiliated by her behaviour, and stated he would complain to a member of the club's board should the behaviour continue. The next day Robert was informed that his services as a volunteer were no longer needed.

ISSUES:

- Abuse of power by virtue of authority
- Inappropriate behaviour with a sexual element.



BENEFITS OF ESTABLISHING A SEXUAL HARASSMENT POLICY

Reasons for adopting a sexual harassment policy are:

- it is the organisation's best legal defence;
- it is an effective deterrent to sexual harassment in the work or sport environment;
- it ensures that complaints can be dealt with quickly, reasonably and effectively;
- it helps maintain a safe and healthy sport environment;
- it is good risk management; and
- it helps to establish and maintain a good reputation in the community.

A sexual harassment policy is seen as one step in a wider program to discourage and prevent sexually harassing behaviour. By establishing a policy, the organisation conveys the message that sexual harassment is unacceptable. It also serves to assure those who experience harassment that their complaints will be taken seriously. In some instances employers can be held liable for wrongs committed by employees in the course of the employee's work. This is referred to as vicarious liability. By taking reasonable steps to prevent sexual harassment, and by being able to show how an organisation has taken these steps, will assist an organisation not to be found liable for the behaviour of an individual.

Other strategies will need to be adopted to translate the policy into practice and to effectively combat sexual harassment in sport. Some additional strategies are considered further in this document.



A MODEL SEXUAL HARASSMENT POLICY

POLICY STATEMENT

1. The ...[Organisation]... is committed to providing a sport and work environment free of sexual harassment, where individuals are treated with respect and dignity. The [Organisation] will not tolerate sexual harassment behaviour under any circumstances and will take disciplinary action against anyone who breaches the policy.
2. This policy applies to all employees, directors, officers, volunteers, coaches, athletes, officials, professional personnel and members of [Organisation].
3. This policy applies to behaviour occurring both within and outside the course of [Organisation] business, activities and events, when the behaviour involves individuals associated with the [Organisation] and negatively affects relationships within the organisation's sport and work environment.

DEFINITION

4. For the purpose of this policy, sexual harassment is defined as behaviour that has a sexual element, that is **unwelcome** and, in the circumstances, a reasonable person would have expected the behaviour would offend, intimidate or humiliate the person to whom it is directed.
5. Behaviour constituting sexual harassment can take many different forms, including unwelcome physical contact, the display of offensive materials, or sexual comments, jokes and propositions. The behaviour may be a single incident or repeated. It may be explicit or implicit, verbal or non-verbal and it may include promises or threats in return for sexual favours. Although the intent may vary, if it is unwelcome and the effect is to offend, humiliate or intimidate, the behaviour should stop.

These and other examples contained in this document are by no means exhaustive. Managers are encouraged to include examples specific to their sport/environment.

RESPONSIBILITIES

6. The [Organisation] is responsible for taking all reasonable steps to prevent sexual harassment and ensuring its position is widely known through all levels of the organisation's activities.

7. The [Organisation] will ensure that appropriate procedures are identified to handle sexual harassment complaints. It is further responsible for ensuring that:
 - Harassment Contact Officers are identified to provide information and support
 - Harassment Grievance Officers are identified and trained to mediate/conciliate grievances
 - complaints are treated in an impartial, sensitive, fair, timely and confidential manner
 - sexual harassment reporting is encouraged, regardless of who the offender might be
 - appropriate training is provided to those who manage and implement the policy
 - widespread awareness and understanding of sexual harassment is provided
 - the policy and procedures are monitored and reviewed regularly
8. All employees, members, professionals and other persons associated with [Organisation] are responsible for complying with this policy.

DISCIPLINARY ACTION

9. Disciplinary action will be taken by [Organisation] against anyone who is found to be in breach of this policy.
10. Disciplinary action will also be taken against anyone who victimises or retaliates against a person who has complained of sexual harassment.
11. The discipline will depend on the severity of the case and may involve an apology, counselling, suspension, dismissal or other form of action.

CONFIDENTIALITY

12. The [Organisation's] management and officers responsible for implementing this policy will keep confidential the names and details related to sexual harassment complaints, unless disclosure is necessary as part of the disciplinary or corrective process.

COMPLAINT PROCEDURES

13. The most effective complaint procedures offer a range of options for dealing with sexual harassment. The [Organisation] recognises that natural justice is the minimum standard of fairness to be applied in the investigation and adjudication of a dispute.
14. Sexual harassment complaints can be handled through a variety of mechanisms. The [Organisation] recognises that, as a highly sensitive and complex matter, sexual harassment is best dealt with informally through discussion between the parties or

with some assistance from an independent third party, so as to minimise its damaging and disruptive effects. An informal resolution is not always possible and it may be necessary to resort to formal procedures to resolve the complaint.

15. The [Organisation] encourages individuals who experience sexual harassment to inform the alleged harasser that the behaviour is unwelcome, unacceptable and contrary to policy, and ask that the behaviour stop. *Individuals should also keep notes documenting incidents of the behaviour, time, place and any witnesses.*
16. If it is not possible to confront the alleged harasser, or if this course of action fails to stop the behaviour, then the matter should be brought to the attention of a Harassment Contact Officer, manager or supervisor for advice.
17. The role of the Harassment Contact Officer (or manager, supervisor) as a first-line-of-contact, is to serve in an unbiased/impartial capacity to listen to the complaint, offer support, provide advice on procedures and refer to a Harassment Grievance Officer when appropriate. **It is not the role of the Harassment Contact Officer to try to resolve a grievance.**
18. The role of a Harassment Grievance Officer is to determine whether a complaint has substance, inform the person accused of harassment of the nature of the complaint, inform both parties of their rights and responsibilities in proceeding with a grievance, act as mediator/conciliator between the parties to resolve the complaint, follow up after a complaint has been resolved to ensure there is no recurrence and refer serious matters to management, or to an external agency.
It is the prerogative of the complainant to decide to proceed with, or desolve a complaint.
19. The [Organisation] recognises the importance of providing a choice of reporting mechanisms and officers (male and female) to complainants in order they may feel comfortable to come forward to discuss or report on an incident. It also recognises that in some instances, the manager or supervisor may be too close to the problem to serve without bias. The [Organisation] will ensure access to a network of Harassment Contact Officers named either from within the organisation or as identified by the NSW Department of Sport and Recreation.
20. The complaint may be resolved informally between the complainant and the alleged harasser — through discussion, an apology, and a commitment to stop the behaviour. In this case, the Harassment Grievance Officer (or manager, supervisor) assisting an informal resolution will establish a follow up date to ensure the behaviour does not recur, otherwise no further action is necessary.

21. In the event that the complaint cannot be resolved informally, the complainant may lay a formal complaint. In this case, the complainant is required to prepare and sign a formal written complaint to the Harassment Grievance Officer who, in turn will ensure the alleged harasser is provided with a copy of the complaint.
22. The [Organisation] management/director responsible for this policy is responsible for ensuring the complaint is investigated and mediated or conciliated professionally and confidentially, in an unbiased and prompt manner. The organisation will fulfil this responsibility either a) by establishing a comparable grievance mechanism within its own structure to handle the complaint, or b) state sporting organisations can utilise the Harassment Grievance Officer pool through the NSW Sports Federation.
23. The review panel will comprise three members, at least one female and one male. Decisions of findings and recommendations of disciplinary action are the responsibility of the review panel.
24. The [Organisation] will ensure that all steps in the complaints procedure are handled promptly, and that the period given to investigation, hearing and release of the decision does not exceed eight weeks.

RIGHT TO APPEAL

25. Both parties to a complaint have the right to appeal the decision and recommendation of a panel if a matter of procedure, bias, or fairness is called into question. An appeals panel, made up of members other than those who formed the original review panel should handle formal appeals.

EXTERNAL ACTION

26. Both complainant and alleged harasser may pursue advice or action from an external authority at any stage of the complaint procedure. In NSW, the Anti-Discrimination Board is the authority responsible for receiving complaints of sexual harassment. The Human Rights and Equal Opportunities Commission is the authority responsible for receiving complaints under Commonwealth jurisdiction, and in some instances, may be the appropriate body.

POLICY REVIEW AND APPROVAL

27. The [Organisation] board of directors approves this policy on.....
28. The [Organisation] director responsible for this policy will ensure a review of the policy is conducted periodically.

NOTES ON IMPLEMENTING YOUR SEXUAL HARASSMENT POLICY

- Officially launch your organisation's policy to reach the organisation's widest audience. Be sure it has endorsement from the senior officer, director and/or management.
- Assign responsibility for policy circulation and review to a specific position.
- Give the policy wide exposure — through newsletters, noticeboards and computer networks, in personnel manuals and in coaching, volunteer and other handbooks.
- Plan to monitor the policy's effectiveness through surveys, and interviews with employees or members who leave the organisation. Has the policy encouraged reporting of sexual harassment?



A CHECKLIST OF OTHER STRATEGIES TO COUNTER SEXUAL HARASSMENT

The introduction of a policy is an important step, and needs to be accompanied by other strategies to effectively counter sexual harassment behaviour in sport.

- **Provide key professionals and other personnel with training in prevention of sexual harassment and in handling complaints**
- **Promote awareness and understanding of sexual harassment through formal and informal sessions at all levels of the organisation**
- **Review the organisation's promotional materials and operations to ensure compatibility with the policy**
- **Collaborate with other groups to identify strategies that have worked in the wider community**
- **Identify a support network for individuals who have experienced sexual harassment**

SUMMARY

PROCESS FOR RESOLUTION OF A COMPLAINT INCLUDES:

- ▼ **Complainant approaches the person creating the problem – asks them to stop the behaviour.**

Remember to document all incidents including time, dates, place, witnesses etc.

- ▼ **If the behaviour continues or it is not possible to approach the person, contact either:**

- Harassment Contact Officer
- executive, manager, president, coach
- colleague

for advice and support on procedures (including advising through police if notification required)

- ▼ **If the complainant decides to proceed:**

- the Harassment Contact Officer refers the matter to the Harassment Grievance Officer or designated person in authority for investigation
- the Harassment Grievance Officer determines whether to investigate complaint, or refer matter to executive

- ▼ **If the complainant wants the Harassment Grievance Officer to investigate the complaint, the Harassment Grievance Officer:**

- informs the alleged harasser
- interviews both parties separately, confidentially and impartially
- keeps confidential records of the process
- attempts mediation/conciliation
- achieves resolution and follows up

- ▼ **If no resolution is achieved:**

- the Harassment Grievance Officer gives all reports to the sports management, who determines the appropriate course of action

- ▼ **If the complaint is not resolved:**

- the complainant puts a written complaint to an external organisation for mediation and/or arbitration. This can be done with the support of an Harassment Grievance Officer

- ▼ **If the complaint is upheld:**

- a remedy will be prescribed by the tribunal

At any stage, it is the prerogative of the complainant to proceed with, or dissolve, a complaint

GLOSSARY OF TERMS

Sexual Harassment

Sexual harassment is behaviour that has a sexual element, that is **unwelcome**. Sexual harassment may involve physical contact; it may be verbal or non-verbal, explicit or implicit. In essence it is behaviour that offends, humiliates or intimidates the person(s) that it is directed to.

Complainant

A person who has lodged a formal or informal complaint against harassment under an internal or external harassment complaints procedure.

Harassment Contact Officer

A specially trained person appointed by an organisation to be the first point of contact for someone experiencing harassment. They provide confidential advice and moral support to the person alleging the harassment.

Harassment Grievance Officer

A person appointed by the Chief Executive Officer to investigate, resolve and make recommendations regarding internal harassment complaints. The officer can be from within the organisation or an external person such as a consultant.

Mediation

The process whereby an impartial third party attempts to help two parties in dispute to agree on terms to resolve their dispute.

Vicarious Liability

Where an organisation is held responsible for wrongs committed by employees in the course of the employee's work, even if there was no deliberate contribution to the wrongful act on the part of the employer.

FURTHER CONTACTS

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SYDNEY MARKETS NSW 2129
Tel: (02) 9746 5071

Womensport and Recreation NSW

73 Sugarloaf Crescent
CASTLECRAIG NSW 2068
Tel: (02) 9958 6019

NSW Anti-Discrimination Board

Level 4, 181 Lawson Street
REDFERN NSW 2016
Tel: (02) 9318 5444

Human Rights and Equal Opportunity Commission (HREOC)

Level 8, Piccadilly Tower
133 Castlereagh Street
SYDNEY NSW 2000
Tel: (02) 9284 9600 or
Charge free: 1800 021 199