

Farm Policies: discrimination and harassment

Discrimination and harassment because of personal characteristics is unlawful.

A way to help ensure discrimination and harassment does not occur on your farm is to have and promote a written policy that makes it clear that discrimination will not be tolerated.

You may want to develop a policy that covers all forms of unlawful discrimination and harassment or, as some businesses do, develop a separate policy for sexual harassment.

What is unlawful discrimination?

Under federal and state legislation unlawful discrimination occurs when someone, or a group of people, is treated less favourably than another person or group because of their race, colour, national or ethnic origin, sex, pregnancy or marital status, age, disability, religion, sexual preference, membership of a trade union or trade union activity, or some other characteristic specified under anti-discrimination or human rights legislation.

Workplace discrimination can occur in:

- recruiting and selecting staff;
- terms, conditions and benefits offered as part of employment;
- who receives training and what sort of training is offered;
- who is considered and selected for promotion, retrenchment or dismissal.

Download: A Fair Go for Job Seekers at

www.thepeopleindairy.org.au/LiteratureRetrieve.aspx?ID=16488 for more information.

What is unlawful harassment?

Under federal and state legislation unlawful harassment occurs when someone is made to feel intimidated, insulted or humiliated because of their race, colour, national or ethnic origin, sex, disability, sexual preference or some other characteristic specified under anti-discrimination or human rights legislation. It can also happen if someone is working in a 'hostile' – or intimidating – environment. Harassment can include behaviour such as:

- telling insulting jokes about particular racial groups;
- sending explicit or sexually suggestive emails;
- displaying offensive or pornographic posters or screen savers;
- making derogatory comments or taunts about someone's race or religion;
- asking intrusive questions about someone's personal life, including their sex life.

More specific information about what may constitute unlawful discrimination or harassment available at the Human Rights and Equal Opportunity Commission at www.hreoc.gov.au

What to include in your farm anti-discrimination and harassment policy

1) A strong opening statement on the farm's attitude to discrimination and harassment

The statement should say that:

- the farm business is committed to ensuring that the working environment is free from discrimination and harassment;
- discrimination and harassment will not be tolerated under any circumstances;
- disciplinary action will be taken against any employee (or agent) who breaches the policy.

2) An outline of the farm's objectives regarding discrimination and harassment

This demonstrates that the farm business is committed to a comprehensive strategy for eliminating discrimination and harassment. Employers may wish to say that their farm aims to:

- create a working environment which is free from discrimination and harassment and where everyone on the farm is treated with dignity, courtesy and respect;
- implement training and awareness raising strategies to ensure that everyone knows their rights and responsibilities;
- provide an effective procedure for complaints, based on the principles of natural justice, which are that the person be made aware of the case against them, be given a chance to be heard and present their version of events, be given a fair hearing by an unbiased person or tribunal that will only make a finding based on reasonable evidence;
- treat all complaints in a sensitive, fair, timely and confidential manner;
- guarantee protection from any victimisation or reprisals;
- encourage the reporting of behaviour which breaches the discrimination and harassment policy;
- promote appropriate standards of conduct at all times

3) A clearly worded definition of discrimination and harassment

A definition of discrimination and harassment could say:

"Discrimination and harassment occur when a person is discriminated against or harassed in the workplace and in certain areas of public life:

- because of their race, colour, descent or national or ethnic origin, as defined under the Racial Discrimination Act 1975;
- or because of their sex, marital status, pregnancy as defined under the Sex Discrimination Act 1984;
- or because of a disability as defined under the Disability Discrimination Act 1992;
- or because of age as defined under the Age Discrimination Act 2004;
- and some grounds under the Human Rights and Equal Opportunity Act 1986."

The relevant legislation for your state can be found at:

Anti-discrimination Act 1977 (NSW) www.austlii.edu.au/au/legis/nsw/consol_act/aa1977204

Anti-discrimination Act 1991 (Qld) www.austlii.edu.au/au/legis/qld/consol_act/aa1991204

Equal Opportunity Act 1984 (SA) www.austlii.edu.au/au/legis/sa/consol_act/ea1984250

Anti-discrimination Act 1998 (Tas) www.austlii.edu.au/au/legis/tas/consol_act/aa1998204

Equal Opportunity Act 1995 (Vic) www.austlii.edu.au/au/legis/vic/consol_act/ea1995250

Equal Opportunity Act 1984 (WA) www.austlii.edu.au/au/legis/wa/consol_act/ea1984250

On a farm that only employs a few people, it can be difficult to find someone to report a case of harassment to - particularly if it is the owner or manager who is doing the harassing.

In this situation, try contacting the local working women's centre or community legal centre, legal aid helplines, or the Equal Opportunity and/or Human Rights Commission in your state.

- New South Wales: www.lawlink.nsw.gov.au/adb
- Queensland: www.business.qld.gov.au/business/employing/employee-rights-awards-entitlements/anti-discrimination-eeo
- South Australia: www.eoc.sa.gov.au/site/home.jsp
- Tasmania: www.equalopportunity.tas.gov.au/home
- Victoria: www.humanrightscommission.vic.gov.au
- Western Australia: www.equalopportunity.wa.gov.au

Who has responsibility for ensuring workplace harassment and discrimination does not occur?

Emphasise the primary role of the managers and supervisors in ensuring people on the farm are not harassed or discriminated against within the workplace or 'in connection with' the person's employment. Emphasise the responsibility of everyone on the farm to not participate in discriminatory or harassing behaviour.

Likely consequences of unlawful discrimination or harassment

Ensure everyone on the farm is aware of the consequences of engaging in unlawful discrimination or harassment. Establish a range of outcomes, such as an apology, demotion or dismissal.

Where to get help if discrimination or harassment occurs

Ensure everyone on the farm is provided with the names and contact numbers of nominated person(s) who have been trained to assist in the formal or informal resolution of complaints within the workplace.

How the complaints procedure operates

Ensure everyone understands how complaints procedures operate on the farm.

Checklist for documenting an anti-discrimination and harassment policy

A written policy should include:

- a strong statement of the farm's attitude to discrimination and harassment;
- a clearly worded definition of discrimination and harassment;
- a statement that discrimination and harassment on any of the grounds listed in the legislation is against the law;
- circumstances where discrimination and harassment can occur;
- a statement that everyone has a responsibility to prevent workplace harassment and discrimination;
- information on how and where to seek help if discrimination or harassment occurs;
- the likely consequences of unlawful discrimination or harassment.

Next steps: Download an [anti-discrimination & harassment policy template](http://www.thepeopleindairy.org.au/LiteratureRetrieve.aspx?ID=39582) to create a policy for your farm www.thepeopleindairy.org.au/LiteratureRetrieve.aspx?ID=39582

Sexual harassment

What is sexual harassment?

Sexual harassment is a type of sex discrimination. Sexual harassment is any *unwanted* or *unwelcome* sexual behaviour which makes a person feel offended or humiliated where that reaction is reasonable in the circumstances. It has nothing to do with mutual attraction or friendship.

The Sex Discrimination Act 1984 protects individuals across Australia from discrimination on the basis of sex, marital status or pregnancy and, in relation to employment, family responsibilities. The Act also makes sexual harassment against the law.

Employers can be held legally responsible for sex discrimination or sexual harassment by employees.

What to include in your sexual harassment policy

1) A strong opening statement on the farm's attitude to sexual harassment

This should state that the farm business is committed to ensuring that the working environment is free from sexual harassment, that it will not be tolerated under any circumstances and that disciplinary action will be taken against anyone (or agent) who breaches the policy.

2) An outline of the farm's objectives regarding sexual harassment

This demonstrates that the farm business is committed to a comprehensive strategy for eliminating sexual harassment. Employers may wish to consider something along the following lines.

On this farm we aim to:

- create a working environment which is free from sexual harassment and where all members of staff are treated with dignity, courtesy and respect;
- implement training and awareness-raising strategies to ensure that everyone knows their rights and responsibilities;
- provide an effective procedure for complaints, based on the principles of natural justice
- treat all complaints in a sensitive, fair, timely and confidential manner;
- guarantee protection from any victimisation or reprisals;
- encourage the reporting of behaviour which breaches the sexual harassment policy;
- promote appropriate standards of conduct at all times

3) A clearly worded definition of sexual harassment

There is no single, universally accepted definition of sexual harassment. However, the definition adopted should be consistent with the legal definition to avoid any confusion. The most important element to emphasise in any definition is that sexual harassment is unwelcome behaviour of a sexual nature.

For example, sexual harassment can be defined in the following way:

Sexual harassment is any unwanted, unwelcome or uninvited behaviour of a sexual nature which 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.

Some examples of sexual harassment relevant to the farm working environment

The policy should identify specific examples of sexual harassment, such as: 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; unwelcome physical contact such as massaging a person without invitation or deliberately brushing up against them; touching or fiddling with a person's clothing including lifting up skirts or shirts, flicking bra straps, or putting hands in a person's pocket; requests for sex; sexually explicit conversation; persistent questions or insinuations about a person's private life; offensive phone calls or letters; stalking; and offensive e-mail messages or computer screen savers.

What sexual harassment is not?

The policy should explain that sexual harassment is not behaviour which is based on mutual attraction, friendship and respect. If the interaction is consensual, welcome and reciprocated it is not sexual harassment.

A statement that sexual harassment is against the law

The policy should make it clear that sexual harassment is against the law. Reference should be made to the federal, state or territory anti-discrimination laws that apply to the farm business. Everyone needs to know that legal action could be taken against them for sexual harassment and that they could also be exposing the business to liability.

The circumstances in which sexual harassment may occur

The policy should state that a person may be sexually harassed by a supervisor or manager, co-worker, contractor or service provider. Although not all these situations would necessarily give rise to a complaint under the legislation, you should provide an internal procedure for dealing with any sexual harassment which could affect the welfare of people working on the farm.

The policy should also state that sexual harassment is not just unlawful during working hours or in the workplace itself and not only between co-workers. The behaviour is unlawful in any work-related context, including conferences, work functions, Christmas parties and training, work or field trips.

The consequences that can be imposed if the policy is breached

The policy should include a general warning to all people on the farm of the consequences they can expect if they do not comply. Depending on the severity of the case, consequences may include an apology, counselling, dismissal, demotion or other forms of disciplinary action.

Everyone should also be informed that immediate disciplinary action will be taken against anyone who victimises or retaliates against a person who has complained of sexual harassment.

Responsibilities of management and staff

The policy should state that the farm business has a legal responsibility to prevent sexual harassment, otherwise it can be liable for the behaviour of people working on the farm.

This means that managers and supervisors have a responsibility to:

- monitor the working environment to ensure that acceptable standards of conduct are observed at all times;
- model appropriate behaviour themselves;

- promote the farm's sexual harassment policy within their work area;
- treat all complaints seriously and take immediate action to investigate and resolve the matter;
- refer a complaint to someone else if they do not feel that they are the best person to deal with the case (for example, if there is a conflict of interest or if the complaint is particularly complex or serious).

All people working on the farm have a responsibility to:

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

Information on where individuals can get help, advice or make a complaint

The policy should tell people on the farm where they can get help if they are sexually harassed. Employees can be advised to approach their manager, supervisor or health and safety representative. Where possible, a number of different contact people of both sexes should be provided so that employees can approach someone they feel comfortable with.

It is not appropriate to only give employees the option of approaching their line manager because there may be cases where the manager is the alleged harasser or is perceived to be closely associated with the harasser and therefore not impartial.

As mentioned, on a farm that only employs a few people it can be difficult to find someone to report a case of harassment to, particularly if it is the owner or manager who is doing the harassing. In this situation, try contacting the following in your state:

- New South Wales: www.lawlink.nsw.gov.au/adb
- Queensland: www.business.qld.gov.au/business/employing/employee-rights-awards-entitlements/anti-discrimination-eeo
- South Australia: www.eoc.sa.gov.au/site/home.jsp
- Tasmania: www.equalopportunity.tas.gov.au/home
- Victoria: www.humanrightscommission.vic.gov.au
- Western Australia: www.equalopportunity.wa.gov.au

A brief summary of the options available for dealing with sexual harassment

People working on the farm should be advised of the different ways that sexual harassment can be addressed. This includes informal action such as confronting the harasser directly (but only if the individual feels confident enough to do so) or making a formal complaint to a manager, supervisor or health and safety representative.

The way that complaints will be handled should be documented in the policy or in a separate complaints procedure. Staff can be referred to this if they require more information. Employees can also approach HREOC or the relevant state or territory anti-discrimination agency for information and confidential advice.

Next steps: Download the [sexual harassment policy template](http://www.thepeopleindairy.org.au/LiteratureRetrieve.aspx?ID=41725) to create a policy for your farm www.thepeopleindairy.org.au/LiteratureRetrieve.aspx?ID=41725