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# Discrimination & Harassment Policy

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Amended in June 2011

## INTRODUCTION

Thoroughbred Racing S.A. Limited (TRSA) wishes all Industry participants be aware of their rights and responsibilities with regard to discrimination and sexual harassment.

Discrimination and sexual harassment are unacceptable and unlawful forms of behaviour.

All people have the right to work in an environment that is free of sexual harassment, victimisation and discrimination.

TRSA, as the regulatory body for racing in South Australia, provides support services, to promote working environments which are free of sexual harassment and discrimination. These services include the following:

- Contact with Industry Representatives
- Availability of course material for trainees and apprentice jockeys
- Contact with independent bodies, eg. Human Rights and Equal Opportunities Commission, Anti-Discrimination Commission

A range of options exists to ensure all those involved in the Industry have at least one channel of complaint with which they feel comfortable.

TRSA will not tolerate sexual harassment and discrimination in the South Australian Racing Industry.

TRSA Stewards will enforce the Rules of Racing and will refer complaints to appropriate authorities which may include the SA Police where appropriate. A brochure summarising the policy and assistance with personal and workplace problems will be available to all racing industry employees, apprentices and trainees at all Metropolitan, Provincial and Regional race clubs, and in addition at the offices of TRSA Ltd.

## **TRSA'S OBJECTIVES**

TRSA's objectives are to:

1. ensure that the working environment in the Racing Industry is free from discrimination, victimisation, bullying and harassment and that all employees and all racing participants are treated with dignity, courtesy and respect;
2. provide an effective procedure for complaints based on the principles of natural justice;
3. treat all complaints of harassment seriously, and ensure they are dealt with promptly, impartially and confidentially. If sexual harassment is found to have taken place, appropriate disciplinary action will be taken;
4. as far as reasonable provide protection from any victimisation or reprisals;
5. encourage the reporting of behaviour which breaches the Discrimination and Harassment Policy;
6. promote appropriate standards of conduct at all times.

Please review this policy document carefully and be sure you know your rights and responsibilities.

## **WHAT IS DISCRIMINATION?**

Unlawful Discrimination occurs when someone is treated unfairly or badly compared to others, often because they are seen as different.

The Equal Opportunity Act 1984 (South Australian) focuses on discrimination on the grounds of:-

- Sex (that is, whether a person is male or female);
- Sexuality (that is, whether a person is homosexual, heterosexual, bisexual or transsexual);
- Marital Status and/or parental status (that is, whether a person is single, married, widowed, divorced, separated, or living in a de facto relationship);
- Race (that is, a person's country of birth, ancestry, colour of skin, or nationality);
- Impairment (whether physical, intellectual, psychiatric or mental disability, injury or illness, including whether they are HIV+ or use a guide dog, wheelchair or some other remedial device)
- Age (which covers all ages);
- Religion;
- Political belief or activity;
- Trade Union activity;
- Pregnancy or breastfeeding.

Discrimination on any of the grounds listed is unlawful if it occurs in any of the following areas of public life:-

- Employment (which includes all aspects of employment, and all types of employees);
- Accommodation (of any sorts, and while seeking it or being provided with it);
- Education (at all levels);
- Provision of Goods or Services (which includes all dealings with businesses, trades, professions, and governments);
- Access to places and vehicles;
- Clubs and Associations (in the sorts of membership and the sorts of benefits offered);
- Conferral of qualifications that are needed for employment;
- Application forms;
- Sale of land;
- Advertising that indicates an intention to break the law;
- Superannuation and insurance;
- Sport.

Discrimination need not be DIRECT or open. It can also be INDIRECT and harder to detect because it is built into the structure of an organisation, or into policies or practices or “the way things are done”. DIRECT discrimination happens when there is a requirement that at first sight seems to treat everyone equally, but which in fact has an unfavourable effect on one group of people. To be unlawful it must also be unreasonable.

It is also against the law to discriminate against a person because they associate with, or are related to, someone who has any of these attributes or characteristics.

### **WHAT IS VICTIMISATION?**

Victimisation is unlawful.

Victimisation means treating someone unfairly because they acted on rights given them by equal opportunity laws (such as to seek advice, or to complain), or supported someone else acting on their rights. A person who is victimised (eg by being sacked or demoted, or by having hours lessened, or by being subjected to taunts by other workers) could lodge a complaint with the Equal Opportunity Commission – South Australia or the Human Rights & Equal Opportunity Commission – New South Wales.

Victimisation is treated very seriously and may attract severe financial penalties.

## **WHAT IS BULLYING?**

Workplace bullying involves the persistent ill treatment of an individual at work by one or more other persons. To be recognised as bullying, the ill-treatment must be continuous and directed against a particular person. It need not involve physical ill-treatment, such as punching, kicking and other ways of inflicting physical pain. Most cases of bullying involve such treatment as verbal abuse, “nit-picking”, threats, sarcasm, ostracism, sabotage of a person’s work and so on.

Discrimination, bullying, victimisation and harassment create an uneasy, intimidating, hostile or offensive work environment and can adversely affect an individual’s job performance or career prospects, result in resignation or unfair dismissal, all of which might reflect on the integrity and standing of TRSA and the Racing Industry.

## **WHAT IS SEXUAL HARASSMENT?**

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. Sexual harassment is determined from the point of view of the person feeling harassed.

### **Some examples of sexual harassment are:-**

#### **Touching**

- uninvited touching, embraces or kisses;
- unwelcome physical contact such as massaging a person without invitation or deliberately brushing up against them;
- touching or fiddling with a person’s clothing, such as lifting up skirts or shirts, flicking bra straps, or putting hands in a person’s pocket.

#### **Verbal**

- offensive phone calls;
- smutty jokes or comments;
- requests for sex or sexual favours, even if made jokingly;
- repeated invitations to go on a date after a previous refusal;
- sexually explicit conversation;
- persistent questions or insinuations about a person’s private life;
- making promises or threats in return for sexual favours.

#### **Conduct**

- staring or leering at a person or at parts of their body;
- stalking;
- offensive phone calls, letters or e-mail messages;
- “flashing” or sexual gestures; sex-based insults, taunts, teasing or name calling.

### **Display of Materials**

- displays of sexually graphic material including posters, pinups, cartoons, graffiti or messages left on notice boards, desks, common areas or computer screen-savers;
- offensive letters and e-mail messages.

Sexual harassment can involve behaviour that would also be an offence under criminal law. For example, physical assault, indecent exposure, sexual assault, stalking or obscene communication.

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.

### **COULD SEXUAL HARASSMENT AFFECT YOU? YES!**

Everybody who is engaged in activities related to the South Australian Racing Industry must be aware of their responsibilities and rights with regard to discrimination, including sexual harassment.

Everybody includes owners; trainers; jockeys; TRSA employees; contractors; trainees and all other associated persons who are engaged in activities in all areas of the Racing Industry in South Australia.

### **HOW CAN IT AFFECT YOU?**

Sexual harassment can have a serious and damaging effect on your life.

#### **It can:-**

- affect work performance and opportunities;
- create a hostile or unpleasant work environment;
- make you insecure and fearful;
- affect your studies and future career.

### **WHEN AND WHERE CAN SEXUAL HARASSMENT HAPPEN?**

Sexual harassment is not just unlawful during working hours or in the workplace itself. The behaviour is illegal in any work-related context. Sexual harassment in employment is prohibited, but not limited to, in the following circumstances:-

- recruitment and selection – for example, during job interviews;
- the course of employment – for example, 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 – for example, where an employee is dismissed for objecting to sexual harassment or resigns because of intolerable sexual harassment;
- any other circumstance that could arise in the context of relationships such as sexual harassment of an employee by a fellow employee, regardless of when or where it occurs.

### **WHAT ARE YOUR RIGHTS?**

- Everyone has the right to work in an environment which is free of harassment, discrimination and victimisation.
- The right to be protected by their employers from these behaviours.
- The responsibility not to discriminate against, sexually harass or victimise other employees or clients.
- Sexual harassment is against the law.
- Sexual harassment is against the Rules of Racing.
- Confidential complaint procedures are available.
- The right for employment decisions to be made on merit.
- The right to complain.

### **WHAT DOES THE LAW SAY?**

Sexual harassment is prohibited in Australia by the Federal Sex Discrimination Act and anti-discrimination laws in all States and Territories. The Sex Discrimination Act prohibits sexual harassment and other forms of discrimination in areas such as employment, the provision of services, education and accommodation.

Sexual harassment is a legally recognised form of sex discrimination. Sexual harassment can be a breach of an employer's common law duty to take reasonable care for the health and safety of employees. It can also be a breach of occupational health and safety legislation.

### **WHAT DO THE RULES OF RACING SAY?**

Stewards are empowered to investigate misconduct or allegations of misconduct and to lay charges and impose penalties under certain Rules of Racing.

### **DISCIPLINARY ACTION**

Any employee who engages in any form of discrimination, victimisation, bully and harassment or otherwise breaches this policy may be subject to disciplinary action depending on the severity of the case, including counselling, transfer, dismissal, demotion or other forms of action. Immediate disciplinary action will be taken against anyone who victimises or retaliates against a person who has complained of sexual harassment.

## **WHO IS RESPONSIBLE?**

### **Are individual persons responsible? YES**

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

### **Are employer's responsible? YES**

- An employer is vicariously liable\* for any acts of harassment or discrimination committed by employees or agents in connection with their duties unless "all reasonable steps" were taken by the employer to prevent harassment and discrimination occurring.
- Lack of awareness that an employee or agent sexually harassed or discriminated against another will not discharge an employer's vicarious liability.

\*Vicarious liability" is an employer's legal responsibility for wrongs committed by employees in the course of work.

## **RESPONSIBILITY OF EMPLOYEES**

All Racing Industry employees in South Australia must:-

- fully comply with TRSA's Discrimination & Harassment policy;
- not cause, instruct, induce, aid or permit another person to commit an act which causes a breach of TRSA's Discrimination & Harassment policy;
- not engage in any act of victimisation;
- offer support to anyone who is being discriminated against, victimised, bullied or harassed and let them know where they can get help and advice (they should not, however, approach the person who is the alleged harasser);
- maintain complete confidentiality if they provide information during the investigation of the complaint. Staff should be warned that spreading gossip or rumours may expose them to a defamation action.

## **RESPONSIBILITY OF EMPLOYERS**

Every employer, manager and supervisor, regardless of business size, is legally required to take all reasonable steps to prevent sexual harassment if they wish to avoid liability.

- There is no exemption in the Sex Discrimination Act for small business. Employers in all small businesses, whatever the size, will be vicariously liable for acts of sexual harassment or discrimination committed by employees unless all reasonable steps were taken to prevent it occurring.
- Allowing sexual harassment or discrimination to remain unchecked can expose employers to the cost, inconvenience and damaging publicity of legal proceedings and compensation claims.
- Employers are not only liable for their own acts of sexual harassment or discrimination. They can also be held legally responsible for sexual harassment or discrimination by their employees unless all reasonable precautions were taken. It is the employer's responsibility to prove that all reasonable steps were taken. Employers must actively implement precautionary measures to minimise the risk of sexual harassment or discrimination occurring.
- It is recommended that employers develop and promote a written policy on sexual harassment and discrimination, which includes both internal and external complaint procedures. When developing a strategy to address sexual harassment or discrimination, it is recommended that employers consult with relevant parties including staff, union, employer organisations, industry and professional associations, the Human Rights and Equal Opportunity Commission and/or State and Territory anti-discrimination agencies.

## **HOW TO MAKE A COMPLAINT**

Seek a complaint channel that you both trust and feel comfortable with. First consult your employer's harassment policy procedures and investigate internal complaint channels. External complaint channels include:

- TRSA Equity Officer
- TRSA Executives and Managers
- TRSA Stewards
- South Australian Racing Clubs Council
- SA Equal Opportunity Commission (Anti-Discrimination)
- Human Rights & Equal Opportunity Commission

## **WHO CAN YOU CONTACT?**

### **Thoroughbred Racing S.A. Limited**

GPO Box 2646, Adelaide, SA, 5001

**Phone:** (08) 8179 9800 **Fax:** (08) 8179 9892

### **Confidential Enquiries:**

#### **Equity Officer**

**Craig Kutcher** - (08) 8179 9815

**Mr Johan Petzer (Chairman of Stewards)** - 0488 990 750

**Mr Matt Santoro (Deputy Chairman of Stewards)** - 0412 144 482

**Mrs Briony Moore (Training Supervisor)** - 0403 132 617

### **Equal Opportunity Commission - South Australia**

(Anti-Discrimination Section)

**Telephone:** (08) 8207 1977 **Fax:** (08) 8207 2090

**E-mail:** eoc@sa.gov.au

### **Human Rights Commission**

GPO Box 5218

Sydney, NSW, 2001

**Telephone:** (02) 9284 9600 **Fax:** (02) 9284 9611

**National Information Service:** 1300 656 419

### **Lifeline Australia**

24 - hour Telephone Counselling

**Call:** 13 11 14

### **Rape & Sexual Assault Service**

**Freecall** - 1800 817 421

### **South Australian Jockey Club**

Mr Rob Heinjus (Operations Manager)

**Phone:** (08) 8295 0113

**Fax:** (08) 8295 0136

### **Country Racing SA Incorporated**

Mr Chris Biggs (Executive Officer)

**Phone:** (08) 8179 9888

**Fax:** (08) 8350 0088