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Sexual harassment in Queensland – for Community legal Centres

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Acknowledgement of Country

Caxton Legal Centre acknowledges the Jagera (Yuggera) and Turrbul people who are the Traditional Custodians of the land on which we work. We recognise the ongoing connection to the land, waters and community of the Traditional Custodians.

We also recognise, respect and celebrate the cultural distinctions of the First Nations peoples and value their rich and positive contribution to Queensland and broader Australian society. With respect we strive to achieve justice and inclusion for Aboriginal and Torres Strait Islander people.

Introduction

- Definitions and examples of sexual harassment
- Truth and myths
- Prevention of sexual harassment
- Responding to sexual harassment
- Process through a Human Rights Commission
- Outcomes



Anti-Discrimination Act 1991 – section 119

119 Meaning of sexual harassment

Sexual harassment happens if a person—

- (a) subjects another person to an unsolicited act of physical intimacy; or
- (b) makes an unsolicited demand or request (whether directly or by implication) for sexual favours from the other person; or
- (c) makes a remark with sexual connotations relating to the other person; or
- (d) engages in any other unwelcome conduct of a sexual nature in relation to the other person;

and the person engaging in the conduct described in paragraphs (a), (b), (c) or (d) does so—

- (e) with the intention of offending, humiliating or intimidating the other person; or
- (f) in circumstances where a reasonable person would have anticipated the possibility that the other person would be offended, humiliated or intimidated by the conduct.

Anti-Discrimination Act 1991 – section 120

120 Meaning of relevant circumstances

The circumstances that are relevant in determining whether a reasonable person would have anticipated the possibility that the other person would be offended, humiliated or intimidated by the conduct include—

- (a) the sex of the other person; and
- (b) the age of the other person; and
- (c) the race of the other person; and
- (d) any impairment that the other person has; and
- (e) the relationship between the other person and the person engaging in the conduct; and
- (f) any other circumstance of the other person.

Sex Discrimination Act 1992 – section 28A

28A Meaning of *sexual harassment*

(1) For the purposes of this Division, a person sexually harasses another person (the *person harassed*) if:

- (a) the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or
- (b) engages in other unwelcome conduct of a sexual nature in relation to the person harassed;

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.

Sex Discrimination Act 1992 – section 28A continued

(1A) For the purposes of subsection (1), the circumstances to be taken into account include, but are not limited to, the following:

- (a) the sex, age, sexual orientation, gender identity, intersex status, marital or relationship status, religious belief, race, colour, or national or ethnic origin, of the person harassed;
- (b) the relationship between the person harassed and the person who made the advance or request or who engaged in the conduct;
- (c) any disability of the person harassed;
- (d) any other relevant circumstance.

(2) In this section:

conduct of a sexual nature includes making a statement of a sexual nature to a person, or in the presence of a person, whether the statement is made orally or in writing.

Take away from the definitions of sexual harassment

- Unwelcome
- Conduct of a sexual nature
- In relation to another person
- Which humiliates, offends or intimidates that other person
- In circumstances in which a reasonable person would anticipate the possibility of that distress

Examples of sexual harassment – from the ADA

Physical touching such as patting, pinching or touching in a sexual way

Unnecessary familiarity such as deliberately brushing against a person

Sexual propositions

Unwelcome and uncalled for remarks or insinuations about a person's sex or private life

Suggestive comments about a person's appearance or body

Offensive telephone calls

Indecent exposure

WHAT OTHER EXAMPLES HAVE YOU SEEN IN YOUR PRACTICE?



True or false?

Sexual harassment is only unlawful in specific areas of public life including at work, school and university

According to the Respect@Work Report 53% of women report having been sexually harassed at work in the five years to 2018

Young women are more likely to be sexually harassed because they are more attractive

If someone is sexually harassed at work, they must make an internal workplace complaint or report before they make a complaint to a human rights commission



A person who is sexually assaulted can bring civil sexual harassment proceedings

Sexual harassment is specifically prohibited by the Fair Work Act.

Sexual harassment is specifically prohibited by the Australian Solicitor's Conduct Rules

Employers have a duty to prevent sexual harassment in the workplace

Australian Solicitors Conduct Rules 2012

42. Anti-discrimination and harassment

42.1 A solicitor must not in the course of practice, engage in conduct which constitutes:

42.1.1 discrimination;

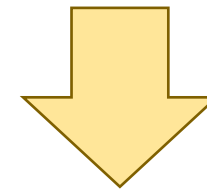
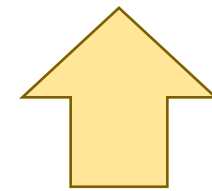
42.1.2 sexual harassment; or

42.1.3 workplace bullying.

All reasonable steps to prevent sexual harassment

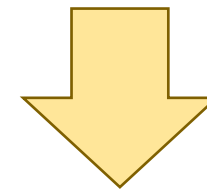
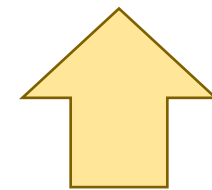
Training

- Specific and targeted
- In person training is better received
 - Regular refreshers



Policies

- Range of options for raising matters (no wrong way)
- Clearly sets out expectations and responsibilities
 - Addresses any workplace specific risks



Workplace culture

- Banter and jokes (eg, 'robust' environment)
 - Drinking and social events
 - Problematic attitudes

Other things to consider

- Workplace Health and Safety
 - Workplace Rights
 - Injury risk
 - Vicarious liability
- Formal positive duties?

Protection against victimisation throughout

**Act of sexual
harassment
occurs**

Informal internal options

- Addressing the harasser directly
- Talking to a trusted person or manager

Formal internal options

- Official complaint
- Investigation (independent or internal)
- Workplace mediation

External complaint/litigation

- Queensland Human Rights Commission
- Australian Human Rights Commission
 - Fair Work Commission
- Other litigation options (eg, PI Claim)
 - Public comments/media

Good outcomes

- A private or public apology
 - Compensation
- Changes in policy
- Training for staff

Mostly good outcomes

- Harasser is disciplined/dismissed
- Workplace changes/transfer

Controversial outcome

- Confidentiality

Bad outcomes

- No outcome/change
 - Victimisation
- Defamation proceedings and other defensive behaviours



General damages – keeping up with “prevailing community standards”

I am unable to discern any in-principle difference between the compensable value of the pain and suffering and loss of enjoyment of life suffered by a victim of sexual harassment (in this case, in the workplace) and of a victim of (workplace) bullying and harassment lacking a sexual element

Kenny J of the Full Federal Court ordering \$100,000 for the general damages component (overturning an original order of \$18,000 for general damages) in **Richardson v Oracle Corporation Australia Pty Ltd [2014] FCAFC 82 [at 108]**



Especially for a lawyer respondent

“In this case, the trial judge was right to measure in general damages the power differential that lay between the Appellant and the Respondent not only by the fact that he was her employer but by the fact of his status as a solicitor.”

Perram J confirming the award of \$120,000 general damages plus \$50,000 aggravated damages. Impact included symptoms of depressive illness. Aggravating features included threats, and appalling conduct during proceedings.

**Hughes trading as Beesley and Hughes Lawyers v Hill [2020]
FCAFC 126**

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... however in Queensland

STU v JKL (Qld) Pty Ltd & Ors [2016] QCAT 505 - \$70,000 in general damages for PTSD and major depressive illness, alcohol use disorder. Case involved a sexual assault.

Green v State of Queensland, Brooker and Keating [2017] QCAT 8 (10 January 2017) - \$70,000 for general damages. Accepted medical evidence of psychiatric injury caused by the sexual harassment. Case involved a prank which caused deep distress.

Golding v Sippel and The Laundry Chute Pty Ltd [2021] QIRC 74 - \$30,000 for general damages and \$5,000 aggravated damages. 'Moderate' psychiatric injury adjustment disorder with anxiety and depressive mood, pre-existing distress from dv history. Case involve a range of behaviours including repeated touching and offering work in exchange for sex.

Making a QHRC/AHRC complaint

- 1 – fill in complaint form, lodge, wait for acceptance
- 2 – have preliminary conversations with witnesses etc
- 3 – there will be a conciliation conference
 - phone or face to face; shuttle if needed; representation with leave
- 5 – if the matter resolves, sign agreement (if in QHRC, this is filed in QCAT)
- 6 – if there is no resolution, referral to QCAT or FCC/Fed Ct
- 7 – make sure evidence (especially medical) is in hand
- 8 - directions will be issued with dates for:
 - filing contentions or similar and evidence
 - probably another conference
 - a hearing



Questions?

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Caxton Legal Centre holds free legal advice sessions on Monday, Tuesday and Thursday evenings for people on a low income or who face other disadvantage.

Call us to book an appointment: **07 3214 6333**

Address:	1 Manning Street South Brisbane
Fax:	07 3746 7483
Email:	caxton@caxton.org.au
Website:	www.caxton.org.au www.queenslandlawhandbook.org.au

Helpful resources

The Queensland Human Rights Commission

<https://www.qhrc.qld.gov.au/>

<https://www.qhrc.qld.gov.au/resources/case-studies/sexual-harassment-case-studies>

Guidance from the Queensland Law Society for lawyers

[https://www.qls.com.au/files/7ede699d-2387-407e-8f7e-ad1901077baa/Guidance Statement No 21 - Sexual Harassment in the Workplace FINAL.pdf](https://www.qls.com.au/files/7ede699d-2387-407e-8f7e-ad1901077baa/Guidance%20Statement%20No%2021%20-%20Sexual%20Harassment%20in%20the%20Workplace%20FINAL.pdf)

AHRC (2008) Effectively preventing and responding to sexual harassment: A Code of Practice for Employers

<https://humanrights.gov.au/our-work/sex-discrimination/publications/effectively-preventing-and-responding-to-sexual-harassment>

Respect@work: Sexual harassment national inquiry report

<https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020>