

# 2017 WR & HR CONFERENCE

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17 & 18 AUGUST  
DOCKSIDE CONVENTION CENTRE  
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## Discrimination and Harassment – What Would You Do ?

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# The “Game Changer”

- *Richardson v. Oracle*
- Discrimination and harassment claims v. unfair dismissals

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# What is Discrimination ?

- Discrimination occurs when a person, or a group of people, is treated less favourably than another person or group because of their background or certain personal characteristics which are:
  - » race, including colour, national or ethnic origin or immigrant status
  - » **sex, pregnancy** or marital status and breastfeeding
  - » age
  - » **disability**, or
  - » sexual orientation, gender identity and intersex status.

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# What is Discrimination ?

- Discrimination can happen at different points in the employment relationship, including:
  - » when recruiting and selecting staff
  - » in the terms, conditions and benefits offered as part of employment
  - » who is considered or selected for training and the sort of training offered
  - » who is considered or selected for transfer or promotion
  - » who is considered and selected for retrenchment or dismissal.

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# What is harassment?

- **Harassment** can include behaviour such as:
  - » telling insulting jokes about particular racial groups
  - » sending explicit or sexually suggestive emails or text messages
  - » displaying racially offensive or pornographic posters or screen savers
  - » making derogatory comments or taunts about a person's disability, or
  - » asking intrusive questions about someone's personal life, including his or her sex life.

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# Challenges

- Injuries (work and non work related)
  - » Dorris Maharaj v Northern Health [2017] FWC 2997
  - » Hilditch v AHG Services (NSW) Trading As Lansvale Holden [2017] FCCA 1086
  - » Dziurbas v Mondelez Australia Pty Ltd (Human Rights) [2015] VCAT 1432
  - » Bevilacqua v Telco Business Solutions (Watergardens) PL (Human Rights) [2015] VCAT 269

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# Challenges

- Psychological
  - » Chalker v Murrays Australia Pty Ltd [2016] NSWCATAD 282
  - » Flavel v Railpro Services Pty Ltd [2013] FCCA 1189
  - » Vernham v Jayco Corporation Pty Ltd [2015] FWC 8185

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# Dealing With Complaints

- Goldman Sachs JB Were Services Pty Limited v Nikolich [2007] FCAFC 120

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# Questions ?

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