



Sexual Harassment live show

Industrial and Employment Law

Emma Harper

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Australian Human Rights Commission www.humanrights.gov.au 1300 656 419 or (02) 9284 9888 1800	Sexual assault support services www.humanrights.gov.au/our-work/sexdiscrimination/list-sexual-assault-services
Respect www.1800respect.org.au	ReachOut https://au.reachout.com
Beyond Blue www.beyondblue.org.au 1300 224 636	Lifeline www.lifeline.org.au 13 11 14

The information provided by Slater and Gordon in this presentation is general in nature and should not be relied upon as legal advice.

Legal advice should be sought for specific matters.

Sexual harassment (Section 28A)

- Criterion 1: Unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; OR
- Criterion 2: Engages in other unwelcome conduct of a sexual nature in relation to the person harassed;
- Criterion 3: 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

Hostile workplace environment on the ground of sex (Section 28M)

- Criterion 1: the first person engages in conduct in their own workplace and/or the workplace of the second person
- Criterion 2: the second person is in the relevant workplace at the same time as or after the conduct occurs, and
- Criterion 3: a reasonable person having regard to all the circumstances would have anticipated the possibility of the conduct resulting in the workplace environment being offensive, intimidating or humiliating to a person of the sex of the second person by reason of their sex or a characteristic generally appertaining or imputed to people of that sex

- Reoccurring themes in these prosecutions for companies
 - Charges under section 21(1) of the Occupational Health and Safety Act for failing to provide and maintain a safe working environment.
 - Section 21(2)(a) of the OHS Act – failing to provide and maintain systems of work for identifying, reporting, investigating and stopping inappropriate workplace behaviour.
 - Section 21(2)(e) of the OHS Act by failing to provide employees with necessary information, instruction and training relating to standards of behaviour in the workplace; the role of managers and supervisors to manage and respond to inappropriate behaviour; how employees could report or complain about inappropriate behaviour; and how those reports or complaints could be investigated and responded to.
- Section 26(1) of the OHS Act for failing to ensure a workplace under his management and control was safe and without risks to health; and 17 charges under section 25(1)(b) of the OHS Act for, as an employee, failing to take reasonable care for the health and safety of a person who may be affected by their acts or omissions at a workplace
 - *The director of this company faced 17 charges as an individual*



Respect@Work Amendment Acts

- The positive duty to prevent sex discrimination and sexual harassment;
- Expanded definition of 'worker';
- Workplace definition, which now extends beyond the physical office to include work and union-related social events, online interactions, and travel;
- The expanded role and powers of the AHRC

Australian Human Rights Commission Amendment (Costs Protection) Bill 2023 (Cth)

- Equal access cost protection.

Sexual harassment options

- *Sex Discrimination Act 1984* (Cth)
- *Fair Work Act 2009* (Cth)
- Other state or territory legislation

Other potential options

- Report to police
- Report to work health and safety regulator
- Make a victims of crimes claim
- Make a workers' compensation claim



Time limits

- The time limit for lodging a sexual harassment complaint in the Australian Human Rights Commission for sexual harassment is 24 months from the date of the incident, or the last of the incidents under the *Sex Discrimination Act 1984* (Cth).