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HR Highlights Series.

Recent sexual harassment decisions

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Tuesday 14 October 2025



Agenda - Sexual Harassment Prevention



- Recap of relevant legal obligations
- Recent changes to the law
- Recent decisions
- What are 'reasonable steps' employers must take?

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Legal Obligations

Definitions - Federal Legislation

Section 28A *Sex Discrimination Act 1984*

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 1984

No. 4, 1984

General Examples of Sexual Harassment



Unwelcome touching



Staring



Suggestive comments or jokes



Sexually explicit photos



Unwanted invitations to go out



Intrusive questions about a person's private life



Crude conversation or innuendo



Sexually explicit emails or SMS text messages

General Examples of Sex/Gender-Based Harassment

Asking intrusive personal questions based on a person's sex or gender

Making inappropriate comments and jokes based on a person's sex or gender

Displaying materials that are sexist, misogynistic or misandrist

Making sexist, misogynistic or misandrist remarks about a person

Requesting a person to engage in degrading conduct based on their sex or gender

Positive Duty

Section 47C Sex Discrimination Act 1984



WHAT IS IT?

A legal duty to take reasonable and proportionate measures to eliminate unlawful conduct

What is unlawful conduct?

Discrimination on the ground of sex - sexual harassment - hostile workplace environments - victimisation



APPLIES TO WHO?

All organisation and businesses



WHO'S BEHAVIOUR?

Employers, employees and third parties



HOW?

Consider the AHRC's Guiding Principles and Standards

In the recent case of *Magar v Khan* [2025], Justice Bromwich stated:

*"the **culture at that workplace** tolerated overt and outspoken **sexist and boorish behaviour** ...*

*Such a workplace culture can have the effect of **normalising sexualised behaviour towards women** and **foster an escalation into worse behaviour**, such as a **progression into sexual harassment**."* [103]

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Mad Mex case

Magar v Khan [2025] FCA 874

Magar v Khan [2025] FCA 874 (Mad Mex)

Allegations by Ms Magar of discrimination on the basis of sex and sexual harassment by her employer, Mr Khan. Ms Magar was an employee of Mexicali Enterprises Pty Ltd, a franchise of Mad Mex Franchising Pty Ltd, owned and controlled by Mr Khan.



The alleged conduct related to Mr Khan and other male employees:

- using sexualised and sexually explicit language to describe female employees and customers;
- comments on Ms Magar's clothing;
- sexualised and demeaning questions in relation to a "hickey" on Ms Magar's neck;
- intrusive and sexualised questions posed to Ms Magar by Mr Khan; and
- a series of incidents of sexual harassment which occurred in Mr Khan's car.



Ms Magar also alleged that she has been victimised by Mr Khan serving her with notices in relation to defamation proceedings.



Bromwich J found that Ms Magar was sexually harassed by Mr Khan in relation to the Hickey Incident and the Car Incidents and that she was victimised by the defamation allegations.

Harassment on the ground of sex

Magar v Khan [2025] FCA 874

The case was one of the first to involve new sex-based harassment provisions following Respect at Work legislation (*Sex Discrimination and Fair Work (Respect at Work) Amendment Act 2021*).

Section 28AA Meaning of harassment on the ground of sex

- (1) For the purposes of this Act, a person harasses another person (the **person harassed**) on the ground of sex if:
 - (a) by reason of:
 - (i) the sex of the person harassed; or
 - (ii) a characteristic that appertains generally to persons of the sex of the person harassed; or
 - (iii) a characteristic that is generally imputed to persons of the sex of the person harassed;
 - (b) the person engages in unwelcome conduct of a demeaning nature in relation to the person harassed; and
- (b) the person does so 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.

Magar v Khan underscores that there must be a discernible and rational link between the alleged conduct and the person harassed, to satisfy the test under section 28AA.

Bromwich J found that the Hickey Incident and at least four of the five Car Incidents constituted sexual harassment of Ms Magar within the meaning of s 28A and found that Mr Khan had contravened s 28B(2) and (3).

Collateral Victimisation

Magar v Khan [2025] FCA 874

Sex Discrimination Act 1984 (Cth)

Section 47A - Victimisation

- Where a person subjects, or threatens to subject, another person to any detriment on the ground that the other person:
 - has or proposes to make a complaint, bring proceedings, give information/documents, attend a conference, appear as a witness or reasonably assert any rights under the Sex Discrimination Act or the *Australian Human Rights Commission Act 1986* (Cth);
 - has made an allegation of an unlawful act or contravention of Part II (discrimination) or Part IIA (duty to eliminate unlawful sex discrimination) of the Sex Discrimination Act.

Significant damages awarded

Magar v Khan [2025] FCA 874

The Court awarded Ms Magar \$305,000 plus costs, one of the highest awards under the federal Sex Discrimination Act.

- \$160,000 for sexual harassment
- \$10,000 for victimisation
- \$5,000 in aggravated damages
- \$90,000 for past economic loss
- \$40,000 for future economic loss



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Duty to prevent harassment

What constitutes 'reasonable steps'?

As of December 2022, all organisations and businesses in Australia have a legal duty to take '**reasonable and proportionate measures**' to eliminate and prevent unlawful conduct in their workplaces.

The Commission and the courts consider a broad range of factors in assessing compliance with the positive duty. Including:

Environment

Different environments carry varying risks of sexual harassment.

- the size
- nature of the work
- industry
- nature and location of the workplace (including physical or online)
- workplace profile
- the location of workers.

Resources

The resources available to your organisation will significantly impact what's considered 'reasonable'.

Finances - Organisations with lower budgets are not absolved of responsibility - expected to utilise less expensive methods to mitigate risk.

Resource Allocation

- Prioritising Resources
- Scaling Measures

Capability

Specialised skills access - HR, risk management and legal capabilities?

Building Capacity - investing in training and development

Seeking External Support -

This demonstrates a proactive approach to addressing your limitations.

Size

Small - less formal methods of communicating policies. E.g. team meetings / notice boards.

Medium - more formal structures like handbooks / HR Team. Investment in workshops/ modules. Better intranet communication.

Large - Developed organisational culture with clear values. Dedicated HR and legal team.

AHRC also provides guiding principles to eliminate unlawful conduct successfully

AHRC's Guiding Principles to eliminate unlawful conduct successfully

Consultation

Talk to workers about:

- What they need to feel safe and respected
- What risks may exist
- Any mitigating options they might see

Consultation is to inform actions

Gender Equality

Attempts to achieve the positive duty should contribute to gender equality.

Achieving gender equality involves going beyond 'equal treatment' to achieve 'equal outcomes'.

Equal rights, rewards, opportunities and resources

Intersectionality

Understanding that people's lives are influenced by a variety of sectors (e.g. relationships, social influence).

Recognises that unsafe workplace behaviour may have a heightened impact on different people.

Risks and impacts are shaped and compounded by systematic issues

Person-centred & Trauma Informed

Person-centred: making systems and processes meet the needs of individuals.

Trauma Informed: building workplace processes on an understanding of trauma to avoid causing further harm.

Systems, policies and practices support people's safety and dignity and avoid causing further harm

AHRC's Seven Standards

1. Ensure senior leaders understand their obligations and regularly review the measures implemented.
2. Foster a culture of safety, respect and inclusivity.
3. Develop, communicate and implement policies regarding respectful behaviour and unlawful conduct.
4. Adopt a risk-based approach to prevention and response.
5. Provide appropriate support for workers.
6. Ensure you have consistent and effective reporting and response systems.
7. Regularly assess and improve systems. Be transparent.



Stop Sexual Harassment Orders

527F Application for the FWC to deal with a sexual harassment dispute

(1) If a person (the **aggrieved person**) alleges they have been sexually harassed in contravention of Division 2 by one or more other persons (a **respondent**), a person referred to in subsection (2) may apply for the FWC to do either or both of the following to deal with the dispute:

- (a) make an order (a **stop sexual harassment order**) under section 527J;
- (b) otherwise deal with the dispute.

527J Stop sexual harassment orders - If the FWC is satisfied that:

(i) if there is a risk that the aggrieved person will continue to be sexually harassed

then the FWC may make any order it considers appropriate (other than an order requiring payment of a pecuniary amount) to prevent the aggrieved person from being sexually harassed in contravention of Division 2 by the person or persons.

Presenters.



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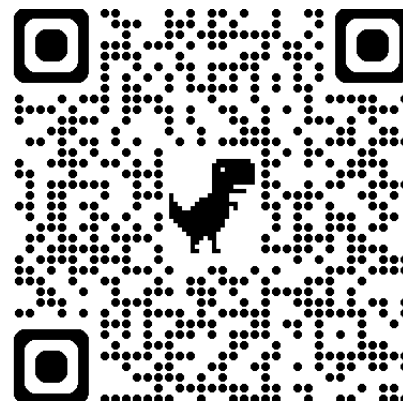
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Upcoming Education Spotlight webinar

Our next Education Spotlight webinar is on **Tuesday 28 October** and is titled ***Child safety in schools - with an investigator.***

Mathisha Panagoda, Partner, Colin Biggers & Paisley will conduct a deep dive into a recent case study relating to child safety in schools. He will be joined by **Kath Element** and **Michelle Becroft**, experienced child protection and workplace misconduct investigators.

Scan the QR code to see more details and to register



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Thank you.

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