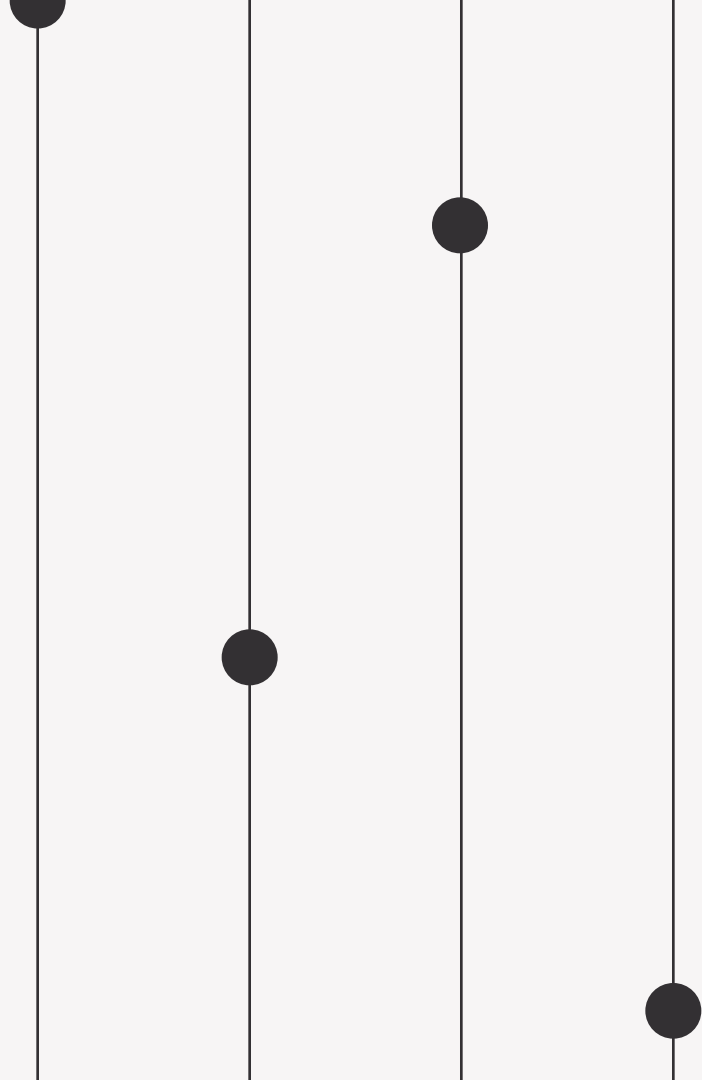


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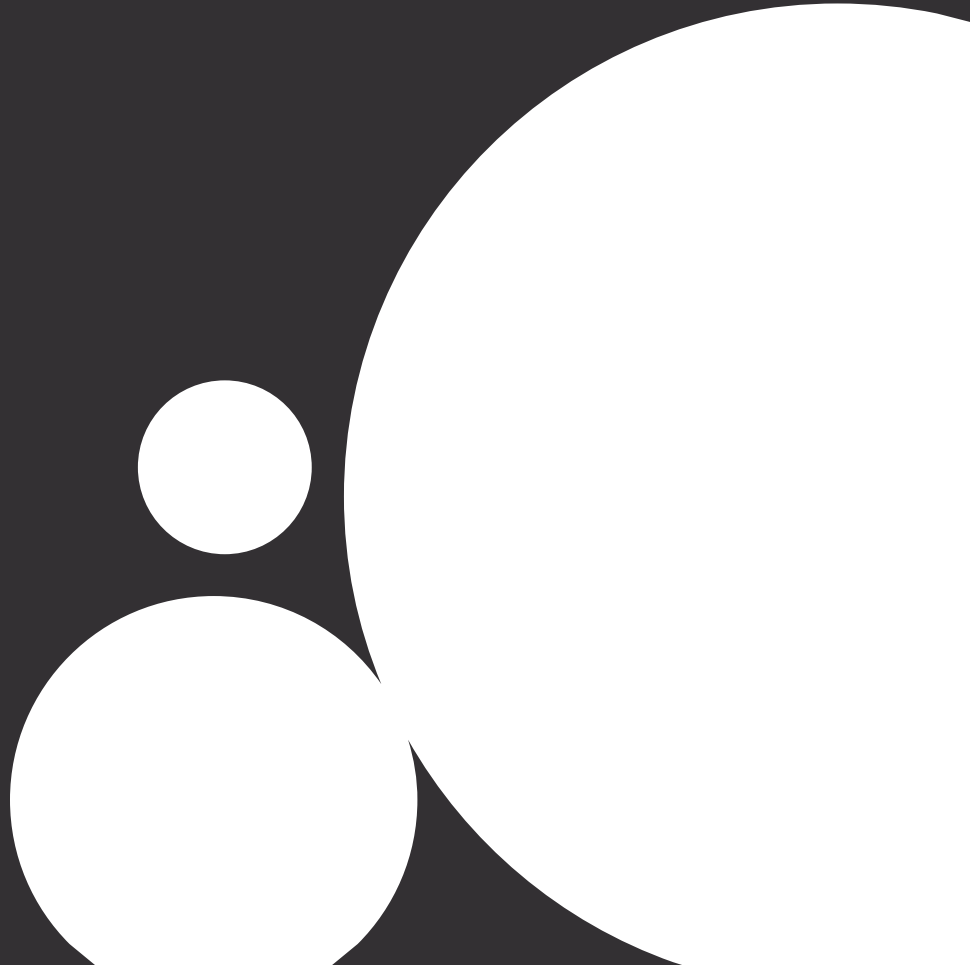
**Navigating Sexual Harassment in the Workplace:
Insights from Clarke v Beiler Constructions**

Adam Foster | July 2026



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**What has come
before?**



What has come before ...

Previous significant cases

Hills v Hughes [2019] FCCA 1267 - Highest award of damages of \$170,000 by Federal Court.

Yelda v Sydney Water Corporation [2021] NSWCATAD 107 - Award of \$200,000 by NSW Supreme Court

Why it matters

The first fully contested Federal Court decision on the Fair Work Act's sexual harassment prohibition, introduced by the 2022 “Secure Jobs, Better Pay” reforms. It shows how the Court will apply the regime in practice — and that harassment can be proven without witnesses.

Outcome

Two sexual harassment contraventions established and the employer held vicariously liable. Adverse action and discrimination claims failed, but multiple wage and record-keeping breaches were established.

What happened

The workplace

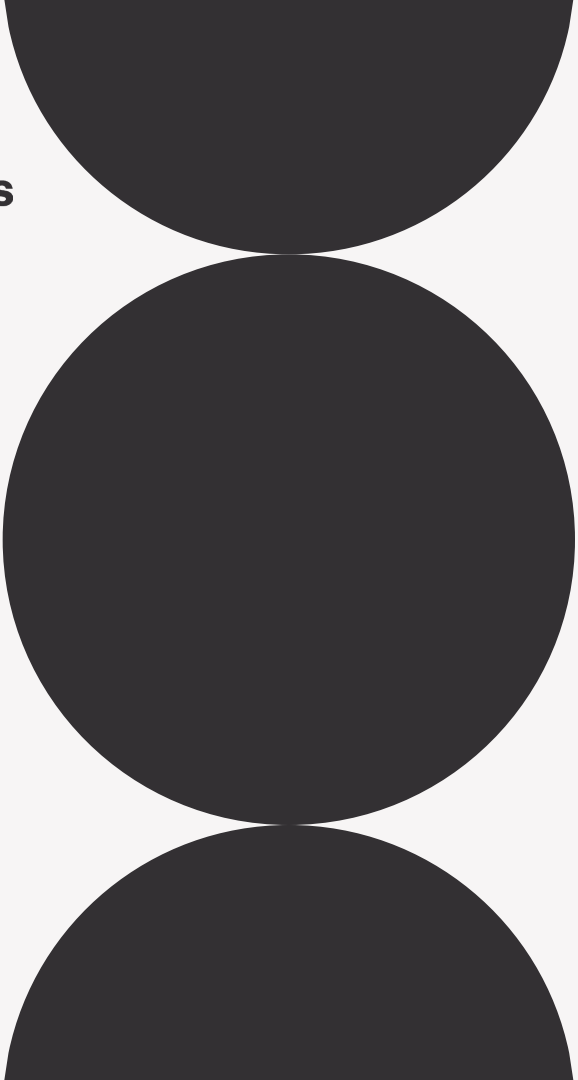
Ms Clarke, an adult apprentice carpenter, was engaged by Beiler Constructions in April 2023 on a fly-in, fly-out basis at the Southern Ocean Lodge site on Kangaroo Island and at sites around Adelaide.

She was the only female employee at the Kangaroo Island site.

The allegations

Between April and May 2023 she alleged several incidents of unwelcome conduct of a sexual nature by two co-workers — including a supervisor's direct request for a sexual act while walking to the mess hall, followed by "what happens on the island stays on the island."

She left in July 2023 and, in December 2023, commenced proceedings also claiming adverse action, sex discrimination and underpayment.



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**Section 28A of
the Sex
Discrimination
*Act 1984 (Cth)***

The three-part test for harassment - s28A

1. Conduct of a sexual nature

An unwelcome sexual advance, request for sexual favours, or other conduct of a sexual nature — here, a direct request for a sexual act on the walk to the mess hall.

2. That was unwelcome

The conduct must be unwelcome to the person it is directed at. A permissive “site culture” or “banter” does not make an advance welcome.

3. Reasonable person test

A reasonable person would anticipate the possibility that the conduct would offend, humiliate or intimidate — assessed on the circumstances, drawn from s 28A of the Sex Discrimination Act.

Proving harassment without witnesses

No witnesses — still established

Two contested incidents were established on the balance of probabilities, even though no one else was present and the supervisor denied the conduct.

Applying the Briginshaw standard, the Court weighed the seriousness of the allegations against the strength of the evidence — and found the applicant's account credible.

What persuaded the Court

Contemporaneous disclosures — she told her son and parents shortly after the events, and told the story consistently.

Credibility — it was “unlikely she would fabricate the allegation, or be mistaken about what was said.”

No “banter” defence — a direct request for a sexual act is plainly a sexual advance, whatever the site culture.

What the Court found

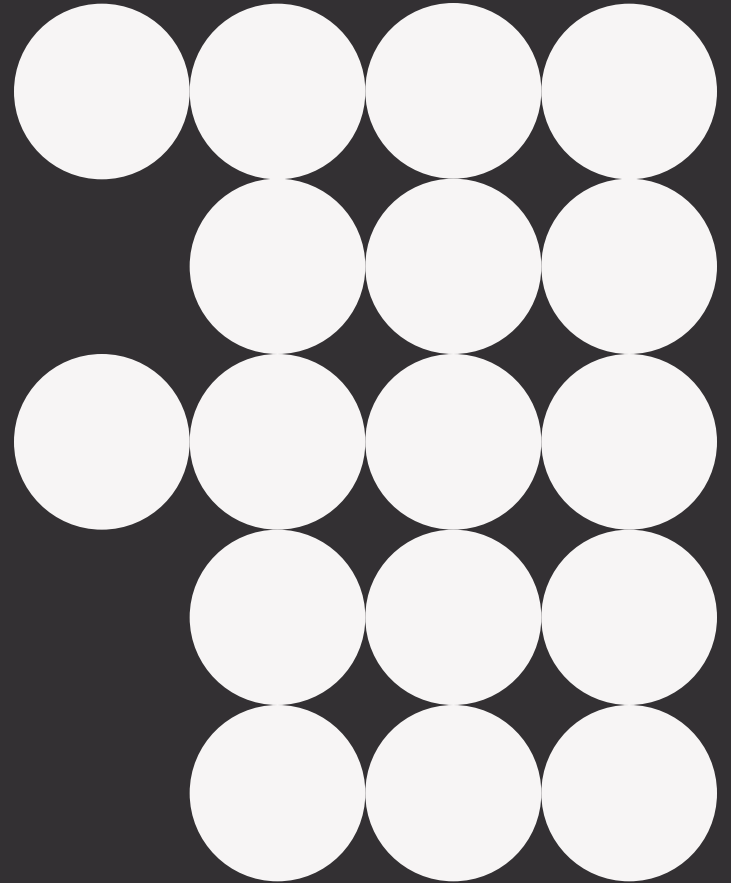
The Court tested each claim against the evidence — text messages, rosters and payroll records — not just policy documents.

Two harassment contraventions were established; several other claims failed.

Claim	Outcome	Section
Sexual harassment (supervisor)	Established	s 527D
Vicarious liability	Liable	s 527E
Harassment (co-worker)	Not established	s 527D
Adverse action	Not established	s 340
Sex discrimination	Not established	s 351
Award underpayments	Established	s 45
Payslips & records	Established	ss 536, 125

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**Vicarious liability under
section 527E of the *Fair
Work Act 2009* (Cth)**



Employees and agents

(1) If an employee or agent of a person (the ***principal***) does, in connection with the employment of the employee or with the duties of the agent as an agent, an act that contravenes subsection 527D(1), this Act applies in relation to the principal (subject to subsection (2)) as if the principal had also done the act.

(2) Subsection (1) does not apply if the principal proves that the principal took all reasonable steps to prevent the employee or agent from doing acts that would contravene subsection 527D(1).

Why the employer was liable

Vicarious liability is close to automatic

Under s 527E, an employer is liable for harassment committed by its workers in connection with employment unless it took all reasonable steps to prevent it.

Beiler Constructions never ran the “all reasonable steps” defence — so once the harassment was established, liability followed automatically.

For FIFO and construction employers, the lesson is direct: prevention has to be documented and real, because the defence is the only thing standing between a worker’s conduct and the company’s liability.

The “all reasonable steps” defence is the employer’s only protection — and it must occur before an incident, not argued after one.

Wage and record-keeping failures

Alongside the harassment findings, the Court upheld a series of pay and compliance breaches

Underpayments (s 45)

Entitlements under the Building and Construction General On-site Award 2020 were not paid in full.

No payslips (s 536)

No payslips were issued for roughly two months of the engagement.

No Fair Work Information Statement (s 125) - the required statement was never provided to the new employee.



Key lessons for employers

Prevent, and prove it

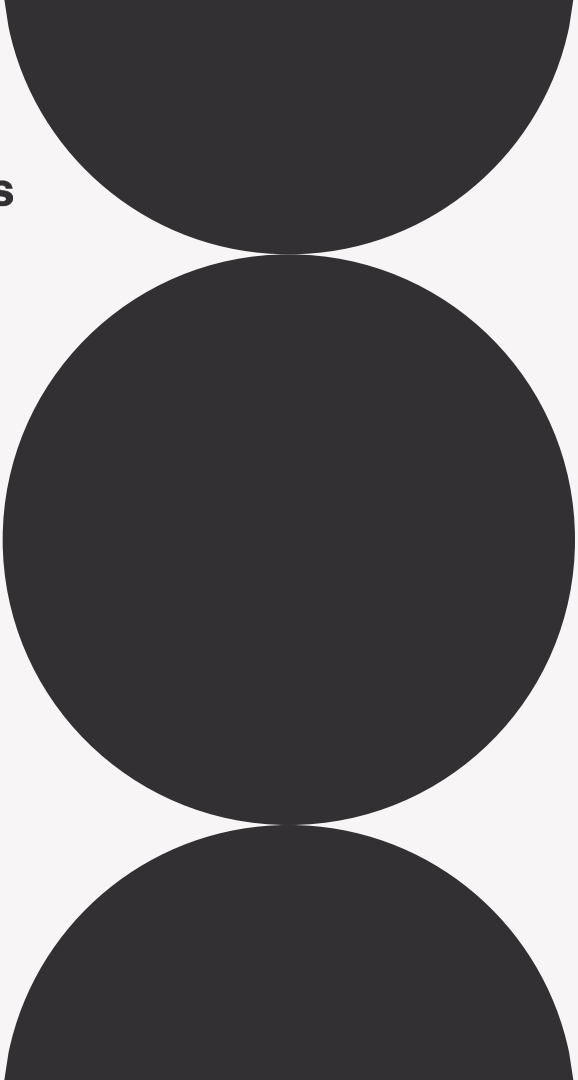
The “all reasonable steps” defence only works if prevention is real and documented — training, policies and active supervision, not a policy on a shelf.

Witnesses are not essential

Harassment can be established on credible, consistent evidence alone. Contemporaneous disclosures and a witness’s reliability can carry a case.

Get the basics right

Award pay, payslips and a Fair Work Information Statement are non-negotiable — these breaches surface alongside the conduct claims.



**Colin
Biggers
& Paisley**

Questions

Presenter



Adam Foster

Partner

Colin Biggers & Paisley

**Colin
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& Paisley**

Thank you.

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