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Sexual harassment and power imbalance: a \$305,000 Federal Court warning for employers

The following article was published by Jonathan Mamaril, Director at South Geldard Lawyers on 20 November 2025.

SEXUAL harassment remains one of the most serious and preventable risks in Australian workplaces. Recent reforms, increased public awareness and the shift toward a positive duty to eliminate harmful behaviour mean employers are under closer scrutiny than ever.

The Federal Court's decision in *Magar v Khan* [2025] FCA 874 is a powerful reminder of what can happen when poor culture, unchecked behaviour and power imbalances collide. It is also the first judgement to consider the new section 28AA of the *Sex Discrimination Act 1984*, which deals with harassment on the ground of sex.

Section 28AA of the *Sex Discrimination Act 1984* (Cth) defines harassment on the ground of sex as unwelcome, demeaning conduct based on a person's sex that a reasonable person would anticipate would cause offence, humiliation or intimidation. This can include comments, jokes or displaying sexist materials and captures behaviour that is not necessarily sexual in nature but is demeaning due to someone's sex.

For HR and People and Culture leaders, this case contains essential insights about culture, accountability and the rising level of damages awarded by the courts with particular regard to sexual harassment.

1. A case that highlights culture, power and vulnerability

Ms Magar worked as a shift supervisor at a Mad Mex franchise owned and operated by Mr Sonny Khan. She was young, new to Australia, financially dependent on the work and without local family support.



The workplace was male-dominated and the Court accepted evidence of:

- regular crude jokes;
- demeaning comments about women; and
- inappropriate behaviour among a group of male staff.

Justice Bromwich described the culture as one that tolerated “sexist” and “boorish behaviour”. According to the Court, this type of environment can normalise disrespect and lay the groundwork for more serious conduct to occur. This context was critical in assessing the allegations.

It also demonstrated the significant power imbalance between Mr Khan, who ran the business, and the young employee who relied on him for income and direction.

2. Testing the new law on harassment based on sex

One of the key issues was the meaning of harassment on the ground of sex under section 28AA. This provision was introduced after the Respect at Work report and was designed to capture demeaning conduct related to a person's sex, even when it is not sexual in nature.

For this claim to succeed, the conduct must have a clear connection to the person making the complaint. Justice Bromwich

confirmed that there must be a rational link between the behaviour and the individual who says they were harassed. It cannot be a generalised observation about a problematic culture unless that culture was expressed in a way that relates to the person affected.

In this case, although the workplace culture was plainly inappropriate, the Court found that the broader conduct among staff was not sufficiently connected to Ms Magar herself. The sex-based harassment claim therefore failed.

In practical terms, the culture was offensive and sexist, but the legal test required more than that.

3. Serious sexual harassment proven

The failure of the sex-based harassment claim did not prevent the Court from making very significant findings of unlawful sexual harassment.

The Court accepted that Mr Khan:

- questioned Ms Magar about a hickey and her sexual activity in graphic detail;
- asked intrusive personal questions about her sex life;
- showed her pornographic material;
- showed her sex toys, asked

her to comment on them, and touched her with them;

- encouraged her to go to a massage parlour or hotel with him; and
- asked her to watch pornography with him in private settings.

These events occurred repeatedly over several weeks. Justice Bromwich preferred the evidence of Ms Magar to that of Mr Khan, importantly noting that her continued attendance at work did not undermine her credibility. The Court commented that people often continue working despite harassment because they need their job, especially when vulnerable or financially dependent.

This finding reinforces that HR teams must take a nuanced approach when assessing credibility. An employee's decision to remain at work rarely means the conduct did not happen.

4. Victimisation through legal threats

After Ms Magar made an internal complaint to Mad Mex, Mr Khan became aware that she was the complainant. He then issued formal letters through his lawyers, accusing her of defamation and demanding she withdraw her statements.

The Court found these letters were intended to intimidate her. They discouraged her from pursuing her rights and therefore constituted victimisation under the Sex Discrimination Act.

This aspect of the case is a significant reminder for HR and employer representatives. Any action that could be perceived as punishing an employee for raising concerns can attract liability in its own right.

6. A landmark damages award

Justice Bromwich ordered Mr Khan to pay \$305,000, which included:

- \$160,000 general damages for sexual harassment;
- \$10,000 general damages for victimisation;
- \$5,000 aggravated damages due to aspects of the defence;
- \$90,000 past economic loss; and
- \$40,000 future economic loss.

This is one of the larger awards for sexual harassment in Australia. The Court emphasised that sexual harassment damages are not assessed by simple comparison with earlier cases. Previous decisions provide guidance but do not cap or limit what a court can award.

The judgement reflects community expectations and the trend toward stronger financial consequences for workplace misconduct.

7. Key lessons for HR and People & Culture teams

1. Culture is not a side issue. It is evidence.

A workplace that tolerates sexist comments or disrespect can be used as contextual proof of more serious allegations. Culture creates risk and courts are increasingly relying on cultural evidence.

2. Power imbalance magnifies the seriousness of conduct.

Young, migrant, casual and visa-dependent workers may have limited ability to push back. Courts will consider these factors.

3. Policies and training are not enough without enforcement.

A written policy does little if managers model poor behaviour or allow others to do so.

4. Threatening a complainant can create a new legal breach.

Victimisation is unlawful. Heavy-handed responses, warning letters or legal threats can generate additional liability.

5. Early HR intervention can prevent escalation.

Proactive training, accessible reporting mechanisms and independent investigations are essential. Where the accused is in a position of authority, external investigators are strongly recommended and those investigations should really be under legal professional privilege.

8. What could HR and P&C teams do now?

Review sexual harassment policies to ensure they reflect the extended legal definitions.

Deliver training that addresses both sexual and sex-based harassment. Training from a law firm who are experts in this area could be a consideration.

Strongly consider independent investigations in sensitive or senior-level allegations and those investigations should really be under legal professional privilege.

Audit workplace culture, especially in male-dominated environments and, if need be, look at potential solutions, most likely starting with management training on sexual harassment.

Ensure reporting pathways are safe and do not require employees to raise complaints directly with the alleged harasser.

Respond to complaints promptly and without any conduct that could be interpreted as retaliation.

These actions support compliance with the positive duty to eliminate harmful conduct and reduce exposure to significant financial and reputational risk.

You can reach out on (07) 4936 9100 or via email to Jonathan Mamaril, Jonathan Mamaril, Director at jmamaril@southgeldard.com.au. All employers receive an obligation-free consultation.