

WorkSafe prosecutes employer and employee over alleged sexual harassment

WorkSafe has charged a director, an employee and two companies after multiple allegations of sexual harassment of young employees at hospitality outlets at two Melbourne hospitals. The director and companies face charges under section 26(1) of the Victorian *Occupational Health and Safety Act 2004* (OHS Act) for failing to ensure that, as far as is reasonably practicable, the workplace was without risks to health. The employee has been charged with a single breach of section 25(1)(b) of the OHS Act for 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.

Maximum penalties for the breaching of these duties are 1800 penalty units (currently \$332,856) for a natural person and 9000 penalty units (currently \$1,664,280) for a body corporate.

In commenting on the matter, WorkSafe stated:

“Under the OHS Act, duty holders must take all reasonably practicable steps to protect workers from physical and mental injury. This includes taking all reasonable steps to prevent and effectively deal with sexual harassment in the workplace.”

Whilst there is limited detail regarding the specifics of the case, the charging of an employee is significant – and consistent with VACC long-standing view that the prevention and elimination of sexual harassment from the workplace is everyone’s responsibility, rather than employers’ alone.

Members should note that WorkSafe’s prosecution is under the OHS Act and is therefore unrelated to recent legislative amendments to the *Fair Work Act 2009* and *Sex Discrimination Act 1984* aimed at addressing workplace sexual harassment. Accordingly, the prosecution also serves to highlight that workplace sexual harassment is subject to overlapping jurisdictions and is now a key area of focus for a number of regulators, including WorkSafe.

Action Steps for Employers

Members are strongly encouraged to regularly review and evaluate their existing policies and practices on sexual harassment in the workplace to ensure they continue to be both up-to-date and effective – with all workers inducted and trained so that they understand their rights and responsibilities. This is particularly important in respect to managers, who need to act as cultural role models for appropriate behaviour, as well as knowing how to respond if a complaint is raised with them.

It is recommended that stand-alone written policy and procedure should not only govern a zero-tolerance approach to sexual harassment, but also include a detailed and well-defined complaints procedure that clearly conveys that any matter raised will be followed up in a procedurally fair manner, with support and impartiality for all parties involved.

VACC has updated its [Employee Handbook](#) to reflect recent legislative changes and engagement with WorkSafe's Psychosocial Operations Inspectorate – and has also developed a number of stand-alone policy templates for members, including one specifically for the prevention and elimination of sexual harassment in the workplace.

VACC can also assist members in the review and/or implementation of their own sexual harassment policies and procedures. The VACC Workplace Relations team also offers professional onsite training for staff and management to ensure they are continuously engaged on these important workplace issues.

Members seeking further advice or assistance on sexual harassment in the workplace are encouraged to contact the VACC Workplace Relations team on (03) 9829 1123 to speak to an advisor.

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