

Workplace Behaviours – The Changing Landscape

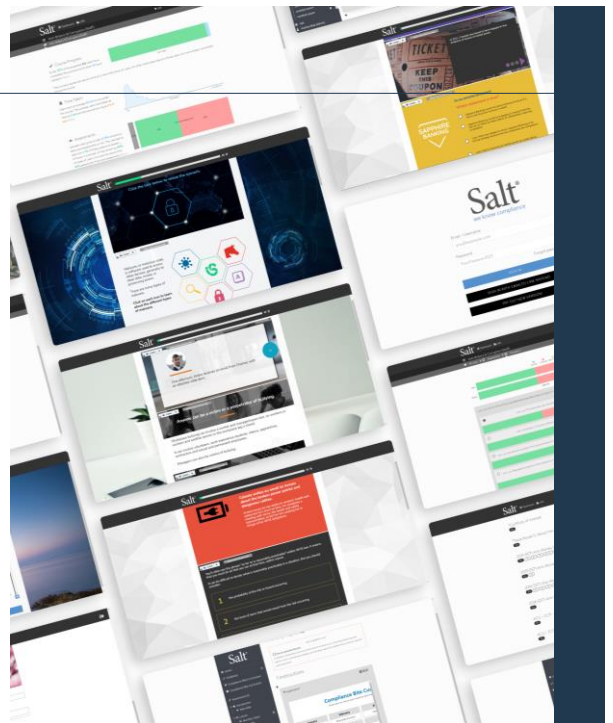
Phil Haultain

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February 2023

National Enquiry into Sexual Harassment

- Some observations
- Interaction of existing law
- Some recommendations



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Changes to the Law

Sex Discrimination Act

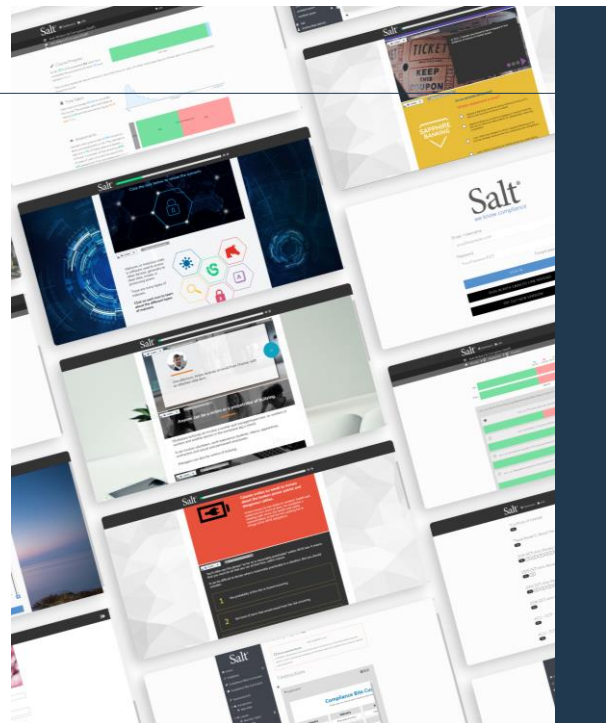
- Positive duty on employees
- Hostile work environment prohibition

Fair Work Act

- Sexual harassment prohibition
- Employer vicarious liability

Elements of Sexual Harassment

- Conduct of a sexual nature
- Conduct is unwelcome – subjective test
- Conduct is offensive, humiliating or intimidating – objective test
- *Ewin v. Vergara (No. 3)* [2013] FCA 1311
- *Johanson v. Blackledge* (2001) 163 FLR 58
- *Lee v. Smith* [2007] FMCA 59
- *Keron v. Westpac Banking Corporation* [2022] FWC 221



When is a working environment hostile?

- *Horne v. Press Clough Joint Venture* (1994) EOC 92-591

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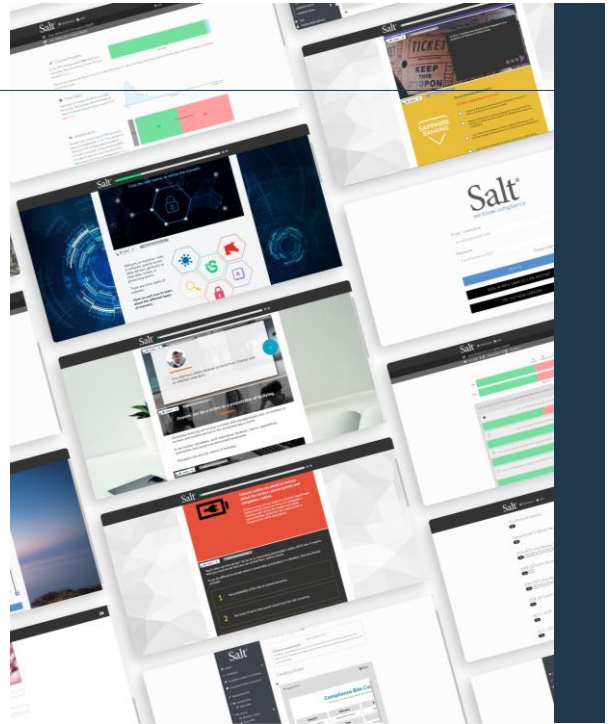
Reasonable and Proportionate Measures/Reasonable Steps

- Proportionality
- Proactive steps
 - Risk assessments
 - Consultation
- Complaints procedures
 - Staff support
 - Protection against victimisation
- Training
- REP 758 Good practices for handling whistleblower disclosures

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Action and Remedies

- AHRC
 - Unlawful discrimination actions
 - Remedies
 - Powers of enquiry
- FWC
 - Stop orders
 - Sexual harassment disputes
 - Remedies
- Termination of employment
- No duplication of actions



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Questions?

Reach out to us for enquiries or comments!

Sydney, Melbourne, Perth, Brisbane, Singapore and New York
contactus@grcsolutions.com.au | grcsolutions.com.au

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