

## Article Information

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## **“Not acceptable in any workplace”: The Fair Work Commission condemns a worker’s “egregious” sexual remarks over two-way radio**

**The Fair Work Commission (FWC) has recently criticised a worker’s “egregious” sexual remarks over a company’s two-way radio network, finding that his dismissal did not amount to an unfair dismissal. The decision in *Garth Saunders v Jellinbah Mining Pty Ltd* [2026] FWC 346 has provided a reminder to employers of the importance of well-drafted, tailored policies and training modules with respect to sexual harassment in the workplace.**

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### Background

On 21 May 2025, the Applicant’s employment with the Respondent was terminated following allegations of inappropriate sexual remarks made over a two-way radio at a mine site. These comments concerned the sexual partners of the Applicant’s coworkers, including encouraging sexual partners to take illicit drugs as a mechanism of encouraging engagement in particular sexual acts, and requesting coworkers to film sexual acts with their partners for workers to view.

Prior to the alleged remarks, the Respondent had established its zero-tolerance approach to any form of sexual harassment, sex-based harassment, and hostile work environments. The Respondent had also issued a workplace memorandum which made clear that the use of “offensive language and swearing” was “not acceptable” on its two-way radios.

In January 2024, the Respondent circulated its Sexual Harassment, Sex-Based Harassment and Hostile Working Environments Policy (**the Policy**). The Policy expressed that the Respondent was committed to maintaining a zero-tolerance approach to this issue and made clear the risk of disciplinary action up to and including termination for breaching the Policy. The Respondent also issued its Code of Conduct in January 2024, which expressly dealt with discrimination, sexual harassment, and bullying.

Further, and perhaps most notably, the Respondent introduced what was described by the FWC as “robust” training in relation to sexual harassment and the appropriate use of the two-way radio system approximately 6 months prior to the dismissal. This training contained presentation slides which explicitly covered the use of offensive language or content on the two-way radio. The slides went on to provide examples of two-way conversations that did not fall within the Respondent’s Code of Conduct or general expectations. These examples included “discussions of any sexual nature no matter the crew or the audience”, asking improper personal questions, and using “vulgar” or offensive language.

### Valid grounds for dismissal

The key question in this matter became whether the dismissal was harsh, unjust, or unreasonable. In contemplating whether there was a valid ground for dismissal, the FWC was critical of the nature of the Applicant’s conduct, despite his genuine contrition, which Deputy President Butler described to be “not acceptable in any workplace in 2025”.

In its decision, the FWC gave considerable weighting to the proximity of the remarks to the Respondent’s respect at work and two-way radio training. The FWC made the following finding in relation to the Applicant’s conduct:

*... [The remarks] were egregious in and of themselves. They were made more egregious in light of the training six months before in respect of use of the two-way, and respect at work. They had potential to harm others; they also had the potential*

*to give rise to vicarious liability for the employer.*

Further, the FWC considered the Respondent's zero-tolerance approach to this nature of conduct, as established and maintained throughout its Code of Conduct and the Policy. It was recognised that employees had been alerted to the risk of termination or other disciplinary action in the event of a breach of the Policy. Although the conduct in itself was found to be entirely unacceptable, the Respondent's policies were found to have provided a further valid reason for the dismissal:

*It was also a valid reason, because it contravened directions that were lawful and reasonable that had been given by way of the policies, the Code of Conduct policy, and the Sexual Harassment, Sex based Discrimination and Hostile Environment Policy.*

The FWC ultimately held that the dismissal was not unfair.

The facts of this case can be contrasted with those in the Queensland Industrial Relations Commission decision of *Loquias v The Star Entertainment Group and Dwyer* [2026] QIRC 23. In this case, the Commission found that the employer was unable to avoid being held vicariously liable for its employee's contraventions of the *Anti-Discrimination Act 1991* (Qld), in sexually harassing a coworker, because its sexual harassment training was required to be completed by workers while "simultaneously attending to their duties".

Although the content of the employer's sexual harassment training was found to be appropriate, the Commission stated the "completion of online training conducted concurrently whilst completing work duties is below basic training expectations to the extent that it cannot be considered reasonable".

### **Lessons for employers**

These decisions reiterates the importance of setting transparent and unambiguous standards regarding behavioural expectations in the workplace, and the importance of maintaining robust workplace policies and comprehensive training modules. Employers should:

- Develop training sessions regarding sexual harassment and sex-based harassment which are regularly reviewed and updated and take into account the unique nature of the workplace. These sessions should be industry-specific, giving mind to the risks that might arise in a workplace with respect to these issues. Further, it is important training sessions occur regularly over periods of time to ensure employees remain up to date in their understanding of the employer's behavioural expectations. Employees should be afforded the time and resources to complete this training without being expected to attend to their duties simultaneously.
- Maintain and distribute policies in relation to sexual harassment and sex-based harassment. It is important to regularly review these policies to ensure that they align with changing legislative requirements and remain relevant to the workplace environment. These policies should be thorough and take into account any specific features of the workplace.
- Risk assessments should be conducted (and regularly reviewed) and control measures implemented to reduce the risk of sexual harassment in the workplace. This is necessary to comply with obligations under work health and safety legislation, particularly considering new psychosocial hazard provisions

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