



Australian
Human Rights
Commission

A Quick Guide for Complying with the Positive Duty under the *Sex Discrimination Act 1984 (Cth)*

August 2023



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A Quick Guide for Complying with the Positive Duty under the *Sex Discrimination Act 1984* (Cth).

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Contents

1. Background to this Quick Guide	3
2. The positive duty – why is it necessary?	4
3. What is the positive duty and to whom does it apply?	5
4. Understanding the unlawful conduct covered by the positive duty	7
4.1 What is sex discrimination?	7
4.2 What is sexual harassment?	7
4.3 What is sex-based harassment?	8
4.4 What is conduct that creates a hostile workplace environment on the ground of sex?	9
4.5 What is victimisation?	10
5. When and where could relevant unlawful conduct occur?	11
6. Who could experience relevant unlawful conduct?	11
7. What are the drivers of relevant unlawful conduct?	12
8. The ‘HOW’ of the positive duty – ‘reasonable and proportionate measures’	13
9. The Guiding Principles	14
10. The Standards	17
10.1 <i>Standard 1: Leadership</i>	18
10.2 <i>Standard 2: Culture</i>	21
10.3 <i>Standard 3: Knowledge</i>	24
10.4 <i>Standard 4: Risk management</i>	26
10.5 <i>Standard 5: Support</i>	28
10.6 <i>Standard 6: Reporting and response</i>	30
10.7 <i>Standard 7: Monitoring, evaluation and transparency</i>	32
Endnotes	35

1. Background to this Quick Guide

Under the *Sex Discrimination Act 1984* (Cth) (**Sex Discrimination Act**), a legal obligation now exists to take **'reasonable and proportionate measures'** to eliminate certain unlawful conduct as far as possible. This legal obligation is referred to as the **'positive duty'** and it is focused on preventing unlawful behaviours in the context of work, workplaces and working relationships.¹

The purpose of this Quick Guide is to help entities that must comply with this positive duty to satisfy their legal responsibilities (in this Guide, for ease of reference, we refer to these duty holders as **organisations and businesses**).

This Quick Guide explains:

- **why** the positive duty is important
- **what** the positive duty is (including to whom it applies) and the **'relevant unlawful conduct'** to which it applies
- **when** and **where** this relevant unlawful conduct may occur
- **who** could experience this relevant unlawful conduct.

Importantly, the primary focus of this Quick Guide is to outline the **'how'** of the positive duty – the actions that organisations and businesses can take to satisfy their obligations. It does so by setting out seven **Standards** that will guide organisations and businesses as they seek to prevent unlawful behaviour and address it appropriately when it occurs. Four **Guiding Principles** are also outlined that should underpin the implementation of the Standards. This Quick Guide also includes examples of how organisations and businesses might meet these Standards in their own circumstances and context.

The Australian Human Rights Commission (**the Commission**) expects organisations and businesses to take a holistic approach to creating safe and respectful workplaces and not to feel restricted to the examples contained in this Quick Guide. Creative, innovative and bold strategies to advance substantive equality between men and women and to foster positive workplace cultures are strongly encouraged.

This Quick Guide forms part of a suite of guidance materials produced by the Commission in relation to the positive duty. The Commission has also published the following resources:

- *Guidelines for Complying with the Positive Duty under the Sex Discrimination Act 1984 (Cth)* (**Guidelines**)
- *Information Guide on the Positive Duty under the Sex Discrimination Act 1984 (Cth): Relevant Unlawful Conduct, Drivers, Risk Factors and Impacts* (**Information Guide**)
- *A Resource for Small Business on the Positive Duty under the Sex Discrimination Act 1984 (Cth)*.

As this document is a Quick Guide, relevant content has been edited and condensed. For more detailed information on complying with the positive duty, and for relevant disclaimers, please see the Commission's Guidelines.

2. The positive duty – why is it necessary?

More than ever before, people are recognising the moral, legal and business imperatives of having a safe, respectful, diverse and inclusive culture at work. Safe and respectful workplaces that advance gender equality are good for business; good for the people who work in and visit them; and good for the Australian community. When people feel safe and respected at work, and when they enjoy equality of opportunity, they can thrive and be more productive, while organisations and businesses also benefit.

Research shows, however, that progress is needed to make work safe and inclusive for all Australians. *Time for respect: Fifth national survey on sexual harassment in Australian workplaces 2022* found that 33% of Australians reported that they had experienced workplace sexual harassment, in the previous five years – representing 41% of women and 26% of men.²

Australian organisations and businesses are increasingly recognising that an unsafe and disrespectful workplace culture influences their ability to attract and retain the best people; reduces productivity; and creates significant reputational and legal risks. It also impacts their ability to attract customers and investors and affects their credibility and bottom line.

A response that focuses on addressing reports of unlawful conduct that has already occurred has limitations. The positive duty is about being proactive. It is about preventing harm connected to work or workplaces before it happens, rather than responding once the harm has already occurred.

Preventative approaches are not new to Australian workplaces or the regulation of people at work. These reforms align the approach in the Sex Discrimination Act with other workplace protections, including those set out in work health and safety (**WHS**) laws.

It is important to note that the new positive duty complements – and does not replace – existing obligations under other Australian laws, including WHS laws. These may require different or additional actions beyond those discussed in this Quick Guide. See the Guidelines, section 3.2, for further detail.

3. What is the positive duty and to whom does it apply?

The new positive duty requires organisations and businesses to take 'reasonable and proportionate measures' to eliminate, as far as possible:

- discrimination on the ground of sex in a work context
- sexual harassment in connection with work
- sex-based harassment in connection with work
- conduct creating a workplace environment that is hostile on the ground of sex
- related acts of victimisation.³

In this Quick Guide, the conduct covered by the positive duty is referred to as '**relevant unlawful conduct**'.

Regardless of their size or resources, all organisations and businesses in Australia that have obligations under the Sex Discrimination Act must satisfy the positive duty. This includes, sole traders and the self-employed, as well as small, medium and large organisations and businesses, and government.

The positive duty in the Sex Discrimination Act applies to 'persons conducting a business or undertaking' (often known as PCBUs) and 'employers'.

Under the Sex Discrimination Act, an **employer** is a person who employs another person, or engages another person to perform work under a contract for services.

A **PCBU** has the same meaning in the Sex Discrimination Act as under WHS law. The term is a broad concept that extends beyond the traditional employer/employee relationship and includes all types of modern working arrangements and structures, such as public and private companies, unincorporated bodies or associations, partners in a partnership, government departments and authorities, franchisors and franchisees, sole traders and self-employed people.

The following are **not** considered to be a PCBU:

- an individual engaged solely as a worker (such as an employee) or officer (such as an executive manager), where they are acting in that capacity alone⁴
- volunteer associations, unless they (or members on behalf of the association) employ one or more people⁵
- elected members of a local authority (who are acting in that capacity)⁶
- strata title companies (bodies corporate) that are responsible for common areas used only for residential purposes, unless the strata company engages one or more workers as an employee.

The positive duty requires organisations and businesses to take reasonable and proportionate measures to eliminate, as far as possible, relevant unlawful conduct being engaged in:

- **by themselves**⁷
- **by their employees, workers and agents**,⁸ including conduct:
 - in some cases, *between* such people or *towards* the employer or person conducting the business or undertaking
 - in some cases, *towards* other people with whom they come into contact in connection with their work ('third parties', such as customers, clients, patients, suppliers, visitors or members of the public)
 - in some cases, by **third parties**⁹ *towards* employees and workers in connection with their work.

The extension of the positive duty to the conduct of third parties recognises the important role that organisations and businesses can play in protecting their workers from unlawful conduct and providing safe, respectful and inclusive workplaces. This is because third parties can pose a significant risk to workers.



An **'employee'** is a person who is employed or engaged by another person.

A **'worker'** has the same meaning in the Sex Discrimination Act as under WHS laws. It is a broad concept that extends beyond the traditional employer/employee relationship. It includes, an employee, a contractor or subcontractor, a 'gig' worker, an apprentice or trainee, a student gaining work experience and a volunteer.

An **'agent'** is someone who acts on behalf of an organisation or business.

Please see the Guidelines, and its Glossary, for full legal definitions and the meaning of other terms referred to in this Quick Guide.

What it means to take 'reasonable and proportionate measures' is discussed further below. The different types of relevant unlawful conduct to which the positive duty applies are outlined in the following sub-sections.

Note on terminology: This document acknowledges the gendered nature of discrimination, harassment and victimisation. When discussing the law, and the conduct covered by the positive duty, this Quick Guide uses the term 'sex' and refers to concepts such as sex discrimination and sex-based harassment. This is because it is the language used in the Sex Discrimination Act. In broader policy discussions, this Quick Guide uses the term 'gender' and refers to concepts such as gender inequality, gender roles and gendered violence. 'Gender' is a more common term than 'sex' and it is more relevant when considering socially constructed roles, behaviours and attributes. When the terms 'men' and 'women' (or their equivalents) are used in this document, this is intended to be inclusive of all genders, including trans men and trans women (subject to any limitations imposed by the Sex Discrimination Act or relevant case law).¹⁰ Where applicable, the document also refers to specific impacts on Lesbian, Gay, Bisexual, Trans and gender diverse, Intersex and Queer ('LGBTIQ+') people.

4. Understanding the unlawful conduct covered by the positive duty

4.1 What is sex discrimination?

Sex discrimination is when someone is treated unfairly, or is unreasonably disadvantaged, because of their sex, or a characteristic that is generally associated with people of their sex.

The kinds of attitudes that can lead to sex discrimination in a work context include:

- making assumptions about the sort of work that people are capable – or not capable – of performing because of their sex
- thinking that people are suited to different kinds of work because of their sex
- having a personal preference for working with people of a particular sex
- thinking that treating people exactly the same is the best way to ensure fairness between people of different sexes.

Sex discrimination can be either direct or indirect and both forms are unlawful under the Sex Discrimination Act.¹¹



Direct sex discrimination occurs when a person is treated less favourably than someone of a different sex would be treated in the same or similar circumstances.¹²

Generally speaking, treating someone 'less favourably' means treating them worse or subjecting them to a detriment. To be unlawful, the less favourable treatment needs to be *because of* the sex of the person, or a characteristic generally associated with people of that sex. For example, a decision not to hire a qualified woman as a mechanic because she is a woman and it is assumed that she will not fit into a workplace with lots of men, would be direct sex discrimination.



Indirect sex discrimination may be less obvious. It occurs when an existing or proposed condition, requirement or practice (such as a rule or policy) may appear to treat everyone equally, but disadvantages, or is likely to disadvantage, people of a particular sex.¹³ It will not be unlawful discrimination, however, if the condition, requirement or practice is reasonable in the circumstances.¹⁴ For example, it may be indirect sex discrimination to require everyone to work from 9am to 5pm, if this is not reasonable in the circumstances. This is because the policy may disadvantage women, who are more likely to need to work flexible hours related to the responsibilities of caring for children.¹⁵

4.2 What is sexual harassment?

Sexual harassment is any unwelcome conduct of a sexual nature that occurs in circumstances in which a reasonable person, aware of those circumstances, would anticipate that the person being harassed might feel offended, humiliated or intimidated.¹⁶

Sexual harassment is common in Australia. For example, over three quarters of Australians aged 15 or older (77%) report that they have been sexually harassed at some point in their lifetime.¹⁷ Additionally, one in three Australians report having experienced sexual harassment at work in the last five years.¹⁸

Sexual harassment can be overt, covert or subtle. It can happen in person, over the phone and online – including via social media. Examples include unwelcome physical contact, repeated or inappropriate invitations to go out on dates, sexualised gifts, images or videos, and inappropriate staring or leering.





Sexual harassment is not always obvious or continuous, and a person does not need to *intend* for their behaviour to be sexual harassment for it to be unlawful. Conduct also does not need to be sexually explicit to be covered and can include innuendo, insinuation, undertone and jokes. It can include one-off incidents, or a pattern of behaviour that makes the working environment uncomfortable or threatening in a sexually hostile way.

Conduct can be unwelcome even when a person does not explicitly reject it. Power imbalances in the workplace, or a fear of victimisation, may prevent people from speaking up. Additionally, behaviour that may have been welcome in the past does not always remain welcome to the person receiving it.

While the ways in which people experience certain behaviour may differ, whether such behaviour is unlawful sexual harassment under the Sex Discrimination Act depends on how a reasonable person would interpret the behaviour in the circumstances. This includes consideration of circumstances such as the age, sex, sexual orientation, gender identity, religious belief and ethnicity of the person being harassed, any disability, and the nature of the relationship between the parties involved.¹⁹

Sexual harassment is not sexual interaction, flirtation, attraction or friendship that is invited, mutual, consensual or reciprocated.

4.3 What is sex-based harassment?

Although they sound similar, and often occur in combination, sexual harassment and sex-based harassment are different.

Harassment on the ground of sex (**'sex-based harassment'**) involves unwelcome behaviour that is sexist and demeaning in nature, but that is not necessarily sexual.²⁰ To 'demean' is to debase or degrade another person. As with sexual harassment, sex-based harassment is unlawful when it occurs in circumstances in which a reasonable person, aware of those circumstances, would anticipate that the person being harassed might feel offended, humiliated or intimidated.²¹ It can happen when a person is degraded, put down or disrespected because of their sex, or a characteristic generally associated with people of that sex. Workplace cultures that foster sex-based harassment and everyday sexism provide environments where sexual harassment can thrive.

Examples include asking intrusive personal questions based on a person's sex (for example, inappropriate questions about menopause, menstruation or genitalia); making inappropriate comments and jokes based on a person's sex; displaying images or making comments that are sexist or strongly prejudiced against a particular sex; or asking a person to engage in degrading conduct based on their sex.



4.4 What is conduct that creates a hostile workplace environment on the ground of sex?

Workplace environments may be hostile and intimidating to people of a particular sex, even if behaviour is not specifically directed at them or any person. This is because general actions can contribute to a workplace culture that makes people feel degraded, humiliated or offended in ways that are associated with their sex. Hostile workplace cultures foster everyday sexism and make it more difficult for workers to speak up and report relevant unlawful conduct when it occurs. In turn, hostile workplace environments are also settings in which sexual harassment and sex-based harassment can thrive.

It is unlawful for a person to subject another person to a workplace environment that is hostile on the ground of sex if they engage in certain conduct in a workplace where one or both of them work.²² The prohibition is intended to apply broadly in the workplace context and ensure that workplaces are safe, respectful and inclusive for people who come into contact with them.

Types of behaviours that might create a hostile workplace environment include:

- conduct involving gendered stereotypes, such as making only women workers responsible for cleaning the office
- making demeaning comments about anatomical attributes or topics such as pregnancy, menstruation or menopause
- the display or circulation of obscene, sexist, pornographic or sexual photos, materials, posters or gifts
- making sexist, derogatory, suggestive or sexual comments, jokes or banter
- sexist, derogatory, suggestive or sexual emails, phone calls, text messages or online interactions – including the use of emojis with sexual connotations.



As with sexual and sex-based harassment, whether conduct creates a workplace environment that is hostile on the ground of sex is determined using an

objective test, based on how a reasonable person would interpret the behaviour in that situation.²³ To be unlawful, a reasonable person, having considered all the circumstances, must anticipate the possibility of the relevant conduct being offensive, intimidating or humiliating to a person of a particular sex, because of their sex or a characteristic that is generally associated with people of that sex.

A person can engage in conduct that creates a hostile workplace environment for someone else, even if they did not intend to do so.

A person may experience a hostile workplace environment from conduct that they encounter, hear or witness while in their workplace.

A person who experiences a hostile workplace does not always need to be in the workplace *at the same time as* the person who engages in the relevant conduct, however, for the behaviour to be unlawful. The conduct may still be unlawful if a person enters the workplace *after* the relevant conduct has occurred.²⁴

A court will consider many factors when determining whether a person has subjected another person to a workplace environment that is hostile on the ground of sex, including the seriousness of the conduct, whether it was continuous or repetitive; and the role, influence or authority of the person engaging in the conduct.²⁵ If senior staff engage in inappropriate behaviour themselves, it is likely to be viewed more seriously because of the impact of power imbalances and because it may be seen as condoning and encouraging such behaviour. Senior staff may also subject others to a hostile workplace environment by inaction if they observe junior workers engaging in inappropriate conduct and do not intervene.²⁶



4.5 What is victimisation?

People should be able to stand up for their legal rights, or help others to do so, without being threatened or treated badly in return.

Victimisation involves retaliatory action, or the threat of such action, against a person because they have asserted, or intend to assert, their rights under the law, or because another person thinks that they have. A person can also be victimised if they help someone else to assert their rights (for example, by being a witness).²⁷

Victimisation happens when a person is treated badly or is subjected to a detriment. People are often victimised after they call out or make a report about experiencing or witnessing unlawful conduct.

Examples of behaviour that could amount to victimisation include:

- demoting or threatening to demote someone, or denying them a promotion because they made (or intend to make) a complaint of sex discrimination
- excluding a worker in the workplace, or refusing them overtime shifts, because they appeared as a witness in support of a colleague who made a complaint of sex-based harassment
- moving a worker who has made a complaint to another worksite, or a non-client-facing role, without first checking if they want to move.



The positive duty extends to acts of victimisation that relate to complaints, proceedings, assertions or allegations about the other unlawful conduct covered by the positive duty.

5. When and where could relevant unlawful conduct occur?

The Commission's Information Guide comprehensively sets out the different types of conduct covered by the positive duty, as well as when and where the Sex Discrimination Act makes it unlawful. In general terms, it is important to note that relevant unlawful conduct can occur in a wide range of contexts, and that it is not necessarily limited to the workplace or working hours of the person experiencing it or engaging in it.

Depending on the circumstances, relevant unlawful conduct may occur at a physical workplace or at a work-related event. It can also occur offsite; when a worker is working outside of the physical workplace (such as at

a client's home); or when working online (such as when working from home). It can also occur during interactions involving certain working relationships (such as between colleagues on the weekend) or if there is another connection to work.

It is also vital to recognise that people do not necessarily need to be colleagues, or to work together, for conduct to be unlawful under the Sex Discrimination Act and covered by the positive duty. For example, it is unlawful for third parties such as clients, customers or patients to sexually harass someone while they are at work and for a worker to sexually harass a client, customer or patient.

6. Who could experience relevant unlawful conduct?

Anyone can experience relevant unlawful conduct, in any workplace, across all industries. Some workers, however, are more likely to be targets for certain types of conduct than others. Understanding risk factors, and who is most likely to be at risk, can help to reduce or eliminate it.

For example, people who are most at risk of experiencing sexual harassment include women, people who identify as LGBTIQ+,

young people, Aboriginal and Torres Strait Islander peoples, people with disability and culturally and racially marginalised people. This is particularly the case for workers who are on temporary visas and employed under casual or insecure arrangements.

See the Information Guide, section 9, for further information.

7. What are the drivers of relevant unlawful conduct?

Having a clear understanding of the drivers (underlying causes) of, and risk factors for, relevant unlawful conduct will enable organisations and businesses to develop tailored strategies, and prioritise actions, to prevent and respond to it effectively.

Significant reviews of Australian workplaces have found clear evidence that certain societal factors play a key role in driving sexual harassment, sex-based harassment and sex discrimination. They include:

- **Power imbalances** such as workplace hierarchies, create a context where someone who holds power may gain a sense of entitlement, while others may hold a fear of challenging or speaking out against that power. Power is complex, however, and is not always limited to those in more senior positions. While the removal of power imbalances may not be possible because of the structure of an organisation or business, consideration should be given to reducing the effects of power imbalances. This includes ensuring that there are safe avenues for raising the conduct of leaders and managers, as well as, demonstrating that leaders and managers will be held accountable for their actions.
- **Gender inequality** – the unequal distribution of resources, opportunity and value afforded to people because of their gender. It is when men are valued more than women and gender-diverse people in social, economic and public life. Examples of characteristics in a workplace or industry influenced by gender inequality include: workplaces or leadership positions that are dominated by men; gender-segregated workplaces; a lack of access to appropriate facilities for women and gender-diverse workers; expectations that workers will perform certain jobs because of their gender; or a culture of sexist and/or transphobic jokes.
- **Intersecting forms of discrimination and exclusion** – the multiple and overlapping forms of discrimination that a person may experience because of their identity (for example, because of their race, ethnicity, Aboriginal or Torres Strait Islander identity, disability, LGBTIQ+ status, gender, age or migration status) which puts them at a higher risk of being discriminated against. Intersectional factors can also exacerbate a person's experience of relevant unlawful conduct. For example, they may be forced to endure behaviour such as sex discrimination and sexual harassment in combination with other discriminatory behaviours, such as race, age or disability discrimination.
- **Lack of accountability** for disrespectful and discriminatory behaviour in the workplace, which can help relevant unlawful conduct to thrive. A lack of accountability sets the workplace tone, creating cultures where relevant unlawful conduct is accepted and unchallenged. On the other hand, clear expectations about appropriate behaviour, set and upheld by workplaces, can reduce the likelihood of relevant unlawful conduct occurring.
- **Specific workplace and industry factors**, which can increase the risk of relevant unlawful conduct occurring. Organisations and businesses will be better placed to eliminate relevant unlawful conduct if they are able to identify these factors, recognise their potential to increase risk, and address them. Common factors include a lack of diversity; unclear and inconsistent standards of behaviour; a poor workplace culture; specific workplace dynamics (such as high pressure environments, or a 'customer is always right' mentality); the particular social conditions of work (such as long or irregular work hours, fly-in-fly-out commitments or the expected consumption of alcohol at work events); employment structures, conditions and systems (such as insecure work, or frequent contact with third parties); and the physical workplace environment (such as remote or poorly lit workplaces).

8. The 'HOW' of the positive duty – 'reasonable and proportionate measures'

The Commission expects all relevant organisations and businesses to have measures in place to address each of the seven Standards outlined below. Measures can be tailored to the individual circumstances of the organisation or business depending on a range of different factors. In determining whether an organisation or business has satisfied its positive duty by taking 'reasonable and proportionate measures', the Sex Discrimination Act requires the Commission and the courts to consider:²⁸

a) The size, nature and circumstances of the business or undertaking:

This may include the number of workers, nature of the work, industry, nature and location of the workplace (including physical or online), workplace profile, location of workers, and the specific risk factors which might be present in that organisation or business. Specific workplace characteristics will also be relevant. For example, it may be reasonable for a small organisation or business to have measures in place that are less formal than a large organisation or business may have. It may also be reasonable to expect an organisation or business to do more to eliminate unlawful conduct in an environment that is dominated by workers of one gender or where workers have significant contact with third parties (for example, retail, hospitality, health services, aged care and education).

b) The resources of the organisation or business:

Consideration will be given not only to how an organisation or business has utilised its budget to implement relevant measures, but whether the allocated budget itself was sufficient to meet the organisation or business' legal obligations. In addition to financial resources, whether an organisation or business has access to specialised human resources (HR), risk or legal capabilities is likely to be a relevant factor in considering what measures are 'reasonable and

proportionate' in the circumstances. This recognises that it may not be reasonable for an organisation or business with limited HR capacity to offer sophisticated HR advice, support services and reporting mechanisms for workers. It may still be reasonable, however, for the organisation or business to implement a reporting process that reflects the HR capacity of the business.

c) The practicability and the cost of measures:

This consideration involves balancing the effectiveness of a measure with the cost and difficulty of implementing it. For some organisations and businesses, measures that involve significant costs may not be reasonable in all the circumstances. However, organisations and businesses may still be required to take less costly steps, such as using free services or referring to existing guidance materials. Conversely, a well-resourced organisation or business may be expected to overcome obstacles associated with implementing a proposed measure by using its financial resources.

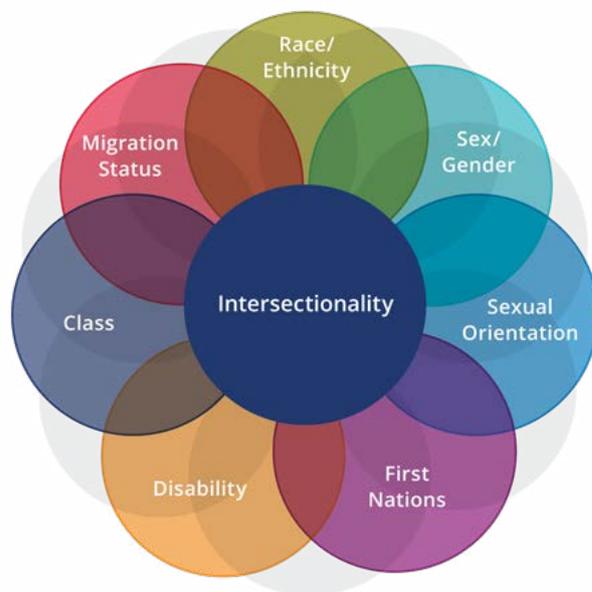
d) Any other relevant matter:

This final area of consideration provides the Commission and the courts with the flexibility to consider a broad range of factors in assessing compliance with the positive duty. These may include the culture of a workplace, levels of worker supervision, working hours, work design and systems of work (such as rostering arrangements), geographic location and any known risks, as well as whether the organisation or business has acted in accordance with the Guidelines or other relevant laws.

9. The Guiding Principles

The Guiding Principles and Standards provide a framework for organisations and businesses of all sizes to help them determine the practical actions or changes required to satisfy their positive duty obligations. This includes how to develop a culture in which relevant unlawful conduct is less likely to occur and how to measure progress.

In implementing the seven Standards outlined below, the Commission expects organisations and businesses to consider and apply the following Guiding Principles. They are based on the evidence of what works and what is needed to eliminate relevant unlawful conduct successfully.



Principle	Description
Consultation	<p>Being consultative means talking to workers about what they need for a workplace to be (and feel) safe and respectful, as well as the risks and mitigation options that they see to eliminate relevant unlawful conduct.</p> <p>Consultation recognises that workers have an important perspective on what affects them. Effective consultation means being better informed about issues affecting workers and what action to take. Strategies may be needed to ensure that the voices of people from marginalised and underrepresented groups are heard and considered.</p>
Gender equality	<p>All actions to implement the positive duty should contribute to achieving gender equality – where people of all genders have equal rights, rewards, opportunities and resources. Achieving gender equality involves taking action beyond ‘equal treatment’ to achieve ‘equal outcomes’, also known as substantive gender equality. Gender inequality is both an underlying cause and consequence of relevant unlawful conduct.</p>

Principle	Description
<p>Intersectionality</p>	<p>Intersectionality refers to the way that different aspects of a person's identity intersect with and impact one another.</p> <p>Intersectionality recognises that people's lives are shaped by their identities, relationships and social factors. These combine to create intersecting forms of privilege and oppression depending on a person's context and the existing power structures within society and within an organisation or business.</p> <p>Factors influencing a person's experience of discrimination may include their sex or gender identity, their sexual orientation, whether they have a disability, whether they identify as Aboriginal or Torres Strait Islander, whether they are from culturally and linguistically diverse or culturally and racially marginalised (CARM) communities, and their socioeconomic class.</p> <p>Understanding intersectionality is important in understanding sex discrimination and sexual harassment because it highlights how a person's experience can be compounded by the other forms of inequality they face.</p> <p>An intersectional approach recognises that unsafe and disrespectful workplace behaviour may have a heightened impact on different people. It involves understanding that experiences of discrimination, harassment and victimisation are shaped and increased by overlapping structural inequalities. For example, LGBTIQ+ women being at greater risk of workplace sexual harassment than people who identify as straight or heterosexual.</p> <p>By taking an intersectional approach, organisations identify and address these unique risk factors and intersecting disadvantages.</p>
<p>Person-centred & trauma-informed</p>	<p>Person-centred and trauma-informed approaches are complementary ways to address relevant unlawful conduct and to meet people's needs in the workplace. They ensure that workplace systems, policies and practices affirm the safety and dignity of the people who encounter them and support healing.</p> <p>Person-centred approaches are about making systems and processes understand and meet the needs of individuals. They involve prioritising someone's needs, values and preferences – listening to them and recognising and respecting their ability to make choices for themselves.</p> <p>Trauma-informed approaches require that workplace processes build in an understanding of trauma and how it affects people and avoid causing further harm. They prioritise safety, choice and empowerment and also recognise the impact of trauma on a person's ability to recall information. Processes should prevent harm and promote repair and recovery to the greatest extent possible.</p> <p>Being person-centred and trauma-informed does not always mean doing what a person requests, but it does mean genuinely considering their wishes and the impact that decisions may have on them.</p>

The seven Standards outline what the Commission expects organisations and businesses to do to satisfy the positive duty. They are based on research about the causes of relevant unlawful conduct and what is required to prevent it from happening. They provide an 'end-to-end' framework for prevention and response, which organisations and businesses can then tailor to their workforce to satisfy their positive duty.

Example actions are provided to demonstrate how a Standard may be met in various ways. They are provided as an illustration to guide organisations and businesses in determining what might be reasonable and proportionate for them. An organisation or business will not necessarily need to implement all of the practical examples listed below in order to satisfy the positive duty. Rather, it will depend on what is reasonable and proportionate in their circumstances.

The Standards are all inter-related and action taken to meet one Standard may also assist an organisation or business to meet another Standard.

The Commission has provided further information and examples on how to satisfy the positive duty, as well as links to external resources and a Glossary, in the Guidelines.

While size is only one relevant factor in determining what measures are 'reasonable and proportionate' in the circumstances,

consideration of the common features of organisations and businesses of different sizes provides a useful starting point. In this Quick Guide the following terms are used:

- **'organisations and businesses without workers'** – a sole-trader or self-employed person who does not have any workers
- **'small organisations and businesses'** – generally fewer than 20 workers
- **'medium organisations and businesses'** – generally between 20 and 199 workers
- **'large organisations and businesses'** – generally more than 200 workers.

These organisation and business sizes are defined based on worker numbers and other characteristics that these organisations and businesses are likely to have. See the Guidelines for further details.

While the Commission expects all relevant organisations and businesses to meet these Standards, including those that do not have any workers, the Commission acknowledges that 'organisations and businesses without workers' will only be able to meet those aspects of the Standards which are applicable to them. For example, where Standards refer to actions to be taken in respect of workers, this aspect will not apply to organisations and businesses without workers.

10. The Standards



10.1 Standard 1: Leadership



01: Leadership

Senior leaders understand their obligations under the Sex Discrimination Act and have up-to-date knowledge about relevant unlawful conduct.

Senior leaders are responsible for ensuring that appropriate measures for preventing and responding to relevant unlawful conduct are developed, recorded in writing, communicated to workers and implemented. Senior leaders regularly review the effectiveness of these measures and update workers.

Senior leaders are visible in their commitment to safe, respectful and inclusive workplaces that value diversity and gender equality. They set clear expectations and role model respectful behaviour.

People responsible for the management and governance of an organisation or business ('**senior leaders**') play a critical role in creating safe, respectful and inclusive workplaces that value diversity and gender equality. Depending on the size and structure of the organisation, this may include the business owner or manager, chief executive officer (CEO), board (or equivalent), executive leadership team (ELT), partners or executive manager.²⁹

Senior leaders hold ultimate responsibility and accountability for the governance and legal compliance of their organisation or business. Senior leaders are responsible for their own actions, the actions of those who they lead and influence, the allocation of resources, and for shaping the broader workplace culture. Leaders set the tone, meaning that what they say and do gives a strong message to workers about what is acceptable, important and valued. Leadership is fundamental to the implementation of all of the other Standards in this Quick Guide and is relevant for organisations and business of all sizes.

Others may assist senior leaders to implement relevant measures (such as HR managers), however it is important that senior leaders remain responsible and accountable for the elimination of relevant unlawful conduct.

Examples of actions that organisations and businesses can take to meet *Standard 1: Leadership* include:³⁰

- Senior leaders keeping up-to-date knowledge about their role and responsibilities regarding the positive duty, the drivers and impacts of relevant unlawful conduct; how to identify and respond to it; and where to go for advice, information, and support, if required. This might include reading guidance published by the Commission; reviewing relevant industry-specific research or reports, and subscribing to relevant updates from regulators and peak bodies. It might also include attending quality education sessions on applicable laws and their rights and responsibilities.



- Senior leaders making the prevention of relevant unlawful conduct a leadership priority and demonstrating that relevant unlawful conduct will not be tolerated. This means that leaders demonstrate a commitment to set standards of respectful behaviour at work and to recognise and hold people accountable for any relevant unlawful conduct at work.
- Senior leaders ensuring that appropriate measures are developed for preventing and responding to relevant unlawful conduct. These should address each Standard; be appropriately tailored to organisational circumstances; recorded in writing and communicated to workers. This may be called a 'prevention and response plan'.
- Senior leaders actively overseeing the implementation of the prevention and response plan; regularly reviewing its effectiveness; and ensuring that it is updated following that review. This should be done in consultation with workers.
- Senior leaders creating opportunities for workers to safely provide feedback about leadership's performance. This may include using an anonymous feedback box, surveys or exit interviews to seek feedback about a leader's attitude towards, and actions taken to create, safe and respectful workplaces – as well as whether they are doing enough to eliminate relevant unlawful conduct.
- Senior leaders communicating expectations about respectful behaviour at work.
 - To workers, in a small organisation or business, this could occur at induction, in team meetings, by email, during 'toolbox talks' and through signs in the workplace, and be reinforced via workplace policies. In medium and large organisations and businesses, this could be done via the intranet and through workers' contracts, and be reinforced through organisational values.
 - To third parties who have contact with workers (such as clients, customers and patients), in a small organisation or business, this might include displaying posters in the workplace about respectful behaviour or messages on shared IT platforms. In a medium or large organisation or business, this might include contractual terms that require third parties to comply with the organisation's respectful behaviour policy.
- Senior leaders role modelling respectful behaviour in interactions with workers, as well as third parties. In a small organisation or business, this might include using respectful and inclusive language; calling out disrespectful behaviour when it occurs; and seeking feedback from workers. In a medium or large organisation or business, leaders' contracts might also include obligations to role model respectful behaviour.
- Senior leaders acknowledging positive behaviour, including in team meetings or by using staff awards. In a medium or large organisation or business, this may include using remuneration and other incentives to influence positive behaviour.

- Senior leaders ensuring proportionate and appropriate consequences for people who engage in relevant unlawful conduct, regardless of their position in, or importance to, the organisation or business.
- Senior leaders ensuring that workers who report relevant unlawful conduct do not suffer negative consequences for their career progression or health and safety.
- Senior leaders supporting and encouraging workers to undertake relevant education (including training or formal learning). This should include promoting education as part of a broader workplace commitment to cultural change, gender equality and inclusion. Support can also include providing time during work hours to complete education.
- Senior leaders making statements that demonstrate their commitment to, and progress toward, eliminating relevant unlawful conduct. Statements may be made internally and externally, and can occur in different ways – whether during an informal discussion with workers, or by a formal public statement.
- Organisations and businesses ensuring that senior leaders are responsible and accountable for satisfying the positive duty and committing to gender equality. For example, in medium and large organisations, this could be made clear in key governance documents, as well as by making positive workplace culture and role modelling respectful behaviour a factor in the appointment and performance framework for senior leaders. Key governance documents could also outline the consequences for senior leaders who engage in relevant unlawful conduct or fail to meet expectations and responsibilities in relation to eliminating relevant unlawful conduct.

Examples of records to demonstrate actions taken to meet *Standard 1: Leadership* might include:

- documented proposed measures to eliminate relevant unlawful conduct (by reference to each of the Standards) and progress toward implementation of those measures (for example, a written ‘prevention and response plan’)
- correspondence and evidence of consultation with workers (and their representatives, where relevant) such as meeting agendas and notes
- feedback from workers, results of worker surveys and exit interviews and actions taken to address issues raised
- policies, codes of conduct, senior leaders’ contracts and position descriptions, performance review documents, incentive plans and Key Performance Indicators (KPIs)
- induction manuals and processes for senior leaders
- organisational values, notice boards and the intranet
- board papers and minutes
- statements made about relevant unlawful conduct within the workplace or externally
- signage for third parties (such as customers, clients and patients) about relevant unlawful conduct and behavioural expectations for terms of entry or service
- a copy of these Guidelines or other relevant Commission resources (including those specifically for small organisations and businesses) signed by senior leaders to confirm that they have been read and understood
- attendance records for training sessions or modules for senior leaders, together with a copy of the training content.



10.2 Standard 2: Culture



02: Culture

Organisations and businesses foster a culture that is safe, respectful and inclusive and that values diversity and gender equality. This culture empowers workers (including leaders and managers) to report relevant unlawful conduct, minimises harm and holds people accountable for their actions.

Organisational culture is made up of the values, attitudes and behaviours that are affirmed, explicitly or implicitly, by an organisation or business. It sets the parameters of what is acceptable and how relevant unlawful conduct will be managed if it occurs.

A culture of safety and respect that values and advances gender equality, diversity and inclusion, is at the core of eliminating relevant unlawful conduct, as well as building trust and confidence in the systems that are in place to respond. By contrast, a permissive culture that devalues women, that accepts and normalises everyday sexism, discrimination and sexual harassment, and in which marginalised groups are excluded, creates an environment for relevant unlawful conduct to thrive.

Culture can be communicated formally through policies, processes, leadership statements, worker benefits and codes of conduct, as well as informally through accepted ways of interacting, attitudes towards working hours and work/life balance, and whether diversity and inclusion are accepted as the norm.

As seen from *Standard 1: Leadership*, the most senior leaders in an organisation or business (for example, business owners, boards and CEOs) are responsible for setting the 'tone from the top' about what is acceptable and valued, and therefore play a very important role in setting the workplace culture. Culture, however, is built and influenced by more than just senior

leaders. Rather, it is influenced and shaped by leaders and managers at all levels, as well as, how every person in a workplace acts every day, in everything that they do.

In this context, 'leaders and managers' include any person with responsibilities for managing other workers, including team leaders, supervisors, executives, line managers, people managers and other managers. Leaders and managers at all levels have the power to enforce the attitudes and behaviours that are acceptable and therefore have a responsibility to take an active role in defining and enacting a positive workplace culture. This includes how they address behaviours on a day-to-day basis, such as by calling out unlawful behaviour when they witness it, taking action to respond to unlawful behaviour, and role modelling respectful behaviour.

Culture is also shaped and influenced by the day-to-day interactions of workers and others in the workplace (such as customers, clients and patients). This includes how people interact and speak with one another, as well as the behaviour that people consider acceptable.

The culture of any organisation or business should empower people to report relevant unlawful conduct and minimise harm when they do. It should also hold people accountable for their actions.

Examples of actions that organisations and businesses can take to meet *Standard 2: Culture include*:³¹

- Prioritising and supporting gender equality and diversity within the organisation or business – including by paying particular attention to gender balance and diversity in recruitment. In medium and large organisations and businesses, this may also involve developing a comprehensive gender equality strategy (including gender equality targets) and a diversity and inclusion strategy, as well as assessing performance against targets.
- Implementing ‘special measures’ or positive discrimination initiatives to advance gender equality and diversity, including in recruitment and employment conditions.
- Leaders and managers at all levels role modelling respectful behaviour in interactions with workers and third parties such as customers, clients and patients. This might include using respectful and inclusive language and calling out disrespectful behaviour when it occurs.
- Leaders and managers at all levels holding people accountable for their responsibilities for creating a positive workplace culture and how they respond to incidents. For example, the contributions of people in the workplace towards creating a positive workplace culture are openly discussed and reflected in relevant policy documents and valued in performance assessments and promotion processes.
- Leaders and managers at all levels regularly and clearly communicating expectations about respectful behaviour; what behaviour is unacceptable and the consequences for engaging in it. In a small organisation or business, this could occur at induction, in team meetings and in ‘toolbox talks’, and be reinforced using emails, posters, notices or brochures. In a medium or large organisation or business, these messages can also be reinforced through organisational values, policies and strategies published internally, workers’ contracts, codes of conduct, and the intranet.
- Leaders and managers at all levels holding people accountable for their conduct; encouraging workers to do the same; and ensuring that people who engage in misconduct are not protected, rewarded or promoted (including leaders and managers at all levels, workers and third parties such as ‘high value’ customers and clients).
 - This could include calling out disrespectful comments (for example, ‘everyday sexism’) or refusing service to a customer or client who engages in relevant unlawful conduct.
 - This could also include informal discussions with workers who engage in disrespectful conduct, as well as formal disciplinary processes (ensuring proportionate and consistent consequences for people who engage in relevant unlawful conduct).
- Leaders and managers taking action to ensure that online working environments are safe and respectful. For example, moderating the chat function in online meetings, removing disrespectful and discriminatory content, and training workers on acceptable and safe online behaviours.
- Celebrating positive behaviours, including by giving individual workers recognition when they engage in positive behaviours, calling out positive behaviours in staff meetings; or through staff awards. This can be done by all workers, not only leaders and managers.
- Encouraging and supporting workers to respond safely to relevant unlawful conduct. This may include telling workers that they are encouraged to call out disrespectful behaviour or providing bystander training to workers.



Examples of records to demonstrate actions taken to meet *Standard 2: Culture* might include:

- correspondence with workers and meeting notes, feedback from workers, exit interviews and results of surveys of workers, and associated actions
- written materials such as posters, notices and brochures
- induction manuals, organisational values, codes of conduct, workers' contracts, job descriptions, and incentive plans/ bonus structures, performance and development plans, recruitment and promotion processes
- notes from consultations with worker networks and diversity groups and associated actions
- data on gender equality and workplace diversity, and associated actions
- gender equality and diversity strategies, targets and associated performance metrics.

Note: Further steps beyond those identified here may be required under WHS laws if the workplace culture creates a risk to health and safety and if there are reasonably practicable control measures that could be taken to eliminate or minimise that risk.

10.3 Standard 3: Knowledge



03: Knowledge

Organisations and businesses develop, communicate and implement a policy regarding respectful behaviour and unlawful conduct.

Organisations and businesses support workers (including leaders and managers) to engage in safe, respectful and inclusive behaviour through education on:

- expected standards of behaviour, including actions and attitudes that foster equality and respect
- identifying behaviours that constitute relevant unlawful conduct, and the consequences for engaging in such conduct
- their rights and responsibilities in relation to safe, respectful and inclusive workplaces and working relationships. This includes their role in preventing and responding to relevant unlawful conduct.

Traditional approaches to workplace education (such as one-off training at induction) have proven ineffective at eliminating relevant unlawful conduct. This is particularly the case if they have not also been periodically reinforced with opportunities for workers to build and apply their knowledge and skills. The focus of education should not be on the frequency of formal training, but on the quality and effectiveness of ongoing education. Education should be presented as a necessary and meaningful part of workplace participation, rather than just a compliance requirement.

Education should cover the nature of relevant unlawful conduct; what causes it; the extent to which it occurs; the harm it causes; and skills in how to identify and respond to it.

Education should extend beyond what is unacceptable to the kind of workplace that organisations and businesses want to create or encourage. It should be directed at achieving attitudinal and behavioural change to advance gender equality and diversity and to address discrimination.

Education and training should also be designed to meet the needs of the targeted audience. For example, training or formal learning for leaders and managers may need to be more comprehensive and include skills development in relation to identifying risks of relevant unlawful conduct and appropriately responding to reports of such conduct.

To be effective, formal training or learning should:

- be compulsory for all new and existing workers
- be part of a broader workplace commitment to cultural change, gender equality and inclusion; with leaders demonstrating the importance of training and education through what they say and how they act (so that the training or formal learning is not viewed as simply a legal compliance requirement; and so that workers meaningfully engage in skills development)



- be led by instructors with expertise in discrimination and harassment, as well as skills to engage with people from culturally and linguistically diverse backgrounds and other marginalised backgrounds
 - focus on developing behavioural skills and new ways of thinking and acting, as well as on providing knowledge to support those skills
 - involve immersive and active participation, with space for debate and discussion, and create space for questions, doubt and concerns
 - provide a safe space for discussion, debate and reflections, which may require that certain modules be gender-specific
 - reflect the cultural diversity of the organisation or business.
- engaging relevant experts to provide education and training, support and advice
 - utilising quality industry, sector and profession-based educational resources
 - providing leaders and managers with specific education on how to take an intersectional approach to preventing and responding to relevant unlawful conduct.
- Ensuring that information about unlawful conduct, the consequences for engaging in that conduct and where to seek support is included in posters, brochures, factsheets and written policies, including translated materials where available.

Examples of actions that organisations and businesses can take to meet *Standard 3: Knowledge* include:³²

- Establishing a policy regarding respectful behaviour and unlawful conduct and ensuring that it is communicated to workers, consistently followed and regularly reviewed to make improvements (in consultation with workers). In this context, a policy means a set of agreed or accepted rules for what is acceptable; and what will be done to respond to unacceptable behaviour. For most organisations and businesses, it will be in writing. The policy might be communicated to workers through position descriptions, contracts, induction processes, education and training, emails, codes of conduct and notice boards. In medium and large organisations and businesses, it might also be included in performance and promotion processes, and the intranet.
- Providing education about relevant unlawful conduct, which includes formal training, supplemented by ongoing learning opportunities and written materials (which are easily accessible). Education should be trauma-informed and tailored to specific roles and responsibilities. Medium and large organisations may also consider the following practical examples:

Examples of records to demonstrate actions taken to meet *Standard 3: Knowledge* might include:

- attendance records for training sessions or modules, together with a copy of the training content
- written policies and processes, such as an Appropriate Workplace Behaviour policy or Respectful Workplace Behaviour policy (addressing relevant unlawful conduct and standards of behaviour) and reporting procedure
- notes and agendas from meetings with workers and ‘toolbox talks’
- position descriptions, work plans and performance development frameworks with mandatory learning requirements
- educational materials that have been made available to all personnel
- feedback from workers or engagement survey data to demonstrate the level of understanding of relevant unlawful conduct; and attitudes towards such conduct.

10.4 Standard 4: Risk management



04: Risk management

Organisations and businesses recognise that relevant unlawful conduct is an equality risk and a health and safety risk. They take a risk-based approach to prevention and response.

All organisations and businesses carry the risk of relevant unlawful conduct impacting or involving their workers.

Relevant unlawful conduct can pose significant risks to the psychological and physical health and safety of workers and other people in workplaces. It can also violate a person's right to equality, non-discrimination and human dignity. Relevant unlawful conduct, therefore, represents a risk to equality rights, even if it does not pose a specific or identifiable risk to health and safety. If conduct is unlawful under the Sex Discrimination Act, and covered by the positive duty, reasonable and proportionate measures must be taken to eliminate it, as far as possible.

Risk management is a standard part of running any organisation or business. It is a requirement under WHS laws and should form part of the 'prevention and response plan' that an organisation or business develops for satisfying the positive duty in the Sex Discrimination Act.

Organisations and businesses should consider whether known drivers and risk factors for relevant unlawful conduct exist in their workplace. This will help them to assess the risk of relevant unlawful conduct occurring in their workplace and take effective action to prevent it. For example, power imbalances and gender inequality have been found to be key drivers of some forms of relevant unlawful conduct.

Organisations and businesses that understand the nature, extent and impacts of relevant unlawful conduct concerning their workplaces – including what behaviours constitute relevant unlawful conduct; who is most likely to be affected; when and where it is most likely

to occur; and how workplace environments, structures and culture can drive it – can better assess the specific risks present in their workplaces. They can also implement targeted measures to eliminate, reduce and/or control these risks (**control measures**).

A risk-based approach involves:

- a) regularly identifying and assessing the risk of relevant unlawful conduct occurring, as well as the health and safety impact that it might have
- b) implementing effective control measures to address identified risks
- c) regularly reviewing control measures to determine whether they remain effective and appropriate in controlling identified risks and adjusting where required.

Effective risk management requires meaningful engagement and consultation with workers (and their representatives) as they are often best placed to know the particular risks of their workplaces.

In undertaking a risk assessment and determining appropriate control measures, consideration should be given to the **duration** (how long a person is exposed to the risk), **frequency** (how often a person is exposed to the risk) and **severity** (level of seriousness) of the risks identified. Taking this approach enables an organisation or business to determine which risks should be prioritised when implementing appropriate control measures. More severe risks to health and safety may warrant additional attention and measures by an organisation or business.



Examples of actions that organisations and businesses can take to meet *Standard 4: Risk management* include:³³

- Treating relevant unlawful conduct as an equality risk and a health and safety risk and ensuring that senior leaders (including business owners) are actively involved in, and responsible for, the risk management process relating to relevant unlawful conduct.
- Senior leaders seeking out, and being provided with, information about:
 - the risks, nature and extent of relevant unlawful conduct in the organisation or business
 - actions taken to prevent and respond to relevant unlawful conduct
 - outcomes of reports and consequences for people who engage in relevant unlawful conduct
 - trends, patterns and lessons learned.
- Establishing and training personnel in the workplace with a specific mandate to address relevant unlawful conduct. Supporting these roles, including providing time during work hours to attend relevant training.
- Reviewing industry-relevant WHS guidance, including approved Codes of Practice.
- Holding leaders and managers accountable (e.g. through job descriptions and performance and promotion processes) for monitoring risk and creating workplace cultures and systems that advance gender equality, respect, safety, diversity and inclusion.
- Consulting with workers, stakeholders and representatives (including contact officers, health and safety representatives, committees) in relation to where and when workers are at risk, proposed control measures and the effectiveness of control measures.
- Using a range of sources of information (including reports, industry data, exit interviews, workplace trends) to consider when, where and how unlawful conduct may occur and who may engage in it (including in relation to third parties).

- Considering the risks inherent in physical spaces, systems of work and workplace profiles. This includes risks associated with the drivers of relevant unlawful conduct (such as gender inequality and power imbalances).
- Considering individuals who may be at greater risk of experiencing relevant unlawful conduct than others, as well as those who experience additional barriers to reporting and seeking support.
- Implementing control measures that may:
 - relate to the physical working environment (e.g. installing security cameras and/or duress alarms).
 - involve changes to work methods and procedures to minimise the risk of relevant unlawful conduct (e.g. rostering two people on in a shop in the evening).
- Providing workers with necessary education, training or instruction to implement control measures.

Note: In Appendix 3, the Guidelines provide examples of specific control measures that organisations and businesses may implement to address the risk of relevant unlawful conduct.

Examples of records to demonstrate actions taken to meet *Standard 4: Risk management* might include:

- correspondence with workers, meeting agendas and notes
- a completed risk framework and/or risk register (or other evidence of risk identification and assessment, as well as, implementation and review of control measures)
- exit interviews, survey results or notes from consultations with workers and actions taken in response
- position descriptions for roles such as contact officers, health and safety committees and representatives
- analysis of data relating to relevant unlawful conduct, including reporting figures and gender equality indicators
- board papers and minutes
- documented control effectiveness testing and evaluation.

10.5 Standard 5: Support



05: Support

Organisations and businesses ensure that appropriate support is available to workers (including leaders and managers) who experience or witness relevant unlawful conduct.

Workers are informed about the available support, and can access the support, regardless of whether they report the conduct.

Support is essential to reduce the short-term and long-term harm of relevant unlawful conduct, as well as to empower people to make decisions about any action that they may take because of the conduct.

Providing appropriate support to workers before, during and after an incident of relevant unlawful conduct can help to foster a safe, respectful and inclusive culture. This drives better behaviour and helps to eliminate relevant unlawful conduct. Effective support options also increase the likelihood that reports will be made when relevant unlawful conduct occurs, enabling action to be taken to address the conduct and to prevent any further incidents from occurring.

Support should be made available to all workers, regardless of whether they choose to make a formal report about their experiences of relevant unlawful conduct or conduct that they have witnessed. It should be person-centred and trauma-informed to ensure that people who witness or experience relevant unlawful conduct are not further harmed by responses.

Support can take many forms. It can be informal, such as asking a worker whether they wish to take leave following an experience of relevant unlawful conduct or making changes within the workplace to avoid the need for them to interact with the person who engaged in the

behaviour. It can also be more formal, such as through contact officers or health and safety representatives; providing a designated contact point to offer wellbeing support when a person reports their experiences; or providing access to external, confidential counselling through an Employee Assistance Program.

For any person, experiencing or witnessing relevant unlawful conduct can cause psychological and/or physical harm, including trauma. The effects of this can be profound and long-lasting. Organisations and businesses should recognise this and consider providing or facilitating access to confidential mental health, wellbeing and other supports for affected workers.

Given that many people who experience relevant unlawful conduct at work do not report it, information about available supports should be accessible by workers without the need for them to talk to anyone at work. Support should be confidential and made available to all workers regardless of whether they choose to report their experiences of relevant unlawful conduct or conduct they have witnessed.



Examples of actions that organisations and businesses can take to meet *Standard 5: Support* include:

- Providing easily accessible information about available supports, such as, providing information when a person first starts working; posters, flyers and other information around the workplace; or emails and information on a staff intranet, where applicable.
- Ensuring that support is available to workers internally and externally, including support that can be accessed anonymously or without disclosure to the organisation or business. Internal support options might include the owner or manager, a trusted senior worker, a health and safety representative or union delegate. External support might include the 1800 RESPECT service, a GP, counsellor, union representative or an Employee Assistance Program (EAP). Ensuring that people in support roles are properly trained, and considering the need to develop a Mental Health First Aid Plan where applicable is also important. Specialist support options may be provided that are culturally specific.

Importantly, support should minimise harm. Worker safety should be prioritised ahead of disciplinary processes; workers should be able to access support at any time (including after the report and response process has finished); and a nominated contact person should be provided to anyone who reports relevant unlawful conduct. Wherever possible, people who provide support to affected people should be separate from those who investigate the report and make decisions about outcomes. Leaders and managers should also be trained to receive reports in a person-centred, trauma-informed and confidential way.

Examples of records to demonstrate actions taken to meet *Standard 5: Support* might include:

- posters, brochures or emails setting out available support options
- attendance records for training sessions and associated training content
- evidence of supports offered and provided in individual cases, such as emails to workers or notes of conversations
- inclusion in staff surveys of questions about knowledge of and access to supports
- EAP details and data about the number of times that the EAP is accessed.

10.6 Standard 6: Reporting and response



06: Reporting and Response

Organisations and businesses ensure that appropriate options for reporting and responding to relevant unlawful conduct are provided and regularly communicated to workers and other impacted people.

Responses to reports of relevant unlawful conduct are consistent and timely. They minimise harm to, and victimisation of, people involved.

Consequences are consistent and proportionate.

Conventional processes for reporting and responding to reports of relevant unlawful conduct have proven ineffective in the past because of limited options and choice for the person impacted by the conduct. The focus on investigations, which are often lengthy, adversarial and complex, can be traumatising and disempowering for those who make a report. Typical responses have also sought to prioritise the avoidance of legal liability and the protection of the reputation of the organisation or business over the wellbeing of the person who experienced the conduct and their preferences for resolution.

It is crucial to ensure that all workers are aware of reporting options and that reports are taken seriously, responded to promptly and sensitively, as well as with a person-centred and trauma-informed approach. Taking this approach should include organisations and businesses providing choice about whether and how to report relevant unlawful conduct; providing multiple reporting avenues, different resolution options, with the wishes of the person experiencing the conduct taken into account; and providing appropriate transparency over the consequences imposed.

A good reporting process is accessible, clear and simple. It is also confidential, with information about a report only provided to

those people who need to know. There should be a commitment to timely resolution and it should be made clear that victimisation for making a report is prohibited. The process, possible outcomes and progress should be explained in a transparent way to affected people and the process should be safe. At the conclusion of the process, information should be provided to the person affected about the outcome and, where appropriate, de-identified and aggregate information provided to the workforce more broadly.

Accountability is also crucial. Reporting and resolution processes need to be equally applied to everyone across any organisation or business, with consistent consequences applied for relevant unlawful conduct regardless of the importance or seniority of the people involved.

Examples of actions that organisations and businesses can take to meet *Standard 6: Reporting and response* include:³⁴

- Communicating reporting and resolution options to workers, and ensuring that these options are available without the need to speak with anyone in the organisation or business. Communication can occur through information sheets, posters, flyers, or discussions at appropriate forums. In medium and large



organisations and businesses, this might also include detailed policies, emails and information on an intranet, as well as more formal discussions. In relation to third parties (such as clients, customers and patients), this might include providing information in posters, emails or on websites about their right to receive a service free from relevant unlawful conduct, as well as what they can do if they experience relevant unlawful conduct.

- Providing multiple options for reporting internally or externally, informally or formally, including anonymously (to the extent possible). In a small organisation or business, this might include an option to report internally to a nominated person and/or to obtain information about how to contact relevant external bodies (such as the Australian Human Rights Commission, the Fair Work Commission, the Fair Work Ombudsman, WHS regulators and state and territory anti-discrimination bodies). In a medium or large organisation or business, this might also include multiple internal pathways (such as online or through a choice of different nominated persons).
- Ensuring that people who experience relevant unlawful conduct are given a choice in whether they make a formal report and how they do so, with their preferences taken into account in how to address the report most appropriately, while also considering relevant legal duties.
- Developing a clear process for making and handling reports about senior leaders (including board members), in consultation with workers.
- Ensuring that processes are tailored to the demographic and working environment, taking into account the needs of workers (particularly those at higher risk of experiencing relevant unlawful conduct).
- Ensuring that reporting processes are regularly reviewed for effectiveness, in consultation with workers.

Ensuring that there are multiple pathways for resolving reports of relevant unlawful conduct (including early intervention, informal and formal pathways and external pathways), with a consistent approach adopted to responding to reports, and external referrals available when needed for impartiality.

Examples of records to demonstrate actions taken to meet *Standard 6: Reporting and response* might include:

- posters or brochures setting out reporting options and possible response pathways and outcomes
- a written procedure for reporting relevant unlawful conduct
- outcomes of reviews of processes and systems for reporting and responding to incidents
- data maintained regarding reports, including the response taken and the outcome (kept confidentially and securely stored).

10.7 Standard 7: Monitoring, evaluation and transparency



07: Monitoring, evaluation and transparency

Organisations and businesses collect appropriate data to understand the nature and extent of relevant unlawful conduct concerning their workforce.

Organisations and businesses use the data they collect to regularly assess and improve the work culture, as well as to develop measures for preventing and responding to relevant unlawful conduct.

Organisations and businesses are transparent about the nature and extent of reported behaviours that could constitute relevant unlawful conduct concerning their workers and actions taken to address it.

Organisations and businesses should collect and analyse data and use it to implement, monitor and update measures to control and eliminate relevant unlawful conduct.

Understanding the nature and extent of any problem is a critical step to eliminating it. Data helps organisations and businesses to understand when, where and how relevant unlawful conduct is happening; who is engaging in it; who is impacted by it; and why it might occur. By understanding this, organisations and businesses are better placed to prevent the behaviour from happening and to respond effectively if it does occur. Data can also be used to provide transparency to leaders, workers and other stakeholders.

Monitoring

Organisations and businesses should not rely on the number of reports of relevant unlawful conduct alone, given that underreporting is significant and widespread across all industries. They should understand that the absence of reports may indicate that existing reporting mechanisms are perceived to be ineffective or not meet workers' needs. Likewise, an increase

in reports may indicate that people now feel safe to report relevant unlawful conduct, rather than signalling that the conduct itself is increasing. It is therefore important that multiple sources of data be used to understand the nature and extent of relevant unlawful conduct (including where it is likely to occur and who is at risk) and whether existing control measures are effective.

Useful data can be collected (where available) in relation to:

- leadership
- workplace culture
- specific industry and workplace characteristics
- support options
- reports of relevant unlawful conduct
- processes for reporting and responding to relevant unlawful conduct (including timeframes, outcomes and whether processes meet the needs of workers)
- workers' understanding of relevant unlawful conduct, support options and processes for dealing with relevant unlawful conduct



- workers' feedback on whether they feel at risk of relevant unlawful conduct and effectiveness of workplace initiatives
- workers' feedback on their experiences of intersectional and systemic discrimination, including, for example, how factors such as ethnicity, race, gender, sexual orientation, disability or age contribute to their experiences of disadvantage and discrimination in the workplace settings.
- the evaluation of the effectiveness of actions taken to eliminate relevant unlawful conduct
- the improvement of policies and processes for reporting and responding to relevant unlawful conduct
- the evaluation of workplace culture and the role of leadership in creating safe, respectful and inclusive workplaces
- the evaluation of effectiveness of education and training initiatives.

Organisations and businesses can collect data from a variety of sources, including:

- consultations with workers (and their representatives, where relevant), including interviews and focus groups, surveys, exit interviews or anonymous feedback
- feedback from third parties, such as customer feedback (including by way of social media)
- workforce statistics, such as workforce turnover rates, rates of absenteeism and use of sick leave, and rates of access to flexible working arrangements and parental leave, across all genders.

Evaluation

Data should be used to determine whether measures are working and how they can be improved. Evaluation and improvement are ongoing processes – there is no 'end point' to creating the 'perfect' system.

Data collected should inform:

- the identification of risks relating to relevant unlawful conduct and the implementation and review of control measures to address those risks

Transparency

Organisations and businesses should use de-identified data to be transparent with leaders and managers, workers and key stakeholders about trends, patterns and lessons learned.

Data should be reported to leaders responsible for governance of the organisation or business and oversight of the 'prevention and response plan'. Transparency assists senior leaders to understand the nature and extent of relevant unlawful conduct and helps them to be more effective in addressing risks. Data should also be reported to workers to increase trust in the organisation or business and create positive change.

Transparency includes being:

- **Open** about the risk of relevant unlawful conduct in the workplace and reported behaviours. Relevant information should be provided to workers, leaders and managers. Information can also be shared publicly where appropriate.

Note: Confidentiality, anonymity, and the protection of workers' privacy should be at the core of all data collection. Organisations and businesses should maintain privacy and confidentiality in collecting data directly from workers to ensure that workers are not at risk of harm or retaliatory action. Workers should also not feel pressured, explicitly or implicitly, to share information if they do not want to.

- **Visible** in actions taken to prevent and respond to relevant unlawful conduct, while listening to the wishes of the people who experience relevant unlawful conduct and taking care not to provide identifying information. While it is necessary to consider personal privacy in individual cases, this should not be used as a blanket reason to avoid appropriate transparency.
- **Honest** with the broader workforce and other stakeholders (internal and external) about the circumstances and outcomes of reports, wherever possible, while prioritising the person who experienced the relevant unlawful conduct having control over what is and what is not shared. This includes acknowledging and taking responsibility for mistakes.

It is important to ensure that transparency is also:

- **Fair**, meaning that it does not interfere with natural justice or compromise the integrity of processes underway to address reports of relevant unlawful conduct. It is always important to balance confidentiality with transparency. While reporting and response processes are ongoing, confidentiality should be maintained to ensure that people are provided with procedural fairness. Confidentiality should not be used, however, as a reason to refuse to provide transparency over outcomes, wherever possible.
- **Supportive** of people in the workplace, by respecting privacy and safety and by recognising that being transparent about an incident (of any form) can sometimes compromise the health, safety and wellbeing of those involved. Transparency can build trust, but only if the safety or wellbeing of the person who experienced the relevant unlawful conduct remains the priority. Any information shared about incidents should not include identifying information and special consideration should be taken in relation to confidentiality in small or medium organisations or businesses. When there

is a small number of workers involved, or a particular group of workers, it may not be possible to provide transparency in a way that ensures confidentiality.

Examples of actions that organisations and businesses can take to meet *Standard 7: Monitoring, evaluation and transparency* include:³⁵

- Regularly reviewing their measures for eliminating relevant unlawful conduct (including specific control measures and their 'prevention and response plan') to ensure that they remain effective, incorporating input from workers and stakeholders.
- Updating measures to eliminate relevant unlawful conduct following (and informed by) a review
- Sharing relevant data with leaders to inform a 'prevention and response plan'.
- Sharing relevant data (for example, case studies, trends and lessons learned) with managers and workers, acknowledging any issues and reiterating that relevant unlawful conduct is unacceptable.
- Where appropriate, reporting publicly, including on the effectiveness of the control measures.

Examples of records to demonstrate actions taken to meet *Standard 7: Monitoring, evaluation and transparency* include:

- notes of reflections undertaken
- meeting notes of consultation conducted with workers, survey results, feedback and exit interviews and associated analysis
- notes illustrating assessment of reports of relevant unlawful conduct
- business data/metrics and associated analysis
- reporting registers
- a revised prevention and response plan or other evidence of assessment of measures to eliminate relevant unlawful conduct.

Endnotes

- 1 The positive duty is found in s 47C of the *Sex Discrimination Act 1984* (Cth).
- 2 Australian Human Rights Commission, *Time for respect: Fifth national survey on sexual harassment in Australian workplaces* (2022) 12
<<https://humanrights.gov.au/time-for-respect-2022>>.
- 3 *Sex Discrimination Act 1984* (Cth) ss 47C(1), 47C(2), 47C(4).
- 4 *Work Health and Safety Act 2011* (Cth) s 5(4).
- 5 *Work Health and Safety Act 2011* (Cth) ss 5(7), 5(8).
- 6 *Work Health and Safety Act 2011* (Cth) s 5(5).
- 7 *Sex Discrimination Act 1984* (Cth) ss 47C(1), 47C(2), 47C(3).
- 8 *Sex Discrimination Act 1984* (Cth) ss 47C(1), 47C(2), 47C(3).
- 9 *Sex Discrimination Act 1984* (Cth) ss 47C(1), 47C(4), 47C(5).
- 10 The *Sex Discrimination Act 1984* (Cth) does not define the terms 'man', 'woman' or 'sex'. Following the *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013* (Cth), it is likely that 'sex' is not limited to sex assigned at birth or to a strictly biological understanding of sex characteristics. This issue has not yet been determined by the federal courts.
- 11 *Sex Discrimination Act 1984* (Cth) s 5.
- 12 *Sex Discrimination Act 1984* (Cth) s 5(1).
- 13 *Sex Discrimination Act 1984* (Cth) s 5(2).
- 14 *Sex Discrimination Act 1984* (Cth) ss 5(2), 5(3), 7B.
- 15 Discrimination in employment on the ground of 'family responsibilities' is also separately covered by the *Sex Discrimination Act 1984* (Cth) s 7A, limited to direct discrimination in specified areas of work, but there can be overlap with the ground of 'sex' as women are more likely to require flexible work arrangements as a result of family responsibilities.
- 16 *Sex Discrimination Act 1984* (Cth) s 28A.
- 17 Australian Human Rights Commission, *Time for respect: Fifth national survey on sexual harassment in Australian workplaces* (2022) 12.
- 18 Australian Human Rights Commission, *Time for respect: Fifth national survey on sexual harassment in Australian workplaces* (2022) 12.
- 19 *Sex Discrimination Act 1984* (Cth) s 28A(1A).
- 20 *Sex Discrimination Act 1984* (Cth) s 28AA.
- 21 *Sex Discrimination Act 1984* (Cth) s 28AA(1)(b).
- 22 *Sex Discrimination Act 1984* (Cth) ss 28M(1), 28M(2).
- 23 *Sex Discrimination Act 1984* (Cth) s 28M(2)(c).
- 24 *Sex Discrimination Act 1984* (Cth) s 28M(2)(b).
- 25 *Sex Discrimination Act 1984* (Cth) s 28M(3).
- 26 See *Sex Discrimination Act 1984* (Cth) s 4(2), which provides that for the purposes of the *Sex Discrimination Act 1984* (Cth), refusing or failing to do an act shall be deemed to be the doing of an act and a reference to an act includes a reference to a refusal or failure to do an act. See also the *Australian Human Rights Commission Act 1986* (Cth) s 3(1), which provides that subjecting another person to a hostile workplace environment is 'unlawful discrimination' for

the purposes of the *Australian Human Rights Commission Act 1986* (Cth). Unlawful discrimination is defined by s 3(1) of the *Australian Human Rights Commission Act 1986* (Cth) to mean 'any acts, omissions or practices that are unlawful under...Part II of the SDA'. As a result, s 28M of the *Sex Discrimination Act 1984* (Cth) extends to conduct by omission, such as a failure to act or intervene. See also Revised Explanatory Memorandum, Anti-Discrimination and Human Rights Legislation Amendment (Respect At Work) Bill 2022 (Cth) [44].

- 27 *Sex Discrimination Act 1984* (Cth) s 47A.
- 28 *Sex Discrimination Act 1984* (Cth), s 47C(6).
- 29 Senior leaders may be considered 'officers' under WHS law. For further information on who is an 'officer' under WHS laws, see guidance from the relevant WHS regulator in the jurisdiction(s) in which you operate.
- 30 Senior leaders may be 'officers' under WHS laws. 'Officers' have specific duties under WHS laws to exercise due diligence in the management of psychosocial risks (including those posed by sexual harassment). Those duties may require officers to take further steps, beyond what is required by this Standard, to ensure the organisation or business meets its WHS duties.
- 31 Further steps, beyond those identified in this Standard, may be required under WHS laws, if the workplace culture creates a risk to health and safety and there are reasonably practicable control measures the 'person conducting a business or undertaking' could take to eliminate or minimise that risk.
- 32 Duties under WHS laws may require more than what is required by this Standard. For example, duties relating to the provision of information, training and instruction, and consultation with workers, as well as 'officers' due diligence duties to acquire and maintain up-to-date knowledge of the organisation or business' operations and associated hazards or risks.
- 33 A 'person conducting a business or undertaking' also has duties under WHS laws to eliminate or minimise the risk of psychosocial hazards (including those posed by sexual harassment) so far as is reasonably practicable. For guidance on what is reasonably practicable under WHS laws, refer to the relevant WHS regulator in the jurisdiction(s) in which you operate. Additional actions, beyond those identified in this Standard, may be required to comply with WHS duties.
- 34 The duties of a 'person conducting a business or undertaking' to identify the risk of psychosocial hazards (including sexual harassment) and review control measures, as well as to ensure safety in reporting and response processes, are also likely to be relevant here. Duties under WHS laws may require more than what is outlined in this Standard. Organisations and businesses should carefully consider their WHS duties in addition to the examples in this section.
- 35 The duties of a 'person conducting a business or undertaking' to identify the risk of psychosocial hazards (including sexual harassment) and review control measures are also likely to be relevant here. Duties under WHS may require more than what is outlined below. Organisations and businesses should carefully consider their WHS duties in addition to the examples in this Standard.

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