

Member Presentation

Sexual Harassment – ‘Positive Duty’

Acknowledgement

We acknowledge the Traditional Owners of the land on which we meet today and pay respect to Elders past, present and emerging.

We also extend that respect to Aboriginal and/or Torres Strait Islander people who are with us today.

Sexual Harassment – Positive Duty

Under the Sex Discrimination Act 1984 (Cth), organisations and businesses now have a positive duty to eliminate, as far as possible, the following unlawful behaviour from occurring:

- ⦿ discrimination on the grounds 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 grounds of sex
- ⦿ related acts of victimisation.

The ‘Australian Human Rights Commission’ refers to this conduct as ‘relevant unlawful conduct’.

Positive Duty

The new positive duty was introduced in December 2022. It imposes a legal obligation on organisations and businesses to take proactive and meaningful action to prevent relevant unlawful conduct from occurring in the workplace or in connection to work. Taking preventative action will help to create safe, respectful and inclusive workplaces.

This important change requires organisations and businesses to shift their focus to actively preventing workplace sexual harassment, sex discrimination and other relevant unlawful conduct, rather than responding only after it occurs.

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

Guidelines for Complying with Positive Duty

Guidelines for complying with the Positive Duty (2023). The Guidelines are the Commission's most comprehensive legal resource on the positive duty. The Guidelines provide detailed information about:

- ⦿ what the positive duty is
- ⦿ who must meet the positive duty
- ⦿ what it means to take 'reasonable and proportionate measures'
- ⦿ how the positive duty will be enforced
- ⦿ related legal obligations.

The Guidelines also provide examples of practical actions that organisations and businesses can take to help them satisfy the positive duty.

Guidance Materials links:

- ⦿ [Positive Duty Webinar](#)
(Highly recommended to watch as a leadership team)
- ⦿ [Guide about the Positive Duty](#)
- ⦿ [Quick guide for complying with the Positive Duty](#)

Positive Duty compliance and enforcement

The Positive Duty under the Sex Discrimination Act 1984 (Cth)

The positive duty is a legal obligation on organisations and businesses to take proactive and meaningful action to prevent relevant unlawful conduct from occurring in the workplace or in connection to work.

From 12 December 2023, the Commission has the power to enforce compliance by organisations and businesses with the positive duty.

The Commission:

- ⦿ supports cultural change towards safer, respectful and fairer workplaces in Australia
- ⦿ makes sure organisations and businesses comply with their new positive duty obligations.

[Positive Duty compliance and enforcement](#)

Resources Links

- ⦿ [The Positive Duty in the Sex Discrimination Act | Australian Human Rights Commission](#)
- ⦿ [Education | Australian Human Rights Commission](#)
- ⦿ [Research | Australian Human Rights Commission](#)
- ⦿ [Factsheets and other resources | Australian Human Rights Commission](#)
- ⦿ [Positive Duty Webinar](#)



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