



Sexual Harassment and complying with Positive Duty

Introduction:

In 2022 the Australian Parliament significantly reformed the way that anti-discrimination law protects people at work, or in the workplaces, from harmful behaviours and unlawful conduct.

Statistics:

The fifth national survey on sexual harassment in Australian workplaces (National Survey 2022) found that 33% of people reported having experienced workplace sexual harassment in the previous five years – representing 41% of women and 26% of men.

Additionally, the risk of sexual harassment is much greater for people who already experience higher rates of disadvantage and discrimination, with 46% of workers who identify as lesbian, gay, bisexual, transgender or intersex; 56% of Aboriginal or Torres Strait Islander workers; and 48% of workers with disability, indicating that they were sexually harassed at work in the previous five years.

However, many Australian organisations and businesses have recognised that an unsafe and disrespectful workplace culture diminishes their ability to attract and retain the best people; reduces productivity; and creates significant reputational and legal risks. Further, an unsafe and disrespectful workplace impacts the ability of organisations and businesses to attract customers and investors. It also affects their credibility and their bottom line.

Positive Duty.

The new statutory obligation in the Sex Discrimination Act is known as the positive duty. It requires organisations and businesses to take 'reasonable and proportionate measures' to eliminate, as far as possible:

1. Discrimination on the ground of sex in a work context.
2. Sexual harassment in connection with work.
3. Sex-based harassment in connection with work.
4. Conduct creating a workplace environment that is hostile on the ground of sex.
5. Related acts of victimisation.

What are Reasonable and Proportional Steps?

Reasonable and proportional steps mean having processes in place to *prevent* workplace sexual harassment occurring.

The Human Rights Commission lists the following Seven Standards as necessary to ensure a business complies with their Positive Duty obligations.

1. Leadership:

Business owners and management are responsible for ensuring that appropriate measures for preventing and responding to relevant unlawful conduct are developed, recorded in writing, communicated to workers, implemented, and reviewed.

2. Culture:

Organisations and businesses foster a culture that is safe, respectful, inclusive and 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.

3. 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.

4. 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.

5. 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.

6. 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, and the consequences are consistent and proportionate.

7. 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.

Although the Human Rights Commissions seven standards at first appear onerous they are a legislative requirement that all businesses adhere to and have the appropriate framework in place to *prevent* workplace related sexual harassment.

Should you require assistance or advice with implementing these Preventing Sexual Harassment in the Workplace framework please contact the Motor Traders' Association ER team on (02) 9016 9097

Click [Here](#) for Guidelines for Complying with the Positive Duty under the Sex Discrimination Act 1984 (Cth) August 2023

Click [Here](#) for A Resources for Small Business on the Positive Duty under the Sex Discrimination Act 1984 (Cth) August 2023