

Guidelines for Complying with the Positive Duty under the *Sex Discrimination Act 1984 (Cth)*

August 2023



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

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August 2023



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Foreword

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Australia has made significant progress towards achieving gender equality and creating a more inclusive society. However, sexual harassment and gender inequality continue to be unacceptably prevalent in Australian workplaces. In 2022, the Australian Human Rights Commission's fifth national survey on sexual harassment in Australian workplaces found one in three workers said they had experienced workplace sexual harassment in the last five years.

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Australia must begin actively preventing workplace sexual harassment and sex discrimination, rather than responding only after it happens.

On 28 November 2022, the Anti-Discrimination and Human Rights Legislation (Respect at Work) Bill passed Parliament. A key amendment was the introduction of a positive duty on organisation and businesses to prevent workplace sexual harassment, sex-based harassment, sex discrimination, hostile work environments and victimisation. The positive duty requires organisations and businesses to take reasonable and proportionate measures to eliminate these forms of unlawful conduct, as far as possible.

The Commission has developed these Guidelines to help Australian employers and business owners understand their responsibilities and the changes they may need to make to meet new legal obligations. The Guidelines are centred around seven standards: leadership, culture, knowledge, risk management, support, reporting and response, and monitoring, evaluation and transparency.



Emeritus Professor Rosalind Croucher AM FAAL
President Australian Human Rights Commission

Examples of practical actions that organisations or businesses can take to meet each of the Standards are clearly set out in the Guidelines.

From 12 December 2023, the Commission will have the power to enforce compliance with the positive duty. These Guidelines will be used by the Commission to assess compliance.

Leaders of organisations and businesses play a pivotal role in setting the benchmark for best practice in preventing unlawful conduct and fostering a culture of respect and inclusivity. By prioritising the implementation of the positive duty, these leaders can demonstrate their commitment to creating workplaces that are not only legally compliant but also truly safe, empowering, and conducive to the well-being of all employees.

This is an opportunity for Australian workplaces to become what they should be – safe, inclusive, gender-equal, and free from sexual harassment and sex discrimination. A place in which all Australians – no matter their gender, race, sexual orientation, disability status or age, have the opportunity to thrive.

A handwritten signature in black ink that reads "Rosalind Croucher". The signature is written in a cursive, flowing style.

Emeritus Professor Rosalind Croucher AM FAAL
President Australian Human Rights Commission



01



Introduction

Safe and respectful workplaces that advance gender equality, diversity and inclusion 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.

In 2022, the Australian Parliament significantly reformed the way that federal anti-discrimination law protects people at work, or in workplaces, from harmful behaviours and unlawful conduct.¹

Previously, the law focused on providing a mechanism for people to make complaints when they experienced unlawful conduct under the *Sex Discrimination Act 1984* (Cth) (**Sex Discrimination Act**). The *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* report (**Respect@Work Report**)² found that this legal framework was ineffective at preventing sexual harassment because it only required employers to demonstrate actions taken to try to prevent harmful behaviour *after* the harmful behaviour had already occurred.

Now, the Sex Discrimination Act requires 'persons conducting a business or undertaking' and 'employers' (**organisations and businesses**) to take proactive action to prevent discrimination and harm from occurring in the first place. The Sex Discrimination Act also no longer requires a person to make a complaint of unlawful behaviour for the organisation or business to be held to account. These changes to the law require a systemic shift from responding to harm after it happens, to preventing it before it occurs. 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.

The new statutory obligation in the Sex Discrimination Act is known as the **positive duty**.³ It 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 context⁴
- sexual harassment in connection with work⁵
- sex-based harassment in connection with work⁶
- conduct creating a workplace environment that is hostile on the ground of sex⁷
- related acts of victimisation.⁸

In these Guidelines, the conduct covered by the positive duty is referred to as '**relevant unlawful conduct**'.

Changes to the law also give the Australian Human Rights Commission (**Commission**) new inquiry and enforcement powers to ensure that organisations and businesses are complying with their positive duty. See section 4.7 for more information.

These Guidelines provide guidance on how to comply with the positive duty and include the Standards that the Commission expects organisations and businesses to meet.

Appendix 1 contains links to available resources to assist organisations and businesses with implementation. This Appendix will be updated as further resources are developed.

Organisations and businesses can find further information about the unlawful conduct covered by the positive duty, including its drivers, risk factors and impacts, in the Commission's educative companion document, *Information Guide on the Positive Duty under the Sex Discrimination Act 1984 (Cth): Relevant Unlawful Conduct, Drivers, Risk Factors and Impacts (Information Guide)*.

A 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, these Guidelines use the term 'sex' and refer 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, these Guidelines use the term 'gender' and refer 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).⁹ Where applicable, the document also refers to specific impacts on Lesbian, Gay, Bisexual, Trans and gender diverse, Intersex and Queer ('LGBTIQ+') people.



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Context

Global movements such as #MeToo, as well as research conducted through national surveys and inquiries,¹⁰ have drawn particular attention to the nature and extent of gender inequality and sexual harassment in Australian workplaces.

More than ever before, people are recognising the moral, legal and business imperatives of having a safe, respectful, diverse and inclusive culture at work.

Yet research shows that Australia has a long way to go to make work safe and inclusive for all. *Time for respect: Fifth national survey on sexual harassment in Australian workplaces (National Survey 2022)*¹¹ found that 33% of people reported having experienced workplace sexual harassment in the previous five years – representing 41% of women and 26% of men.¹²

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.¹³

Gender inequality, power imbalances, entitlement and exclusion, as well as a lack of accountability provide the underlying conditions for sexual harassment, sex-based harassment and other forms of sex discrimination to thrive. While progress has been made in recent decades, significant work still needs to be done to achieve substantive equality between men and women in Australia.¹⁴ For example, in 2022, men were twice as likely to be in the top income bracket than women, and only 1 in 4 organisations that reported to the Workplace Gender Equality Agency had gender balanced leadership teams (between 40% to 60% women).¹⁵

The Respect@Work Report found that people who experience sexual harassment and other forms of sex discrimination often experience serious mental, economic and physical harm.¹⁶

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.

In 2018/2019, Deloitte Access Economics estimated that workplace sexual harassment cost the Australian economy \$3.5 billion that financial year.¹⁷

The costs of responding to discrimination, harassment and victimisation only once it has already occurred, are too high. Harm suffered by those experiencing the conduct can be serious and long lasting, as can the impacts on the broader workforce and the organisation or business.



03



About these Guidelines

3.1 What is the purpose of these Guidelines?

These Guidelines form part of a suite of guidance material produced by the Commission in relation to the positive duty under the Sex Discrimination Act. They are intended to help organisations and businesses to understand their positive duty; the Standards that they are expected to meet; and the actions that they can take to assist them to satisfy their legal obligations. The Guidelines are the Commission’s most comprehensive resource about the positive duty. The Commission has also published the following resources about the positive duty:

⇒ *Information Guide on the Positive Duty under the Sex Discrimination Act 1984 (Cth): Relevant Unlawful Conduct, Drivers, Risk Factors and Impacts.*

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

⇒ *A Resource for Small Business on the Positive Duty under the Sex Discrimination Act 1984 (Cth).*

These Guidelines explain:

- who must satisfy the positive duty
- what it means to take ‘reasonable and proportionate’ measures to eliminate relevant unlawful conduct, and
- how the positive duty will be enforced.

It then sets out four Guiding Principles and seven Standards that the Commission expects all relevant organisations and businesses to meet to satisfy the positive duty.

The Guiding Principles are based on the evidence of what works and what is needed. These Principles are informed by a human rights-based approach, support the promotion and protection of human rights and give effect to provisions of relevant international treaties and conventions.¹⁸ For an organisation or business to eliminate relevant unlawful conduct successfully, its approach should:

- involve **consultation**, so that any actions taken are informed by those affected or potentially affected by relevant unlawful conduct at work
- advance **gender equality**, where people of all genders have equal rights, rewards, opportunities and resources
- acknowledge **intersectionality**, recognising that the risks and impacts of relevant unlawful conduct are shaped and compounded by systemic issues and factors that include race, religion, gender, sexual orientation and disability
- be **person-centred and trauma-informed**, ensuring that workplace systems, policies and practices support people’s safety and dignity and avoid causing further harm.

These Principles are discussed further in section 5.1.

The Standards cover the following areas:



Standard 1:
Leadership

See section 6.1 • Page 29



Standard 2:
Culture

See section 6.2 • Page 39



Standard 3:
Knowledge

See section 6.3 • Page 46



Standard 4:
Risk management

See section 6.4 • Page 52



Standard 5:
Support

See section 6.5 • Page 61



Standard 6:
Reporting and response

See section 6.6 • Page 68



Standard 7:
Monitoring, evaluation and transparency

See section 6.7 • Page 75

These Guidelines are issued in accordance with section 35A of the *Australian Human Rights Commission Act 1986* (Cth). While the Guidelines are not legally binding, they are authoritative and set out the steps that the Commission expects organisations and businesses to take to comply with the positive duty.

Following these Guidelines will assist organisations and businesses to comply with the positive duty. Compliance with the positive duty may also be achieved by other methods if those methods provide an equivalent or higher level of protection against relevant unlawful conduct. What is necessary is that an organisation or business can demonstrate that they have taken reasonable and proportionate measures to eliminate the relevant unlawful conduct, as far as possible (see further in section 4.5).

The Commission expects organisations and businesses to take a holistic approach to creating safe and respectful workplaces and not feel restricted to the examples contained in these Guidelines. Creative, innovative and bold strategies to achieve substantive equality and foster positive workplace cultures are strongly encouraged.

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These Guidelines will be used by the Commission in assessing compliance with the positive duty when its enforcement functions commence in December 2023.
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Additionally, a court may consider whether organisations and businesses have followed these Guidelines when assessing compliance with the positive duty.¹⁹

Please note that these Guidelines are a tool to assist organisations and businesses to comply with the positive duty in the Sex Discrimination Act. They are not a comprehensive statement

of all legal responsibilities for organisations and businesses and should not be treated as such.

Organisations and businesses are also obliged to comply with all relevant provisions of the Sex Discrimination Act, including those outside the scope of the positive duty (which is the focus of these Guidelines). See Information Guide, section 2, 'Understanding relevant unlawful conduct', for further information.

3.2 Other legal obligations relevant to the positive duty under the Sex Discrimination Act

Behaviours that constitute relevant unlawful conduct are addressed under various laws in Australia and regulated by a number of different legal frameworks.

These Guidelines set out what the Commission expects organisations and businesses to do to satisfy their positive duty under the Sex Discrimination Act. These actions are likely to be similar to the actions that they are required to take to comply with other legal frameworks. The same preventive action may be used as evidence of compliance with multiple legal duties. However, these Guidelines do **not** provide specific guidance on how organisations and businesses can comply with other related obligations, such as:

- obligations under work, health and safety (**WHS**) laws
- obligations under workplace or industrial relations laws, such as the *Fair Work Act 2009* (Cth) (**Fair Work Act**)
- obligations under State or Territory anti-discrimination laws, including any equivalent or similar positive duty.²⁰

Taking these wider obligations into consideration, it may be necessary for an organisation or business to take different or additional steps beyond those discussed in these Guidelines to comply with other relevant laws.

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Organisations and businesses should take steps to understand and comply with any other legal obligations that may be relevant to the issues discussed in these Guidelines.

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Likewise, satisfying WHS duties may not equate to compliance with the positive duty under the Sex Discrimination Act (which can extend beyond conduct that presents an identifiable threat to health and safety).

Safe Work Australia and WHS regulators have produced detailed guidance about what people must do to satisfy their WHS duties in relation to psychosocial hazards, including sexual harassment. The Commission strongly recommends that organisations and businesses separately consult this WHS guidance. Resources from Safe Work Australia are linked in Appendix 1.

In particular, the Commission notes that WHS laws establish a comprehensive legal framework to protect workers from risks to their health and safety while at work, including from psychosocial hazards such as sexual harassment. Under WHS laws, 'persons conducting a business or undertaking' have a duty to eliminate or minimise risks both to physical and psychological health at work (including risks from sexual harassment), so far as is reasonably practicable.

As outlined above, the steps that an organisation or business takes to meet the positive duty are likely to be actions which will help them to meet their WHS duties.

Satisfying the positive duty in the Sex Discrimination Act, however, will not necessarily ensure that a 'person conducting a business or undertaking' has met all of their WHS duties to ensure the health and safety of workers, in all of the ways that health and safety issues can arise.



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Understanding the positive duty

4.1 What is the positive duty under the Sex Discrimination Act?

Under the Sex Discrimination Act, organisations and businesses have a legal duty to take **'reasonable and proportionate measures' to eliminate relevant unlawful conduct** as far as possible.

The positive duty aims to create systemic change by preventing unlawful conduct from happening in the first place, rather than reacting to conduct after it has occurred and already caused harm. This is because preventative action that addresses relevant unlawful conduct at a systemic level is more effective at creating safe, respectful and inclusive workplaces.

The positive duty requires organisations and businesses to be proactive and take appropriate measures to eliminate relevant unlawful conduct, as far as possible. Simply responding to individual reports as they arise is not enough. Organisations and businesses can also now be held accountable even if no one makes an individual complaint under the Sex Discrimination Act.

4.2 Who must satisfy the positive duty?

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, including sole traders and the self-employed, as well as small, medium and large businesses and government.

The positive duty applies to a 'person conducting a business or undertaking' and an 'employer'. For ease of reference in these Guidelines, these duty holders are referred to as **'organisations and businesses'**.

(a) Who is an employer?

An **'employer'** is a person who:

- employs another person, including by way of part-time or temporary employment (including as a Commonwealth or State/Territory employee)

- engages another person to perform work under a contract for services (a contractor).²¹

(b) Who is a 'person conducting a business or undertaking'?

A **'person conducting a business or undertaking'** has the same meaning in the Sex Discrimination Act as under WHS law.²² A person conducts a business or undertaking whether they do it alone or with others, and whether or not the business or undertaking is conducted for profit or gain. 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 partnership²³
- government departments and authorities
- local government councils
- franchisors and franchisees
- owners and operators of businesses
- principal contractors and head contractors
- not-for-profit organisations that engage and pay administrative staff
- sole traders and self-employed people.

The following are **not** considered to be a 'person conducting a business or undertaking':

- 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 alone²⁴
- volunteer associations, unless they (or members on behalf of the association) employ one or more people²⁵
- elected members of a local authority (who are acting in that capacity)²⁶
- 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.²⁷

4.3 What conduct does the positive duty cover?

The positive duty requires organisations and businesses to take reasonable and proportionate measures to eliminate, as far as possible, the following conduct:

- discrimination on the ground of sex in a work context²⁸
- sexual harassment in connection with work²⁹
- sex-based harassment in connection with work³⁰
- conduct that amounts to subjecting a person to a hostile workplace environment on the ground of sex³¹
- related acts of victimisation.³²

The Information Guide outlines the law regarding each of these grounds in more detail.

4.4 Whose conduct does the positive duty cover?

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**³³
- **by their employees, workers and agents**³⁴, 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 or members of the public)
- in some cases, **by third parties**³⁵ towards employees and workers in connection with their work.

(a) Conduct by organisations and businesses, and their employees, workers and agents

Organisations and businesses are responsible for eliminating relevant unlawful conduct by themselves and, where applicable, by their employees, workers and agents.

An '**employee**' is a person who is employed or engaged by another person, including by way of part-time or temporary employment, work under a contract for services (a contractor) or as a Commonwealth or State/Territory employee.³⁶

'**Worker**' has the same meaning in the Sex Discrimination Act as under WHS law.³⁷ It is a broad concept that extends beyond the traditional employer/employee relationship. A person is a 'worker' if the person carries out work *in any capacity* for an organisation or business, including work as:

- an employee
- a contractor or subcontractor (or their employee)
- an employee of a labour hire company who has been assigned to work in a 'host' person's business or undertaking
- an outworker, such as a home-based worker
- a 'gig' worker
- an apprentice or trainee
- a student gaining work experience
- a volunteer³⁸

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

(b) Conduct by third parties (such as customers, clients, patients and members of the public) towards employees and workers

The positive duty requires organisations and businesses to take reasonable and proportionate measures to eliminate, as far as possible, the following types of discriminatory conduct being engaged in by third parties *towards* employees and workers in connection with work:

- sexual harassment³⁹
- sex-based harassment⁴⁰
- conduct that amounts to subjecting a person to a hostile workplace environment on the ground of sex⁴¹
- related acts of victimisation.⁴²

This aspect of the positive duty does not apply to discrimination on the ground of sex.

In this context, third parties can include, but are not limited to:

- customers, clients and patrons (for example, in industries such as hospitality, retail, transport and public services)
- clients (for example, in the professional services industry and in personal training)
- patients, clients, residents, service users and visitors (in industries such as healthcare, disability and aged care, as well as community and public services)
- students in the context of an educational institution, such as a university, TAFE or school and other visitors such as parents
- suppliers and visitors
- members of the public.

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 behaviour and providing safe, respectful and inclusive workplaces. This is because third parties can pose a significant risk to workers.

According to a 2019 national survey, more than one third of sexual harassment incidents in the fast-food and retail industries were perpetrated by a customer (36%).⁴³ 1 in 5 (21%) members of the Shop, Distributive and Allied Employees Association reported that they had been sexually harassed by a customer in their current job, with that figure far higher for women and younger workers.⁴⁴

4.5 What does it mean to take 'reasonable and proportionate' measures to eliminate relevant unlawful conduct?

While the Sex Discrimination Act requires *all* relevant organisations and businesses to take proactive steps to eliminate, as far as possible, relevant unlawful conduct, it recognises that these actions will look different for different organisations and businesses.

The Commission expects all organisations and businesses to have measures in place to address each of the seven Standards outlined in section 5.2 of these Guidelines. Measures can be tailored to the individual circumstances of each organisation and business, however, depending on a range of specified factors.

Whether an organisation or business has satisfied its positive duty will be determined objectively. In deciding this, the Sex Discrimination Act requires the Commission and the courts to consider each of the matters set out below:⁴⁵

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

This includes the number of workers, nature of the work, industry, nature and location of the workplace (including physical or online), workplace profile, the location of workers and the specific risk factors which might be present in that organisation or business. As discussed in section 8 of the Information Guide, the specific workplace characteristics of an organisation or business, particularly those that may increase



the risk of relevant unlawful conduct occurring, will also be relevant in assessing what are 'reasonable and proportionate' measures. For example:

- It may be reasonable for smaller organisations and businesses to have less formal measures in place to eliminate relevant unlawful conduct than a large organisation or business. For example, feedback might be sought from workers via discussions and anonymous feedback boxes, rather than a formal employee engagement survey or the regular exit interviews conducted by human resources (HR) that might be used in a large organisation or business.
- It may 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, whether financial or otherwise:

In determining what is reasonable, it is important to note that 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, considering the

risks of relevant unlawful conduct and the legal obligations of the organisation or business.

In addition to financial resources, whether an organisation or business has access to specialised HR, risk or legal capabilities is likely to be a relevant factor in considering what measures are 'reasonable and proportionate' to expect 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 business to implement a reporting process that reflects the HR capacity of the business.

(c) the practicability and the cost of measures to eliminate the relevant unlawful conduct:

The term 'practicability' means that something is *capable* of being put into practice and requires consideration of whether a measure will be effective. It 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. In these cases, however, organisations and businesses may still be required to take less costly steps to eliminate or control the risks of relevant unlawful conduct, such as communicating expectations to staff regularly; drawing on 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 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 these Guidelines or other relevant laws. In addition, the Commission and courts may have regard to the benefits of implementing the measures and the consequences and risks of failing to implement the measures.

4.6 The positive duty and vicarious liability

The Sex Discrimination Act provides that employers and principals can be held liable for unlawful conduct committed by their employees and agents in connection with their employment or duties as an agent.⁴⁶ This is referred to as the principle of ‘vicarious liability’.

This means, for example, that if an employee sexually harasses a co-worker, an employer may be legally responsible for the actions of that employee (and may also be responsible for paying financial compensation), unless they can demonstrate that they took ‘all reasonable steps’ to prevent the unlawful conduct from occurring.⁴⁷

Whether an employer or principal has taken ‘all reasonable steps’ to avoid vicarious liability in a particular case is a matter to be determined by a court, not the Commission. Following guidance provided by the Commission on how to satisfy the positive duty, however, will help employers to demonstrate that they are not vicariously liable under the Sex Discrimination

Act. The Standards and examples outlined in these Guidelines are consistent with, and in some respects go further than, the actions that courts have traditionally expected from employers when considering vicarious liability claims under the Sex Discrimination Act.

4.7 Enforcement of the positive duty

From 12 December 2023, the Commission will have the power to enforce compliance with the positive duty in the Sex Discrimination Act.

The Commission can commence an inquiry when it ‘reasonably suspects’ that an organisation or business is not complying with the positive duty.⁴⁸ This suspicion might come from information or advice provided by other government agencies or regulators, impacted individuals, unions or worker representatives or from reports in the media.⁴⁹

The Commission will have the power to:

- conduct inquiries into compliance with the positive duty by an organisation or business and provide recommendations to achieve compliance
- issue a compliance notice specifying action that an organisation or business must take, or refrain from taking, to address any non-compliance
- apply to the federal courts for an order to direct compliance with a compliance notice
- enter into enforceable undertakings with an organisation or business under which the organisation or business agrees to do, or refrain from doing, certain things.⁵⁰

The Commission can commence an inquiry without the consent of an organisation or business. The Commission also has investigative powers to compel the production of information and documents, as well as to examine witnesses.

If the Commission identifies any areas of non-compliance, the Commission may first offer to work with the organisation or business on a voluntary basis (where appropriate) to support them to meet their legal obligations.



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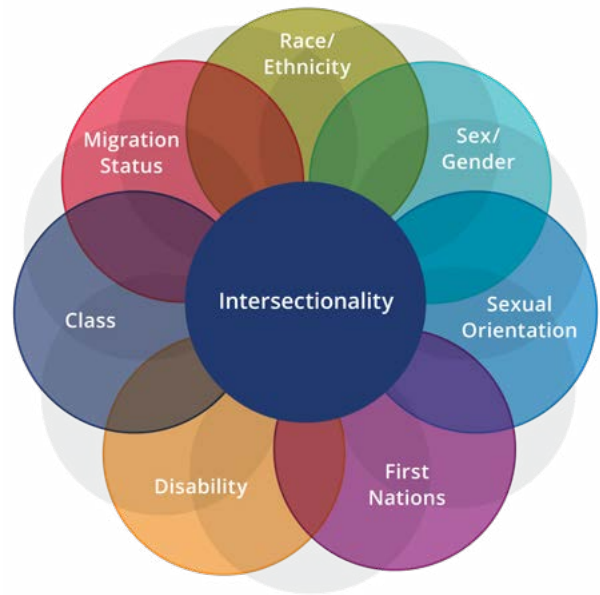
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Satisfying the positive duty

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This section sets out four Guiding Principles and seven Standards. Together, these Principles and Standards give organisations and businesses guidance on what the Commission expects them to do to meet their positive duty under section 47C of the Sex Discrimination Act.

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5.1 Guiding Principles

What works to eliminate relevant unlawful conduct in one organisation or business will be different from what works in another, with the actions required to meet the positive duty not a 'one-size-fits-all' approach. The Guiding Principles help to inform the decisions an organisation or business makes about what it needs to do in its own circumstances.

Each of these Principles is described further in the table below.

The Commission expects organisations and businesses to consider and apply the Guiding Principles when implementing the seven Standards.

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.</p> <p>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 and Torres Strait Islander, whether they are from culturally and linguistically diverse or culturally and racially marginalised (CARM) communities, and their socio-economic 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>

5.2 The Seven Standards

The seven Standards are set out in the table below. They outline what the Commission expects organisations and businesses to do to satisfy the positive duty under the Sex Discrimination Act.

Examples of practical actions to demonstrate how an organisation or business might address each of the Standards are also included below.



The Standards address the following areas:



01: Leadership

Section 6.1

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.



02: Culture

Section 6.2

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



03: Knowledge

Section 6.3

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:

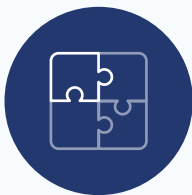
- expected standards of behaviour, including actions and attitudes that foster equality and respect
 - identifying behaviours that constitute relevant unlawful conduct and the consequences for engaging in such conduct
 - their rights and responsibilities in relation to safe, respectful and inclusive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



04: Risk management

Section 6.4

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.



05: Support

Section 6.5

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.



06: Reporting and response

Section 6.6

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.



07: Monitoring, evaluation and transparency

Section 6.7

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.

The Standards are based on research about the causes of relevant unlawful conduct and what is required to prevent it from happening.⁵¹ They provide an ‘end-to-end’ framework for prevention and response, which organisations and businesses can then tailor to their workforce in order to satisfy their positive duty.

The Standards are also interrelated. In many cases, an action taken by an organisation or business to meet one Standard may also assist them to meet one or more of the other Standards.

The Commission expects all organisations and businesses with obligations under the Sex Discrimination Act to meet these Standards, while recognising that the way in which each organisation and business does so is likely to differ. This is because what may be ‘reasonable and proportionate’ for one organisation or business may not be ‘reasonable and proportionate’ for another. For further information on what ‘reasonable and

proportionate’ means, and what factors can be taken into account when assessing what is reasonable and proportionate, see section 4.5.

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.

The Commission will assess compliance holistically, taking into account all relevant information. The Commission anticipates, however, that organisations and businesses will need to meet each of the Standards in order to eliminate relevant unlawful conduct, as far as possible.



06

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Implementing the Standards in practice

Organisations and businesses are encouraged to consider all of the examples below and to consider the measures that will be most effective for their workers.

Organisations and businesses are well-placed to understand the actions that will make a positive difference for their particular workforces and drive meaningful change. Some examples of actions that organisations and businesses could take to satisfy their positive duty are provided below. Organisations and businesses should not feel constrained by the examples below, however, or see the examples as simply a checklist for compliance. The Commission strongly encourages innovation, creativity and the development of bold strategies to achieve substantive equality between men and women and to foster positive workplace cultures.

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 examples below have been tailored to the common features of different-sized entities to help people understand measures that might be 'reasonable and proportionate' in their specific context. As discussed above, the

size of a business or organisation is not the only consideration when determining what measures are 'reasonable and proportionate'. For further information, see section 4.5.

While size is only one relevant factor, consideration of the common features of organisations and businesses of different sizes provides a useful starting point. In these Guidelines the following terms are used:

- 'organisations and businesses without workers'
- 'small organisations and businesses'
- 'medium organisations and businesses'
- 'large organisations and businesses'.

These organisation and business sizes are defined based on worker numbers and other characteristics that these organisations and businesses are expected to have. See Appendix 2 for further details.

Many of the examples below are actions that organisations and businesses may already be taking, such as to meet some of their WHS obligations; to minimise the risk of being found vicariously liable under the Sex Discrimination Act or the Fair Work Act; or to meet reporting obligations to the Workplace Gender Equality Agency. In many cases, the actions below have been aligned with existing frameworks to ensure consistency and clarity. Organisations and businesses should also ensure that they understand and comply with their legal obligations under other laws. For further information, see section 3.2.

Note: The positive duty in the Sex Discrimination Act is a new legal obligation. The Commission anticipates that organisations and businesses may need to dedicate additional resources (financial and otherwise) to their initial response. This will allow them to create new (or alter existing) structures and processes to ensure that they are fit-for-purpose. The resources required may reduce over time, once appropriate systems, processes and culture are in place.



6.1 Standard 1: 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.

'Senior leader' refers to any person with responsibility for the management and governance of the organisation or business.⁵² In a small organisation or business, this will usually be the owner and any manager. In larger organisations and businesses, this will usually include the board (or equivalent), chief executive officer (CEO), executive leadership team (ELT), partners or executive manager.

(a) Why is leadership important?

Senior leaders play a critical role in creating safe, respectful and inclusive workplaces that value diversity and gender equality.

Senior leaders hold ultimate responsibility and accountability for the governance and legal compliance of their organisation or business. They are responsible for their own actions, the actions of those who they lead and influence, allocation of resources, oversight of compliance and shaping the broader workplace culture. They set the 'tone from the top' – meaning that what they say and do gives a strong message to workers about what is acceptable, important and valued.

Senior leaders are therefore critical to the effective implementation of the measures that an organisation or business takes to prevent and respond to relevant unlawful conduct. Senior leaders have great influence over whether the measures will be put into action and whether they will be supported and successful. Senior leaders are also responsible for the allocation of resources towards measures for preventing and responding to relevant unlawful conduct. The nature and level of these resources will have a significant impact on whether the measures are effective at eliminating relevant unlawful conduct, as far as possible. Leadership is also fundamental to the implementation of all the other Standards set out in these Guidelines and is relevant for organisations and business of all sizes. Senior leaders must be confident that their organisation or business is meeting their positive duty to eliminate relevant unlawful conduct, as far as possible.

Others may assist senior leaders to implement relevant measures (such as HR managers), but it is important that senior leaders remain responsible and accountable for the elimination of relevant unlawful conduct. As with other WHS risks, they should be actively involved in the development and implementation of measures to eliminate relevant unlawful conduct and regularly review the effectiveness of those measures. They should do this through active oversight and the endorsement of a 'prevention and response plan' which sets out the measures that the organisation or business will take under each of the Standards to eliminate relevant unlawful conduct. Active oversight includes regularly reviewing the implementation of the plan to ensure its effectiveness.

To drive cultural change, senior leaders should also demonstrate consistent and visible commitment to a safe, respectful, diverse and inclusive workplace culture that prioritises gender equality. One of the ways in which they can do this is by communicating with workers about progress towards eliminating relevant unlawful conduct.

Senior leaders should set clear expectations about roles and responsibilities in relation to relevant unlawful conduct and ensure that those expectations are clearly communicated. Crucially, they should also be a role model for inclusive and respectful behaviour that advances gender equality.



(b) Practical examples of how an organisation or business might meet *Standard 1: Leadership*⁵³

Outcome	Examples of practical ways to achieve the outcome
<p>Senior leaders understand their obligations under the Sex Discrimination Act and have up-to-date knowledge about relevant unlawful conduct.</p> <p><i>Senior leaders (including business owners) understand: the law relating to relevant unlawful conduct (including the positive duty); their leadership and governance responsibilities in relation to 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.</i></p>	<ul style="list-style-type: none"> • Senior leaders read guidance materials published by the Commission and on the Respect@Work website. • Senior leaders arrange for the organisation/business to subscribe to relevant updates from regulators and peak bodies on developments in laws relating to relevant unlawful conduct and for this information to be distributed to senior leaders. • Senior leaders attend quality education sessions on the applicable laws and their rights and responsibilities. This education is refreshed/updated regularly to ensure that senior leaders maintain current awareness. <p>Additional measures most likely to be relevant for medium and large organisations and businesses:</p> <ul style="list-style-type: none"> • Senior leaders regularly review relevant industry-specific research or reports and stay up-to-date on industry trends in relation to relevant unlawful conduct. • Senior leaders ensure that the organisation/business establishes systems to monitor developments relating to best practice in eliminating relevant unlawful conduct. Senior leaders also ensure that those developments are communicated within the organisation/business and considered for implementation.



Outcome	Examples of practical ways to achieve the outcome
<p>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.</p> <p><i>Senior leaders actively oversee the development and implementation of a 'prevention and response plan', and regularly review its effectiveness, in consultation with workers. They ensure that measures for preventing and responding to relevant unlawful conduct are updated following that review, if necessary.</i></p>	<ul style="list-style-type: none"> • Senior leaders create or approve a document setting out the measures that the organisation/business will take to eliminate relevant unlawful conduct, as far as possible. This may be called a 'prevention and response plan'. An example prevention and response plan is linked in Appendix 1. • Senior leaders ensure that the measures: <ul style="list-style-type: none"> ◦ address the seven Standards ◦ are appropriately tailored to the circumstances of the organisation/business ◦ are informed by data about the nature and extent of relevant unlawful conduct in the organisation/business (which may be obtained through worker consultation, HR information and industry surveys) – see <i>Standard 4: Risk management</i> and <i>Standard 7: Monitoring, evaluation and transparency</i> ◦ are communicated effectively within the organisation/business. • Senior leaders regularly check that the chosen measures have been implemented. • Senior leaders ensure that workers are consulted to obtain their feedback about whether the measures are effective and whether any changes should be made. • Senior leaders review relevant data to understand the effectiveness of measures. • Senior leaders ensure that measures are updated to ensure ongoing effectiveness, as required. For example, changes may be required to education programs, reporting and response processes, policy statements, supports and specific control measures. • Senior leaders set timeframes for regularly reviewing the 'prevention and response plan', for example, annually or following a significant incident.



Outcome	Examples of practical ways to achieve the outcome
	<p data-bbox="730 411 1906 480">Additional measures most likely to be relevant for medium and large organisations and businesses:</p> <ul data-bbox="757 501 2042 922" style="list-style-type: none"><li data-bbox="757 501 2042 635">• Senior leaders (including the board, where applicable) are regularly informed about implementation of and performance against the 'prevention and response plan'. For example, 'compliance with the positive duty' may be included as a standing agenda item in senior leadership meetings and/or board meetings.<li data-bbox="757 663 2042 922">• Senior leaders (including the board, where applicable) are regularly informed about:<ul data-bbox="797 703 2042 922" style="list-style-type: none"><li data-bbox="797 703 2042 772">◦ education and access to information for workers in relation to relevant unlawful conduct (including the results of worker consultation on content and effectiveness)<li data-bbox="797 783 2042 815">◦ the nature of any incidents reported and actions taken in response (de-identified as appropriate)<li data-bbox="797 826 2042 922">◦ any required changes to policies, education or training (for example, as a result of an investigation or settlement agreement reached with a person who reported their experiences of relevant unlawful conduct).



Outcome	Examples of practical ways to achieve the outcome
<p>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.</p>	<ul style="list-style-type: none"> • Senior leaders make statements (internally and, where appropriate, externally) that: <ul style="list-style-type: none"> ◦ express commitment to eliminating relevant unlawful conduct ◦ articulate why gender equality, diversity, inclusion and respectful workplace conduct are important ◦ acknowledge the existence of relevant unlawful conduct and the harm that it causes ◦ apologise to people affected by past conduct and commit to improvement (including by giving examples of what has changed/what will change) ◦ outline progress made against their commitment and actions taken. <p>Statements can be made verbally (for example, at induction, in team meetings and CEO Town Halls) or in writing (for example, via email, on the staff intranet or the website of the organisation/business).</p> <p>An example of a public leadership statement from the Champions of Change Coalition is linked in Appendix 1.</p> <p>Additional measures most likely to be relevant for medium and large organisations and businesses:</p> <ul style="list-style-type: none"> • Senior leaders take an active interest in learning from, and supporting, relevant committees and groups. This may include diversity and inclusion committees or existing WHS committees. • Senior leaders may also attend events, or join groups or networks committed to promoting inclusion, gender equality and diversity (for example, at a workplace, industry, state or national level).⁵⁴



Outcome	Examples of practical ways to achieve the outcome
<p><i>Senior leaders communicate expectations about respectful behaviour at work with workers and third parties (such as customers, clients, patients and suppliers).</i></p>	<ul style="list-style-type: none"> • To workers: <ul style="list-style-type: none"> ◦ Senior leaders discuss expectations with workers, such as at induction, in team meetings, during 'toolbox talks', at CEO Town Halls. ◦ Senior leaders ensure that expectations are reinforced in writing, such as through signs in the workplace, brochures, workplace policies, via the intranet or email, through workers' contracts and through organisational values. • To third parties who have contact with workers (such as customers, clients, suppliers and patients): <ul style="list-style-type: none"> ◦ Senior leaders ensure that signs are displayed which state that it is a respectful workplace and that unlawful behaviour towards workers will not be tolerated. <p>Sample signs and posters are linked in Appendix 1.</p> <p>Additional measures most likely to be relevant for medium and large organisations and businesses:</p> <ul style="list-style-type: none"> • Senior leaders ensure that messages are included on shared IT platforms which state that it is a respectful workplace and that unlawful behaviour towards workers will not be tolerated. • Senior leaders ensure that contractual terms are used to require third parties (such as clients and suppliers) to comply with the respectful behaviour policy of the organisation/business and warrant that they have undertaken relevant education.



Outcome	Examples of practical ways to achieve the outcome
<p><i>Senior leaders ensure that the expectations they set are upheld.</i></p>	<ul style="list-style-type: none"> • Senior leaders acknowledge positive behaviour at work (for example, at team meetings, and through staff awards and performance review and promotion processes). • Senior leaders ensure consistent and proportionate consequences for people who engage in relevant unlawful conduct, regardless of their position within, or importance to, the organisation/business. • Senior leaders ensure that workers who report relevant unlawful conduct do not suffer victimisation or negative consequences for their career progression or health and safety.
<p><i>Senior leaders role model respectful behaviour.</i></p>	<ul style="list-style-type: none"> • Senior leaders use respectful and inclusive language. • Senior leaders call out disrespectful behaviour (including the behaviour of third parties). • Senior leaders undertake self-reflection and seek feedback. <p>Additional measures most likely to be relevant for medium and large organisations and businesses:</p> <ul style="list-style-type: none"> • Senior leaders undertake leadership reflection and/or training on their personal leadership of safe, respectful, inclusive workplaces that value diversity and gender equality. An example of a 'Leadership Shadow Model' from the Respect@Work website is linked in Appendix 1.
<p><i>Senior leaders support and encourage workers to undertake relevant education (including training or formal learning) through what they say and how they act.</i></p>	<ul style="list-style-type: none"> • Senior leaders discuss education as part of a commitment to cultural change, gender equality and inclusion at work, not merely as a 'tick-a-box' compliance requirement. • Senior leaders prioritise and speak about their own training and education and its benefit. • Senior leaders provide time during work hours for workers to complete relevant education.



Outcome

The organisation/business ensures that senior leaders are responsible and accountable for satisfying the positive duty and committing to gender equality.

Examples of practical ways to achieve the outcome

Additional measures most likely to be relevant for medium and large organisations and businesses:

- Senior leaders undertake leadership reflection and/or training on their personal leadership of safe, respectful, inclusive workplaces that value diversity and gender equality. An example of a 'Leadership Shadow Model' from the Respect@Work website is linked in Appendix 1.
- Senior leaders' responsibility for the implementation of the 'prevention and response plan' of the organisation/business, as well as related monitoring activities, is reflected in key governance documents (for example, company constitutions, job/position descriptions, codes of conduct or other policies, contracts, bonus structures and performance review and promotion processes).
- Positive workplace culture is a factor in the appointment and performance framework for senior leaders. For example, senior leaders could be assessed through staff survey feedback, as well as through progress towards achieving gender equality and diversity and inclusion targets.
- The organisation/business prioritises gender balance and diversity in leadership teams (including the board, where applicable) and values expertise in gender equality and workplace culture. This may also include seeking representation and input from people from marginalised groups who are disproportionately affected by relevant unlawful conduct, and appointing leaders and/or board members with specialist expertise in gender equality and diversity, workplace culture and/or the effective prevention and management of relevant unlawful conduct.
- Obligations regarding role modelling respectful behaviour, as well as senior leaders' roles in preventing and responding to relevant unlawful conduct, is included in senior leaders' contracts or terms of appointment.
- Key governance documents 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.



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
- records of attendance at committees, groups and events focused on inclusion, and memberships of relevant external organisations
- attendance records for training sessions or modules for senior leaders, together with a copy of the training content.



6.2 Standard 2: 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.

(a) Why is culture important?

Workplace culture is one of the most crucial factors impacting the risk of relevant unlawful conduct occurring, as well as how effectively an organisation or business will respond to it. Culture sets the parameters of what is acceptable and unacceptable, as well as 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. It is also crucial to building trust and confidence in the systems that are in place to respond.

By contrast, a permissive culture that devalues women; accepts and normalises everyday sexism, discrimination and harassment; and in which marginalised groups are excluded, creates an environment for relevant unlawful conduct to thrive.

Organisational or workplace culture is the overall character of an organisation. It can include elements such as the values, beliefs, attitudes, goals and work practices of an organisation or business.⁵⁵ Culture can be communicated:

- Formally – through leadership statements, policies, processes, value statements, worker benefits, codes of conduct and official communications.
- Informally – through accepted ways of interacting with colleagues and third parties, attitudes towards working hours and work/life balance, and whether diversity and inclusion are accepted as the norm.

Culture may both influence, and be influenced by, the physical working environment of a workplace. It is also shaped by policies, systems and practices. This may include whether policies are in place to support workers with caring responsibilities; policies and practices to address gender bias in recruitment and promotion; and practical actions to address 'everyday sexism' in the workplace.

Organisational culture also determines the extent to which people feel safe to raise or report experiences or concerns about relevant unlawful conduct, including issues that might not yet be serious. Organisations and businesses should have a policy of 'no wrong door', meaning that they will undertake to address issues raised, whether or not the formal processes are used. A workplace culture that incentivises and supports people to raise concerns and make reports requires workers to know that there will be no negative consequences from making a report; that appropriate action will be taken; and that people will be held accountable if they engage in relevant unlawful conduct.

Culture is never fixed and permanent but, rather, is constantly changing. Depending on the size of an organisation or business, there may be multiple cultures. For example, in a medium or large organisation or business operating across multiple locations, each location may have its own culture, and some may be more positive or harmful than others. These 'micro-cultures', however, are usually directly influenced by the broader culture of the organisation or business.

As seen in *Standard 1: Leadership*, 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. They therefore play a very significant role in setting the culture of an organisation or business. Culture is built and influenced, however, by more than just senior leaders. Culture 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.

Leaders and managers at all levels play a key role in shaping a positive workplace culture, built on gender equality, diversity, and inclusion, as well as safety and respect. 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 appropriate action to respond to unlawful behaviour; and role modelling respectful behaviour themselves.

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.



(b) Practical examples of how an organisation or business might meet *Standard 2: Culture*⁵⁶

Outcome	Examples of practical ways to achieve the outcome
<p>Organisations and businesses foster a culture that is safe, respectful and inclusive and values diversity and gender equality.</p> <p><i>The organisation/business prioritises and supports gender equality and diversity.</i></p>	<ul style="list-style-type: none"> • The organisation/business pays particular attention to gender balance and diversity in recruitment. • The organisation/business attempts to increase the representation and workplace inclusion of underrepresented groups. • The organisation/business consults with workers (and their representatives, where applicable) on workplace issues concerning gender equality, diversity and inclusion. It gives particular attention to the voices and experiences of workers who have lived experience of gender inequality and intersecting inequalities. <p>Additional measures most likely to be relevant for medium and large organisations and businesses:</p> <ul style="list-style-type: none"> • The organisation/business develops a gender equality strategy. Examples of gender equality strategies and a toolkit are linked in Appendix 1. • The organisation/business sets gender equality targets and assesses performance against them. Targets are regularly reviewed. <i>Note: Organisations and businesses can refer to guidance materials issued to assist public sector entities to comply with reporting requirements to the Workplace Gender Equality Agency (WGEA).</i>⁵⁷ • The organisation/business develops a diversity and inclusion strategy and assesses performance against targets. • The organisation/business considers implementing 'special measures' or positive discrimination initiatives to advance gender equality and diversity, including in recruitment and employment conditions. The Commission's guidelines on special measures, including under the <i>Sex Discrimination Act</i>, the <i>Racial Discrimination Act 1975</i> (Cth) and involving the targeted recruitment of Aboriginal and Torres Strait Islander people, are linked in Appendix 1.



Outcome	Examples of practical ways to achieve the outcome
	<ul style="list-style-type: none"> • The organisation/business participates in industry-specific gender equality, diversity and inclusion initiatives and advocacy. • The organisation/business reviews its workforce and develops a plan to identify and eliminate discriminatory structures and practices, including any issues relating to sex discrimination and gender inequality. • The organisation/business establishes and consults with local working groups or networks of workers to assist in preventing and responding to relevant unlawful conduct and the creation of safe, respectful, diverse and inclusive workplace culture (such as a Diversity & Inclusion committee or using existing WHS committees).
<p><i>Leaders and managers at all levels role model respectful behaviour (both in interactions with workers and others such as customers, clients and patients, where applicable).</i></p>	<ul style="list-style-type: none"> • Leaders and managers use respectful and inclusive language. • Leaders and managers call out disrespectful behaviour (including behaviour of third parties). <p>Additional measures most likely to be relevant for medium and large organisations and businesses:</p> <ul style="list-style-type: none"> • Leaders and managers undertake self-reflection and seek feedback. See 'The Leadership Shadow Model' from the Respect@Work website linked in Appendix 1.
<p><i>Leaders and managers at all levels regularly and clearly communicate to workers their expectations about respectful behaviour; that relevant unlawful conduct is unacceptable; and the consequences for engaging in relevant unlawful conduct.</i></p>	<ul style="list-style-type: none"> • Leaders and managers regularly communicate expectations to workers in person, through induction, team meetings and 'toolbox talks'. • Leaders and managers ensure that these messages are reinforced in writing, such as through emails, posters, notices or brochures in the workplace; policies, organisational values or strategies that are published and promoted internally; workers' contracts, codes of conduct and the intranet.



Outcome	Examples of practical ways to achieve the outcome
<p><i>Respectful behaviour, and actions taken to foster a safe and respectful workplace, is encouraged and rewarded, including through HR processes</i></p>	<ul style="list-style-type: none"> • Individual workers are given recognition when they engage in positive behaviours that reinforce values of equality, diversity, inclusion, respect and safety. • Leaders, managers and all workers call out positive behaviours in staff meetings. • The organisation/business has staff awards for positive behaviour. • Contribution to a positive workplace culture is valued in performance assessments and the consideration of promotions. <p>Additional measures most likely to be relevant for medium and large organisations and businesses:</p> <ul style="list-style-type: none"> • The organisation/business encourages and rewards positive behaviour through organisational values, job descriptions, recruitment processes, workers' contracts, codes of conduct, induction processes, on notice boards/the intranet, through performance targets and assessments, remuneration and bonus structures and through promotion processes. • Incentives are used to influence behaviour in positive ways and to reward people who behave respectfully and foster a safe and respectful workplace. This may include financial and non-financial incentives and benefits.
<p><i>Leaders and managers take action to ensure that online working environments are safe and respectful.</i></p>	<ul style="list-style-type: none"> • Leaders and managers moderate the chat function in online meetings and remove disrespectful and discriminatory content. • Leaders and managers educate workers on acceptable, respectful and safe online behaviours.



Outcome	Examples of practical ways to achieve the outcome
<p>The culture of the organisation/ business empowers workers (including leaders and managers) to report relevant unlawful conduct; minimises harm; and holds people accountable for their actions.</p> <p><i>Workers understand the role that everyone plays in preventing relevant unlawful conduct. Workers are encouraged and supported to act safely to respond to behaviours they witness that are inconsistent with expectations, such as relevant unlawful conduct (for example, as a 'bystander').</i></p>	<ul style="list-style-type: none">• The role of all people in the workplace for creating a positive workplace culture is openly discussed in team meetings and reflected in relevant policy documents.• Workers are encouraged to call out disrespectful behaviour when they see it.• Workers attend bystander training. <p><i>Note: Encouraging bystanders to take action does not replace accountability on the part of leaders for preventing and responding to relevant unlawful conduct.</i></p>



Outcome	Examples of practical ways to achieve the outcome
<p><i>Leaders and managers at all levels hold people accountable for their conduct and encourage workers to do the same.</i></p>	<ul style="list-style-type: none"> • Workers (including leaders and managers) call out disrespectful comments (for example, 'everyday sexism'). • Workers (including leaders and managers) refuse service or entry to customers or clients who engage in relevant unlawful conduct. • Leaders and managers have discussions with workers who engage in disrespectful behaviour or relevant unlawful conduct. • Leaders and managers ensure that appropriate disciplinary processes are implemented, and consistent and proportionate consequences applied, for workers who engage in relevant unlawful conduct. • Leaders and managers ensure that people who engage in relevant unlawful conduct are not protected, rewarded or promoted (including leaders and managers at all levels, workers and third parties such as 'high value' customers or clients).
<p>Records to demonstrate actions taken to meet <i>Standard 2: Culture</i> might include:</p> <ul style="list-style-type: none"> • 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 and job descriptions, as well as 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, diversity and inclusion strategies, targets and associated performance metrics • evidence of the taking of 'special measures' to further substantive equality. 	



6.3 Standard 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.

(a) Why is knowledge important?

Effective education has an important role to play in eliminating relevant unlawful conduct from workplaces, no matter the size of the organisation or business. Building knowledge about respectful behaviour, the nature of relevant unlawful conduct, what causes it, the extent to which it occurs, and the harm that it creates is critical for the elimination of such behaviours. Education is also vital to supporting workers to engage in safe, respectful and inclusive behaviour, as well as to identify and appropriately respond to unlawful conduct if it occurs. Education should be ongoing and aim to embed equality, respect, safety and inclusion as core organisational values.

Organisations and businesses should ensure that workers (including leaders and managers) are educated about the positive duty and relevant unlawful conduct and their roles, rights and responsibilities.⁵⁸ Behavioural standards and consequences for engaging in relevant unlawful conduct should be reflected in appropriate policies. In this context, a policy means a set of agreed or accepted rules for what is acceptable, as well as what will be done to respond to unacceptable behaviour.

While a policy can be created and communicated through actions (for example, by imposing proportionate consequences for inappropriate behaviour), it is strongly advised that policies also be recorded in writing. Written policies should be flexible and appropriately tailored, taking into account the particular circumstances of the organisation



or business and the composition of its workforce. They should also be regularly and consistently enforced, reviewed and updated for effectiveness.

Understanding the different forms of relevant unlawful conduct, and how they are experienced in a work context, is a complex but critical part of eliminating relevant unlawful conduct. To be effective, education should be presented as a necessary and meaningful part of participating in the workplace, rather than simply as a compliance requirement.

Organisations and businesses should ensure that education is connected to the organisational values and mission and provide ongoing opportunities for learning. Traditional approaches to training and education (for example, one-off training at induction), have proven ineffective at eliminating relevant unlawful conduct, if they are not also periodically reinforced with ongoing opportunities for workers to build and apply their knowledge and skills.

The focus of education should not be on the frequency of formal training or learning, but on its quality, accessibility and effectiveness, including consistent and regular messaging from leaders. To be most effective, the focus of education should extend beyond what is unacceptable to the kind of respectful workplace that organisations and businesses want to create or encourage.⁵⁹

The most effective education programs involve key concepts being revisited or presented repeatedly over time, to build knowledge and familiarity, including through formal training, team meetings, leader messaging and regular staff engagement.⁶⁰ Each time that a topic is revisited, it might involve deepening layers of complexity or different applications, depending on the audience. 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, diversity and inclusion

- be shown as important by leaders, through what they say and how they act (so that the training or formal learning is not viewed as simply a legal compliance or 'tick-a-box' requirement and so that workers meaningfully engage in skills development)
- be led by instructors with expertise in discrimination and harassment, as well as with 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 and on providing knowledge to support those skills
- involve immersive and active participation, with space for debate and discussion and opportunities to ask questions, or express doubt and concerns
- provide a safe environment for all participants, which may require that certain modules be gender-specific
- reflect the cultural diversity of the organisation or business.

Education and training should also be accessible to all members of the workforce and should meet the needs and reflect the experiences of all groups, including young workers, women, men, LGBTIQ+ workers, workers from culturally and linguistically diverse backgrounds, culturally and racially marginalised workers, Aboriginal and Torres Strait Islander workers and workers with disabilities. To be accessible, education and training may need to be available in different formats, with supports provided if requested.

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



(b) Practical examples of how an organisation or business might meet *Standard 3: Knowledge*⁶¹

Outcome	Examples of practical ways to achieve the outcome
<p>Organisations and businesses develop, communicate and implement a policy regarding respectful behaviour and unlawful conduct.</p> <p><i>A policy regarding respectful behaviour and unlawful conduct is developed, communicated to workers, consistently followed and regularly reviewed to make improvements (in consultation with workers and their representatives, where applicable).</i></p>	<ul style="list-style-type: none"> • The policy and associated HR processes outline obligations and set standards regarding respectful behaviour; clearly provide that relevant unlawful conduct is unlawful and unacceptable; provide information about reporting and detail the consequences for engaging in relevant unlawful conduct. Recommended content to be included in the policy is set out below in section 6.3(c). For most organisations/businesses, this policy should be in writing. A template policy is linked in Appendix 1. • The policy is communicated to workers through position descriptions, contracts, induction processes, education and training, emails, codes of conduct and notice boards. • The policy is regularly reviewed, for example, annually or after a significant incident. <p>Additional measures most likely to be relevant for medium and large organisations and businesses:</p> <ul style="list-style-type: none"> • Standards of behaviour are reflected in performance and promotion processes, as well as on the intranet.



Outcome

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

Workers are educated about expected standards of behaviour, including actions and attitudes that foster equality and respect. They are also educated about behaviours that constitute relevant unlawful conduct. The education is directed at achieving behavioural and attitudinal change and includes informing them that these behaviours are unlawful and unacceptable, as well as, the consequences for engaging in such conduct.

Workers are educated about 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.

Examples of practical ways to achieve the outcome

- Education includes formal training or learning, supplemented by ongoing learning opportunities and written materials. The Commission's factsheet on *Effective Education and Training* is linked in Appendix 1.
- Education is provided with a trauma-informed approach, given the sensitivity of the topics. This involves considering the potential impact that discussion of these topics can have on individuals, ensuring that appropriate support is available.
- Education is tailored to specific roles and responsibilities (such as workers, leaders and managers, senior leaders, board members, HR staff and those with responsibility for receiving and managing reports of relevant unlawful conduct).

Additional measures most likely to be relevant for medium and large organisations and businesses:

- The organisation/business uses quality industry, sector and profession-based educational resources which are tailored to its particular workforce and work environments and which reflect its specific risks and challenges.
- Relevant experts are engaged to provide education and training, support and advice.
- Leaders and managers are provided with specific education on how to take an intersectional approach to eliminating relevant unlawful conduct, as well as education to deepen knowledge of how such conduct can be experienced by particular groups.



Outcome	Examples of practical ways to achieve the outcome
<p><i>Leaders, managers and workers are provided with easy access to information about relevant unlawful conduct, the consequences for engaging in that conduct and where to seek support.</i></p>	<ul style="list-style-type: none"> • Information is included in posters, brochures, factsheets and written policies, including translated materials where available. Free resources and samples are linked in Appendix 1. • Information is accessible during and outside business hours (for example, on the intranet or in information sheets that workers can take home).
<p>Records to demonstrate actions taken to meet <i>Standard 3: Knowledge</i> might include:</p> <ul style="list-style-type: none"> • 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 appropriate behaviour and relevant unlawful conduct) 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 workers, leaders and managers • feedback from workers or engagement survey data to demonstrate the level of understanding of relevant unlawful conduct, as well as attitudes towards such conduct. 	



(c) Core policy content

The Commission expects that, at a minimum, any policy addressing relevant unlawful conduct will include:

- a statement that sex discrimination, sexual harassment and sex-based harassment, conduct that creates a hostile workplace environment on the ground of sex and victimisation are unlawful (i.e. against the law) and unacceptable (i.e. against the policy of the organisation/business)
- a statement confirming that the organisation/business has a legal obligation to eliminate this conduct, as far as possible (i.e. a positive duty)
- a commitment from the organisation/business to providing workers with a safe working environment
- definitions of sex discrimination, sexual harassment and sex-based harassment, conduct that creates a hostile workplace environment on the ground of sex and victimisation, with reference to the Sex Discrimination Act
- clear statements about how the policy applies to workers and third parties, and where it applies (for example, in a workplace, when 'at work' and in certain situations outside of work, where there is a connection to work)
- practical examples of behaviours that may constitute the different types of relevant unlawful conduct, including examples relating to the conduct of, and towards, third parties, and conduct involving electronic communication such as SMS, email and social media
- recognition that sex discrimination, sexual harassment and sex-based harassment and conduct that creates a hostile workplace environment on the ground of sex have underlying drivers, such as gender inequality
- the standard of behaviour that all workers and third parties (such as customers and clients) are expected to meet
- a section on risk management, including an acknowledgement that prevention of relevant unlawful conduct requires the identification of risks, and a reference to the business/organisation's risk management framework in relation to relevant unlawful conduct (see *Standard 4: Risk management*)
- available supports for people who experience or witness relevant unlawful conduct (see *Standard 5: Support*)
- how and where to report relevant unlawful conduct and the available reporting and resolution options (see *Standard 6: Reporting and response*)
- a clear statement that emphasises a person-centred and trauma-informed approach, including that the safety and wellbeing of the person disclosing or reporting relevant unlawful conduct is a priority for the organisation or business
- any action that may be taken following a report or where relevant unlawful conduct is suspected, as well as, any action that may be taken where relevant unlawful conduct is found to have occurred, including possible consequences
- information about external agencies that can provide advice, information and support on relevant unlawful conduct, including that people who experience criminal conduct, such as sexual assault, can report their experience to the police (see *Standard 6: Reporting and response*)
- who is responsible for the policy and where workers can provide feedback about it
- when the policy will be reviewed.



6.4 Standard 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.

(a) Why is risk management important?

All organisations and businesses carry the risk of relevant unlawful conduct impacting or involving their workers. No organisation or business, however, big or small, is immune.

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 should also understand who is most likely to be affected, acknowledging that some workers experience it more than others and face intersecting forms of discrimination. See Information Guide, section 8, 'What are the drivers and risk factors for relevant unlawful conduct at work?'. See also, section 9, 'Who is most at risk?'

Organisations and businesses that understand the nature and extent of relevant unlawful conduct concerning their workers can better assess the specific risks present in their workplaces. This includes 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 environment, structures and culture can drive it. They can also implement targeted measures to eliminate, reduce and/or control these risks (**control measures**).

A risk-based approach should be taken to address risk in a proactive way and in response to any relevant unlawful conduct that occurs.



A **risk-based approach** involves:

- a) regularly identifying and assessing the risk of relevant unlawful conduct occurring, as well as the impact that it might have on the health and safety of those affected
- 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 risk(s) and making adjustments 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. For more information on consultation, see the Commission's factsheet, *Effective Consultation*, linked in Appendix 1.

In undertaking risk assessment processes 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 warrant additional attention and measures.

See Appendix 3 for examples of specific control measures that might be implemented to address the risk of relevant unlawful conduct within a particular organisation or business.



(b) Practical examples of how an organisation or business might meet *Standard 4: Risk management*⁶²

Outcome	Examples of practical ways to achieve the outcome
<p>Organisations and businesses recognise that relevant unlawful conduct is an equality risk and a health and safety risk.</p> <p><i>Senior leaders treat relevant unlawful conduct as an equality risk, a health and safety risk and a legal risk.</i></p>	<ul style="list-style-type: none"> • Organisations and businesses ensure that senior leaders (including business owners) are actively involved in, and responsible for, the risk management process relating to relevant unlawful conduct. Senior leaders (including business owners for small organisations/businesses, and the board or equivalent and Chief Risk Officers in larger organisations/businesses) actively seek out, and are regularly provided with, information about: <ul style="list-style-type: none"> ◦ the risks, nature and extent of relevant unlawful conduct in the organisation/business ◦ actions taken to prevent and respond to relevant unlawful conduct ◦ outcomes of reports of relevant unlawful conduct and consequences for people who engage in relevant unlawful conduct ◦ trends, patterns and lessons learned. • Organisations and businesses establish, support and train personnel in the workplace with a specific mandate to address relevant unlawful conduct. • Organisations and businesses regularly review industry-relevant WHS guidance, including approved Codes of Practice which set out what is reasonably practicable to manage hazards, such as sexual harassment, under WHS laws. • Organisations and businesses create written records evidencing the risk management process undertaken. See further guidance at section 6.4(c) below about how a risk management process might be recorded in organisations/businesses of varying sizes. A sample risk management tool is linked in Appendix 1.



Outcome	Examples of practical ways to achieve the outcome
	<p data-bbox="730 411 1910 483">Additional measures most likely to be relevant for medium and large organisations and businesses:</p> <ul data-bbox="757 501 2038 975" style="list-style-type: none"><li data-bbox="757 501 1962 571">• ‘Compliance with the positive duty’ is included as a standing agenda item in senior leadership meetings and/or board meetings.<li data-bbox="757 579 2038 715">• Organisations and businesses appoint and train contact officers, health and safety representatives and establish relevant committees (where applicable). These roles and committees are appropriately supported, including by providing time during work hours to attend relevant training. Where possible, roles and committee membership should reflect the diversity of the workforce.<li data-bbox="757 722 1995 898">• Organisations and businesses hold leaders and managers accountable for monitoring risk and creating workplace cultures and systems that advance gender equality, respect, safety, diversity and inclusion. For example, the responsibility of leaders and managers in this regard is stated in job/position descriptions, codes of conduct or other policies, contracts, bonus structures and performance review and promotion processes.<li data-bbox="757 906 2007 975">• Organisations and businesses engage relevant external experts, where appropriate, to assist the organisation/business to undertake risk management.



Outcome	Examples of practical ways to achieve the outcome
<p><i>Organisations and businesses regularly consult workers, their representatives (where applicable) and other relevant stakeholders (including any organisations/businesses with a shared responsibility for workers).</i></p>	<ul style="list-style-type: none"> • Organisations and businesses consult workers and their representatives (where they have them) in relation to when and where workers are at risk (including the likelihood, duration and frequency of risks), proposed control measures and the effectiveness of control measures. For information on what makes consultation effective, see section 5.1. <ul style="list-style-type: none"> ◦ In a small organisation/business, this might include conversations with workers about the risk of relevant unlawful conduct and the response of the organisation/business. ◦ For larger organisations/businesses, consultation might be more formal and may include diversity and inclusion committees and working groups, as well as contact officers. • Organisations and businesses consult with other relevant stakeholders. <ul style="list-style-type: none"> ◦ This may include conversations about relevant risks with organisations/businesses which have a shared responsibility for workers and which will implement agreed upon control measures. • Consultation is conducted regularly. This includes when proposing changes to the work or work environment; when new or changed risks are identified; following any incidents (to assist with identifying why the incident occurred and how the risk could be better managed in future); and otherwise annually.



Outcome	Examples of practical ways to achieve the outcome
<p>Organisations and businesses take a risk-based approach to prevention and response.</p> <p><i>Organisations and businesses regularly identify and assess the risk of relevant unlawful conduct occurring (including the impact that it might have on the health and safety of those affected), in consultation with workers (and any representatives) and other stakeholders.</i></p>	<ul style="list-style-type: none"> • Organisations and businesses use a range of sources of information to consider when, where and how relevant unlawful conduct may occur, and who may engage in it (including third parties). <ul style="list-style-type: none"> ◦ In a small organisation/business, this might include: <ul style="list-style-type: none"> ▪ identifying industry characteristics that may affect its workforce and reviewing industry data on rates of relevant unlawful conduct – see Information Guide, section 10, ‘How common is relevant unlawful conduct?’ ▪ when a report of relevant unlawful conduct is made, monitoring to identify any signs that may indicate evidence of victimisation (for example, high levels of absenteeism or personal leave, or reduced performance) and discussing these with the workers involved ▪ collecting and evaluating relevant data and using it to inform risk assessment – see <i>Standard 7: Monitoring, evaluation and transparency</i> for further guidance. ◦ In a larger organisation/business, this might also include: <ul style="list-style-type: none"> ▪ identifying trends that may highlight areas of concern for affected workers such as considering whether a worker is performing differently, suddenly taking more sick leave, isolating themselves, not attending work functions, or if a work group has had an unusual number of resignations ▪ using exit interviews as an opportunity to ask departing workers about their views of the management of relevant unlawful conduct in the organisation/business, including policies concerning that conduct and compliance with those policies ▪ collecting de-identified details of all reports of relevant unlawful conduct, including those that are not pursued formally by the impacted person or where the report was previously found to be ‘unsubstantiated’ and using these to identify systemic issues.



Outcome	Examples of practical ways to achieve the outcome
	<ul style="list-style-type: none"> Organisations and businesses consider the duration, frequency and severity of the risk of relevant unlawful conduct. Organisations and businesses consider risks inherent in physical spaces and systems of work, as well as risks arising from particular workplace profiles. This includes risks associated with the drivers of relevant unlawful conduct (such as gender inequality and power imbalances). See Information Guide, section 8, 'What are the drivers and risk factors for relevant unlawful conduct at work?' Organisations and businesses consider 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 (such as people who may experience intersectional discrimination or those in insecure work). See Information Guide, section 9, 'Who is most at risk?'
<p><i>Organisations and businesses implement effective control measures to address the identified risks.</i></p>	<ul style="list-style-type: none"> Organisations and businesses implement control measures that may: <ul style="list-style-type: none"> Relate to the physical working environment to reduce the risk of workers and third parties in the workplace experiencing relevant unlawful conduct – such as installing security cameras and providing duress alarms. Involve changes to work methods and procedures to minimise the risk of relevant unlawful conduct. This may include, for example, rostering two people on in a shop in the evening, if there is evidence of an increased risk to workers during this time. <p>Examples of other, more specific, possible control measures are set out in Appendix 3.</p> <ul style="list-style-type: none"> Workers are provided with necessary education, training or instruction to implement the control measures. For example, if a control measure for an organisation/business that provides in-home services is that two workers conduct initial in-home care visits together to assess the risks, workers are provided with information and training on how to do this. Organisations and businesses review relevant WHS guidance on control measures. This may include, for example, Safe Work Australia's <i>Model Code of Practice for Managing Psychosocial Hazards at Work</i> and <i>Preventing Workplace Sexual Harassment Guide</i>. These are linked in Appendix 1.⁶³



Outcome	Examples of practical ways to achieve the outcome
<p><i>Organisations and businesses regularly review control measures to determine whether they remain effective and appropriate in controlling identified risks and to make any necessary changes where required.</i></p>	<p>See <i>Standard 7: Monitoring, evaluation and transparency</i> for further information about monitoring and evaluation of control measures.</p>
<p>Records to demonstrate actions taken to meet <i>Standard 4: Risk management</i> might include:</p> <ul style="list-style-type: none"> • correspondence with workers and meeting agendas and notes • a completed risk framework and/or risk register (or other evidence of a risk identification and assessment, as well as implementation and review of relevant control measures) • exit interviews, survey results or notes from consultations with workers (and their representatives) 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. 	

(c) Recording risk management

The risk management process conducted by **small organisations and businesses** (including organisations or businesses without workers) may be recorded in a less formal way than larger organisations and businesses. Rather than a formal documented risk management framework, it may involve making notes in a diary/workbook about the risks identified, the assessment of those risks, possible control measures, actions taken and review of those actions. What is important is not just how the risk management process is documented, but how the process is undertaken, applied and evaluated. It is anticipated that some form of written documentation will be required to demonstrate the risk management process undertaken.

In addition to the matters identified above for small organisations and businesses, risk management for **medium organisations and business** is expected to:

- include gathering relevant information about the culture, processes and systems of the organisation or business (including policies, programs, practices and procedures, whether written or unwritten)
- draw upon lessons learned from past experiences, including historical data from within the organisation or business, to identify trends and areas of risk

- involve an assessment of whether there is evidence of systemic discrimination or intersectional discrimination – for more information on systemic discrimination and intersectional discrimination, see the 'Intersectionality' guiding Principle in section 5.1 and the Glossary in section 7.

For **large organisations and businesses**, a formal risk management framework for relevant unlawful conduct may be developed and implemented or incorporated into existing WHS management framework(s).



6.5 Standard 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.

(a) Why is support important?

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 assists in fostering a safe, respectful and inclusive workplace culture. This in turn drives better behaviour and aids in the elimination of relevant unlawful conduct.

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 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. For further information, see the Commission's factsheet *Trauma-informed and Person-centred Approaches to Safe and Respectful Workplaces*, linked in Appendix 1.

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 adjusting workplace arrangements to allow them to avoid interacting with the person alleged to have engaged in the behaviour. It can also be more formal, such as through the provision of contact officers and 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.

Setting up an effective support framework also increases the likelihood that reports will be made when relevant unlawful conduct occurs. This enables organisations and businesses to take action to address the conduct and prevent any further incidents from occurring. Support is therefore very important to eliminating relevant unlawful conduct.

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 their workers, particularly when they have experienced relevant unlawful conduct. For small organisations and businesses, this may involve directing workers to free community supports and assistance. A summary of free support services is linked in Appendix 1.

Given that most people who experience relevant unlawful conduct at work do not report it,⁶⁴ organisations and businesses should provide support to workers as they need it, rather than only if and when a formal report is made. Information about available supports should be available for workers without the need for them to talk to anyone at work, such as on noticeboards or intranets. Any requests for support should be kept confidential.



(b) Practical examples of how an organisation or business might meet *Standard 5: Support*

Outcome	Examples of practical ways to achieve the outcome
<p>Organisations and businesses ensure that appropriate support is available to workers (including leaders and managers) who experience or witness relevant unlawful conduct.</p> <p><i>Internal support options are available. These are confidential and prioritise the affected person's safety and wellbeing.</i></p>	<ul style="list-style-type: none"> Internal support options are made available to workers. In a small organisation/business, internal support options might include the owner, a trusted senior worker, a health and safety representative or a union delegate. <p>Additional measures most likely to be relevant for medium and large organisations and businesses:</p> <ul style="list-style-type: none"> Internal support options might also include managers and HR representatives. Particular workers may be nominated to act as support people (such as contact officers and peer support networks) and trained in receiving disclosures of relevant unlawful conduct and harm. Specialist support options may also be provided that offer culturally specific services or involve people with relevant specialist expertise or training.



Outcome	Examples of practical ways to achieve the outcome
<p><i>External support options are available. These can be accessed anonymously or without disclosure to the organisation/business.</i></p>	<ul style="list-style-type: none"> External support options are made available to workers. In a small organisation/business, external support options might include 1800 RESPECT, the worker's GP, a counsellor, or a union representative. A list of support options is linked in Appendix 1. <p>Additional measures most likely to be relevant for medium and large organisations and businesses:</p> <ul style="list-style-type: none"> External support options might also include an Employee Assistance Program (EAP) funded by the organisation/business to provide an independent, confidential professional counselling support service to workers, which workers can access without referral. In addition, they might include establishing referral pathways to specialist response services for people experiencing relevant unlawful conduct, including people who are culturally and racially marginalised, people who identify as LGBTIQ+, or people with disability. The EAP program may also be extended to include wellbeing support that is broader than counselling. This may include, for example, leader support, financial and legal advice, mentoring, wellbeing coaching and dietary and health consultations.
<p><i>Support prioritises safety and minimises harm, by being person-centred and trauma-informed.</i></p>	<ul style="list-style-type: none"> When a report of relevant unlawful conduct is made, workers' safety and support for the worker is considered first, ahead of the formal reporting and disciplinary processes of the organisation/business. This means that: <ul style="list-style-type: none"> The worker who reports the conduct is asked what support they would like from the organisation/business. Consideration is given to the worker's leave arrangements and any temporary changes to working arrangements or other reasonable adjustments (considering the worker's wishes). This could include, for example, providing safe alternative work while a reporting process or investigation is ongoing.



Outcome

Examples of practical ways to achieve the outcome

Additional measures most likely to be relevant for medium and large organisations and businesses:

- Leaders and managers responding to queries about, and reports of, relevant unlawful conduct receive training, information and resources specific to their roles and responsibilities and are adequately supported by the organisation/business.
 - This includes training regarding the receipt of disclosures of relevant unlawful conduct and harm; taking a person-centred and trauma-informed approach to supporting impacted individuals (including consideration of diversity and intersectionality); and training around the importance of confidentiality.
 - This may also include accredited mental health first aid (MHFA) training, as well as training on self-care and vicarious trauma to assist their own mental health and wellbeing.
- A Mental Health First Aid Plan is developed. It equips relevant leaders and managers with the knowledge and confidence to recognise, connect and respond to someone experiencing a mental health challenge or crisis.
- Where necessary, guidance is sought from specialist experts. This may include, for example, in the field of trauma response (such as rape or sexual assault crisis counsellors or advisers) and/or in another specialist field (such as cultural safety or the provision of LGBTIQ+ tailored supports).



Outcome	Examples of practical ways to achieve the outcome
<p>Workers are informed about the available support, and can access the support, regardless of whether they report the conduct.</p> <p><i>Information about support options is easily accessible to workers (both while at work and when at home) and is able to be understood.</i></p> <p><i>Support is available for workers regardless of whether they report the relevant unlawful conduct.</i></p>	<ul style="list-style-type: none"> • An information sheet is given to workers when they first start work. A list of external support options that can be provided to workers is linked in Appendix 1. • Posters, flyers and other information about support options are displayed in the workplace, with copies made available for workers to take home. • An email with relevant links is provided to workers, with permission to forward to their personal email accounts. • It is expressly stated in relevant materials that support will be offered to workers even if they choose not to make a formal report about the conduct that they have experienced or witnessed. <p>Additional measures most likely to be relevant for medium and large organisations and businesses:</p> <ul style="list-style-type: none"> • Information about support options is available on the staff intranet.
<p><i>When a report is made, support is available during the reporting and response process, as well as after it has concluded.</i></p>	<ul style="list-style-type: none"> • Workers who choose to make a report are provided with a nominated contact person with whom they can discuss any concerns (including about victimisation). Wherever possible, this contact person is independent from people responsible for managing reports of relevant unlawful conduct and making decisions about outcomes. • Workers can continue to access support after a reporting and response process has concluded. This is to support their wellbeing, the restoration of working relationships and to assist with career progression (to ensure that their career prospects are not impeded and that they do not experience victimisation or other adverse consequences).



Records to demonstrate actions taken to meet *Standard 5: Support* might include:

- written materials such as posters, brochures, information sheets or emails setting out available support options
- attendance records for training sessions that include support options, associated training content and evaluation of training content by participants
- 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 the EAP service is accessed by workers.



6.6 Standard 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.

Consequences are consistent and proportionate.

(a) Why are reporting and response processes important?

Setting up effective processes for reporting and responding to relevant unlawful conduct demonstrates that relevant unlawful conduct is not acceptable to an organisation or business. Effective processes build trust in the reporting process which, in turn, can help to prevent relevant unlawful conduct from happening in the first place.

Reporting processes are the avenues available for people to raise issues and concerns. These can be formal or informal, internal or external. Response processes are the ways in which an organisation or business responds to relevant unlawful conduct, either raised in a formal report or outside the formal reporting process.

Wider evidence shows that very few workers feel confident to report relevant unlawful conduct. The National Survey 2022 reports that fewer than 1 in 5 Australian workers formally reported sexual harassment when they experienced it.⁶⁵ Further, 22% of respondents who reported sexual harassment felt 'not at all satisfied' with the process that occurred once their report was made.⁶⁶ Numerous factors keep people from feeling safe or comfortable

to report relevant unlawful conduct. See Information Guide, section 12, 'What prevents people from reporting harmful behaviours?' These factors should be considered when developing a reporting and response process or framework in any organisation or business.

Conventional approaches to reporting and response processes by organisations and businesses have proven ineffective. This is partly because of limited options and choice for the person impacted by the conduct. Further, the focus on investigations, which are often lengthy, adversarial and complex, can be traumatising and disempowering for those who make a report.⁶⁷ 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 or their preferences for resolution.

Reporting and response processes should have the following features:⁶⁸

- **Accessibility, clarity and simplicity:** Information about reporting is readily available and is written in clear, understandable and non-threatening plain English. Barriers to meaningful



participation (for example, as a result of language differences) are considered and appropriate adjustments are made (for example, by using telephone interpreters). Responsibilities and actions are clear.

- **Timeliness:** There is a commitment to timely resolution and the process is conducted without undue delay.
- **Transparency:** Information about the reporting and response processes, including how decisions are made, is easily accessible and understandable. The process and possible outcomes are clearly explained to affected people at the outset; they are kept up to date about progress; and are informed of outcomes. Wherever possible, outcomes are communicated to the person who experienced the conduct and reported to the broader workforce on a de-identified or aggregated basis (ensuring that there is appropriate consideration of the affected person's wishes in how this may be communicated). For further information on balancing transparency and confidentiality in sexual harassment matters see the Champions of Change Coalition's *Sexual Harassment: A Guide to Confidentiality and Transparency* linked in Appendix 1.
- **Multiple reporting avenues and resolution options:** Multiple reporting pathways (internal and external) are available and workers are aware of them. An emphasis is placed on early intervention and on affording the person affected by the conduct a choice in the process. There is recognition that an investigation is not always the best option.
- **Fairness:** Processes are fair for all parties, with all parties invited to participate and the person dealing with the report impartial. Wherever possible, people responsible for investigating and deciding consequences are separate from parties' own support people.
- **Appropriate outcomes and consequences:** Accountability is crucial to building trust in reporting processes.

A belief that certain workers can 'get away' with bad behaviour, or are too valued in an organisation or business to be disciplined, keeps many workers from reporting. Consistent and proportionate consequences should be imposed for bad behaviour, regardless of the role, level of seniority or importance of the person engaging in the conduct.

- **Person-centred and trauma-informed:** These concepts are interrelated and involve ensuring that processes for reporting and responding to relevant unlawful conduct incorporate an understanding of trauma and how it affects people and avoid causing further harm. This includes ensuring that all reports are taken seriously and that impacted people are given an opportunity to be heard, feel safe to make a report and have a say in what happens. The wellbeing and safety of people affected is prioritised. See further explanation in the Commission's factsheet, *Trauma-informed and Person-centred Approaches to Safe and Respectful Workplaces* linked in Appendix 1. Also see *Standard 2: Culture* for more information about how to foster a safe reporting culture.
- **Prohibition on victimisation:** Victimisation is prohibited and consequences are applied if it occurs.
- **Confidentiality:** Information about a report is only provided to those people who need to know about it. While a matter is being resolved, the process is confidential to ensure that the process can be fairly carried out and confidentiality requirements are made clear to people involved. People affected by relevant unlawful conduct are not prohibited from speaking about their experiences at the conclusion of a matter. For further information on the use of confidentiality clauses and sexual harassment, see the Respect@Work Council's *Guidelines on the Use of Confidentiality Clauses in the Resolution of Workplace Sexual Harassment Complaints* linked in Appendix 1.



(b) Practical examples of how an organisation or business might meet *Standard 6: Reporting and response*⁶⁹

Outcome	Examples of practical ways to achieve the outcome
<p>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.</p> <p><i>Workers and third parties (such as clients, customers and patients) are provided with information about their reporting and resolution options, including without the need to speak to anyone.</i></p>	<ul style="list-style-type: none"> • Appropriate information is communicated to workers. Communication might include an information sheet when starting work, posters and flyers in the workplace (and in a form that people can take home), regular discussions at appropriate forums (such as meetings with workers and their representatives), a written policy or procedure, emails to workers or information on a staff intranet. Information should be accessible to workers to access, without the need to speak with anyone within the organisation/business. • Appropriate information is communicated to third parties. Communication might include posters in the workplace stating that relevant unlawful conduct is unlawful and unacceptable and what they can do if a worker engages in relevant unlawful conduct. See example signage linked in Appendix 1. It might also include information in emails or on a website stating that they have a right to receive a service that is free from relevant unlawful conduct and options for reporting.
<p><i>There are multiple options for reporting relevant unlawful conduct, including internal and external options.</i></p>	<ul style="list-style-type: none"> • In a small organisation/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 larger organisation/business, this might also include multiple internal pathways (such as online or through a choice of different nominated people). <p>Note: <i>Safe reporting might mean reporting externally (particularly in a small organisation or business, due to its size) and people should not be required to report internally first.</i></p>



Outcome	Examples of practical ways to achieve the outcome
<p><i>There are options for reporting informally or formally, verbally or in written form, as well as anonymously.</i></p>	<ul style="list-style-type: none"> • In a small organisation/business, anonymous reporting might be through an anonymous feedback box. • In a larger organisation/business, this might include a Whistleblower Hotline (that is appropriately set up to receive reports of relevant unlawful conduct).
<p><i>Reporting processes are safe and confidential (which includes being person-centred and trauma-informed).</i></p>	<ul style="list-style-type: none"> • A person who experiences relevant unlawful conduct is given a choice about whether to make a formal report and how they do so. Their preferences for how the conduct should be dealt with are considered, while also balancing relevant legal duties (such as the duty to take reasonable and proportionate measures to eliminate relevant unlawful conduct, as far as possible, and WHS duties). • People handling reports have appropriate knowledge and skills. This may include, for example, by reading these Guidelines or being educated in how to receive and manage reports of relevant unlawful conduct in a person-centred and trauma-informed way. For further information see the Commission's factsheet, <i>Trauma-informed and Person-centred Approaches to Safe and Respectful Workplaces</i>, linked in Appendix 1. • Workers and third parties (such as customers, clients and patients) can lodge a report after their workplace relationship or interaction with the organisation/business has concluded. • A clear process exists for making and handling reports about senior leaders (including board members where relevant), developed in consultation with workers. • Processes consider the demographics of the workforce, the working environment and the needs of workers (particularly those at higher risk of experiencing relevant unlawful conduct). See Information Guide, section 9, 'Who is most at risk?' <p>For more information relating to sexual harassment, see 'Reporting avenues' on the Respect@Work website, linked in Appendix 1.</p> <p>Additional measures most likely to be relevant for medium and large organisations and businesses:</p> <ul style="list-style-type: none"> • There is diversity in the people (age, gender, and seniority) who handle reports.



Outcome	Examples of practical ways to achieve the outcome
<p><i>Reporting processes are regularly reviewed for effectiveness.</i></p>	<ul style="list-style-type: none"> Workers are consulted in relation to reporting processes (for example, annually or following any significant reports). Reviews consider data relating to reporting processes, including outcomes of reports for individuals and the organisation or business. See <i>Standard 7: Monitoring, evaluation and transparency</i>.
<p>Responses to reports of relevant unlawful conduct are consistent, timely, and minimise harm to people involved.</p> <p><i>Appropriate options for resolving reports of relevant unlawful conduct are available and a consistent approach is taken to responding.</i></p>	<ul style="list-style-type: none"> Multiple pathways for resolving reports of relevant unlawful conduct are available. Pathways include early intervention and both formal and informal resolution options. For more information relating to sexual harassment, see 'Resolution pathways' on the Respect@Work website, linked in Appendix 1. The importance of the person alleged to have engaged in the conduct (such as their level of seniority, ability to bring in revenue for the organisation/business, or their value as a client) does not impact on the response. <p>Note: While an organisation/business should consider any relevant legal obligations in relation to the conduct of investigations and disciplinary procedures (for example, under an enterprise agreement), the approach to responding to reports of relevant unlawful conduct should not be influenced by the perceived importance of the people involved.</p> <ul style="list-style-type: none"> External referral options for the investigation and management of reports are used when needed for impartiality (for example, when the organisation/business is too small, or a conflict of interest cannot be appropriately managed internally). External referral, reporting and resolution options may include the Australian Human Rights Commission, the Fair Work Commission, the Fair Work Ombudsman, WHS regulators and state and territory anti-discrimination bodies. For larger organisations/businesses, external referral options might include a specialist investigator or a law firm with specialist skills and training.



Outcome	Examples of practical ways to achieve the outcome
<p><i>Responses to reports minimise harm by being person-centred and trauma-informed.</i></p>	<ul style="list-style-type: none"> • Safety and wellbeing is prioritised, rather than the reputation of the organisation/business or a focus on immediately starting a formal disciplinary process. • Processes recognise the impact of trauma and support the affected person’s choice and control over the process, as far as possible. • Processes allow the person to tell their experiences in their own words, and minimise the need to tell it multiple times and to multiple people. • The affected person can stop or withdraw from the process at any time. • The affected person has a clear understanding of the timeframes and decision points. They receive regular updates. <p>For further information see the Commission’s factsheet, <i>Person-centred and Trauma-informed Approaches to Safe and Respectful Workplaces</i>, linked in Appendix 1.</p>
<p>Consequences are consistent and proportionate.</p> <p><i>A variety of outcomes are considered, including sanctions or disciplinary action, as well as corrective actions targeted at behavioural and systemic change.</i></p>	<ul style="list-style-type: none"> • Consequences are applied consistently regardless of the alleged perpetrator’s role in an organisation. For example, it is inappropriate for a senior person who brings in a lot of income to the organisation/business to be given a warning, while a junior person’s employment is terminated for the same conduct. • Sanctions or disciplinary outcomes exist along a scale of seriousness and might include an apology, ongoing monitoring, verbal/written warnings, suspension, barriers to pay increases, impact to bonus, barriers to promotion, demotion or dismissal. • Corrective actions targeted at behavioural and systemic change may include coaching training, addressing culture, the consequences for work opportunities and promotions, or addressing power imbalances.



Outcome	Examples of practical ways to achieve the outcome
<p><i>Wherever possible, outcomes are communicated to relevant parties (and more broadly in a general or de-identified way).</i></p>	<ul style="list-style-type: none"> • Privacy obligations are considered on a case-by-case basis and not applied as a blanket reason for not communicating outcomes. Competing interests are fairly and carefully balanced, with particular consideration given to the wellbeing and safety of the person who experienced the conduct. For further guidance, see the Champions of Change Coalition’s, <i>Sexual Harassment: A Guide to Confidentiality and Transparency</i>, linked in Appendix 1. • People who report relevant unlawful conduct are not required to commit to blanket confidentiality obligations. For further information relating to sexual harassment, see the Respect@Work Council’s <i>Guidelines on the Use of Confidentiality Clauses in the Resolution of Workplace Sexual Harassment Complaints</i>, linked in Appendix 1.
<p>Records to demonstrate actions taken to meet <i>Standard 6: Reporting and response</i> might include:</p> <ul style="list-style-type: none"> • posters or brochures setting out reporting options and possible response pathways and outcomes • a written procedure or policy for reporting relevant unlawful conduct • outcomes of reviews of processes and systems for reporting and responding to incidents • outcomes of consultation with workers, or surveys regarding workers’ perceptions of the reporting and response processes • data maintained regarding reports, including the response taken and the outcome (kept confidentially and securely stored). 	



6.7 Standard 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.

(a) Why are monitoring, evaluation and transparency important?

Understanding the nature and extent of any problem is a critical step to eliminating it. Data helps organisations/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 or to respond effectively if it does occur. Data can also be used to provide transparency to leaders (for governance, compliance and oversight purposes), workers (to build trust and demonstrate accountability) and other relevant stakeholders.

This Standard addresses:

- **Monitoring** – What data should be collected and how.
- **Evaluation** – How that data should be used.
- **Transparency** – What data should be shared and with whom (both internally and externally).

Monitoring

Organisations and businesses should not rely only on the number of reports of relevant unlawful conduct to measure the extent of relevant unlawful conduct concerning their workers. This is because:

- Underreporting is significant and widespread across all industries. For more information about barriers to reporting, see Information Guide, section 12, 'What prevents people from reporting harmful behaviours?'
- An absence of reports does not mean that relevant unlawful conduct is not happening in a workplace. Rather, it may indicate that existing reporting mechanisms are perceived to be ineffective or as not meeting the needs of workers.
- Organisations and businesses may see an increase in reports as their workplace culture improves. This does not mean that there is an increase in poor behaviour. Rather, it may reflect that people now feel safe to report it; that workers better understand what conduct is not acceptable; and that they trust that the organisation/business will do something about it.

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 control measures are effective.

For the purpose of these Guidelines, 'data' includes:

- **Quantitative data** – being things that can be counted or given a numerical value. These may include the number of reports of relevant unlawful conduct, rates of worker absenteeism and uptake of parental leave across genders.
- **Qualitative data** – being things that cannot be given a numerical value, but that measure qualities or characteristics, thoughts, feelings and opinions. These may include workers' stories about their experiences at work, feedback from workers and third parties, consultations and observations.

What data can be collected?

Understanding how to **prevent** relevant unlawful conduct involves acknowledging and addressing the presence of known drivers of the behaviour in your workplace, such as gender inequality, power imbalances, lack of diversity and lack of accountability. See Information Guide, section 8, 'What are the drivers and risk factors for relevant unlawful conduct at work?' Data can also be collected to understand how the organisation or business **responds** to relevant unlawful conduct.

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

- leadership (including power imbalances and accountability)
- workplace culture (including gender equality, diversity and inclusion)
- specific industry and workplace characteristics
- workers' understanding of relevant unlawful conduct (including the effectiveness of education initiatives)
- support options (including how frequently they are accessed, and whether support options meet the needs of workers)
- reports of relevant unlawful conduct (including how many reports are made and what kind of conduct is reported)
- processes for reporting and responding to relevant unlawful conduct (including timeframes for resolution, outcomes and whether processes meet the needs of workers).

For more information on the types of data to be collected in relation to the topics above, see section 6.7(c).

Many organisations and businesses already collect relevant data, and report it internally and externally, in accordance with existing regulatory and reporting regimes. Examples include data submitted to the Workplace Gender Equality Agency and data collected in accordance with the ASX Corporate Governance Principles. These actions can assist organisations and businesses to meet *Standard 7: Monitoring, evaluation and transparency*.



How can data be collected?⁷⁰

Organisations and businesses can collect data relating to the topics outlined above from a variety of sources, depending on their size and circumstances. Relevant data sources include:

- consultations with workers (and their representatives, where relevant), including an anonymous feedback box, interviews and focus groups, surveys and exit interviews
- feedback from third parties, including by reviewing comments on the business/ organisation's social media account and customer feedback
- workforce statistics, such as workforce turnover rates, rates of absenteeism and use of sick leave, as well as rates of access to flexible working arrangements and parental leave across all genders.

Collecting data may be more difficult for smaller organisations and businesses. Monitoring within the workplace, and associated evaluation, can be supplemented by best practice research and publicly reported data about the nature and extent of relevant unlawful conduct and effective control measures. This can be collected at the industry, professional or sector level.⁷¹

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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.

.....

Evaluation

Data should be used to determine whether the measures in place to prevent and respond to relevant unlawful conduct are working and how they can be improved. Evaluation and improvement is an ongoing process. There is no 'end point' to creating the 'perfect' system. Rather, ensuring safe, respectful, diverse and inclusive workplaces involves proactive maintenance and should be part of the everyday running of an organisation or business.

Data collected should inform:

- **the identification of risks relating to relevant unlawful conduct** – do prevention measures address the known drivers of relevant unlawful conduct (such as gender inequality, power imbalances, lack of diversity, lack of accountability) and workplace and industry specific factors?
- **the evaluation of the effectiveness of actions taken to eliminate relevant unlawful conduct** – are the measures in place working to eliminate relevant unlawful conduct? If not, why not?
- **the improvement of processes for reporting and responding to relevant unlawful conduct** – are people willing to report relevant unlawful conduct when it occurs? If not, why not? Were people who reported relevant unlawful conduct satisfied with the process once they did?
- **the evaluation of workplace culture and the role of leadership in creating safe, respectful and inclusive workplaces** – do workers trust leaders and managers to eliminate relevant unlawful conduct and take appropriate action when it occurs?
- **the evaluation of the effectiveness of education and training initiatives** – do workers understand what behaviours constitute relevant unlawful conduct and what is acceptable? Do they understand the risk factors that make it more likely to occur (for example, gender inequality)?

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 **senior leaders** who are responsible for governance of the organisation/business and oversight of the 'prevention and response plan'. Transparency assists senior leaders to understand the nature and extent of relevant unlawful conduct and informs measures to eliminate it. Transparency with **leaders and managers** also helps them to be more effective in addressing risks.

Data should be reported to **workers** to assist in education initiatives; to increase trust in the organisation or business; and to create positive change. Transparency can increase workers' confidence that relevant unlawful conduct is taken seriously by the organisation or business and establish expectations about appropriate workplace behaviour.

Transparency includes being:

- **Open** about the risk of relevant unlawful conduct in the workplace and reported behaviours. Specific information should be provided to workers, leaders and managers to ensure that they are able to meet their obligations to prevent and respond to relevant unlawful conduct. Information can also be shared publicly, in company reporting or in media statements.
- **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. This includes being visible about outcomes to reports of relevant unlawful conduct noting that, while it is necessary to consider personal privacy in individual cases, this should not be used as a 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 affected people are provided with procedural fairness. Confidentiality should not be used, however, as a reason to refuse to provide transparency over outcomes, wherever possible. For further guidance on balancing confidentiality and transparency in the context of sexual harassment, see the Champions of Change Coalition's *Sexual Harassment: A Guide to Confidentiality and Transparency*, linked in Appendix 1.
- **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.



(b) Practical examples of how an organisation or business might meet *Standard 7: Monitoring, evaluation and transparency*⁷²

Outcome	Examples of practical ways to achieve the outcome
<p>Organisations and businesses collect appropriate data to understand the nature and extent of relevant unlawful conduct concerning their workforce.</p> <p><i>Data is collected to assist in the identification and assessment of the risk of relevant unlawful conduct, as well as in the development of appropriate measures to prevent and respond to it.</i></p>	<ul style="list-style-type: none"> • Data may be collected in relation to leadership, culture, worker knowledge, risks arising from specific industry and workplace characteristics, support options, reporting and response processes. For more information on the types of data to be collected, and how that data may be collected, see section 6.7(c). • Data may be collected from workers, including through an anonymous feedback box, consultation with workers (and their representatives) including interviews and focus groups, surveys and exit interviews. For guidance on developing survey questions, see Our Watch’s <i>Workplace Equality and Respect: People Survey Tool</i>, linked in Appendix 1. • Data may be collected from third parties, including by reviewing comments on social media and customer feedback. • Data may be collected using workforce statistics, such as worker turnover rates, rates of absenteeism and use of sick leave, and rates of access to flexible working arrangements and parental leave across all genders. • ‘Knowledge checks’ can be conducted to test workers’ understanding of relevant unlawful conduct and workplace expectations. In a smaller organisation/business, this may involve informal discussions with workers. In a larger organisation/business, this may involve surveys or tests as part of education programs. <p>Additional measures most likely to be relevant for medium and large organisations and businesses:</p> <ul style="list-style-type: none"> • External expertise is engaged to identify and gather relevant data.



Outcome	Examples of practical ways to achieve the outcome
<p>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.</p> <p><i>Measures implemented to address relevant unlawful conduct (including support options and reporting and response processes) are regularly reviewed to ensure that they remain effective.</i></p>	<ul style="list-style-type: none">• Organisations and businesses regularly review their measures for eliminating relevant unlawful conduct (including specific control measures and their 'prevention and response plan') to ensure that they remain effective.<ul style="list-style-type: none">◦ In a smaller organisation/business, this might include asking and recording responses to the following questions: Are there strategies for preventing and responding to relevant unlawful conduct in place? How do we know if they are effective? Are they updated following an incident of relevant unlawful conduct or when circumstances change? Are people who engage in relevant unlawful conduct being held accountable?◦ In a larger organisation/business, this might include a more formal monitoring and evaluation framework. External expertise may also be engaged to assist with analysing relevant data.• Evaluation is undertaken with the input of workers and other relevant stakeholders.• Evaluation is informed by the data that is collected.• Measures to eliminate relevant unlawful conduct are updated following any evaluation to ensure continuous improvement.



Outcome	Examples of practical ways to achieve the outcome
<p>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.</p> <p><i>Leaders (including the board or equivalent), managers, workers and other relevant stakeholders receive information on the nature and extent of relevant unlawful conduct in the organisation/business, as well as actions taken to prevent and respond to it.</i></p>	<ul style="list-style-type: none"> • Relevant data is shared with senior leaders to inform the ‘prevention and response plan’ and ensure effective governance. See <i>Standard 1: Leadership</i> for more information. • Case studies and information about incidents, associated lessons (including themes of harmful behaviours) and progress over time are shared with leaders, managers and workers. This information could be communicated through team meetings or ‘toolbox talks’ and supplemented by internal emails, sent on an annual basis or post-incident, acknowledging any issues and reiterating that relevant unlawful conduct is unacceptable. <p>Note: <i>Before sharing information, the wishes of the affected person should be considered. Any information should be appropriately de-identified to protect the privacy of the affected person (unless they provide their consent to be identified). The privacy of others including witnesses, bystanders and the person who engaged in the conduct should also be considered when de-identifying the information. De-identified case studies may not be appropriate in small organisations/businesses because affected people may be easily identifiable even if they are not named.</i></p> <p>Additional measures most likely to be relevant for medium and large organisations and businesses:</p> <p>Public reporting is conducted that includes assessment of the effectiveness of the systems and frameworks in the organisation/business for addressing relevant unlawful conduct. This reporting could be done via an annual report or content on the business/organisation’s website or another accessible platform.</p>



Records to demonstrate actions taken to meet *Standard 7: Monitoring, evaluation and transparency* might include:

- notes of reflections undertaken
- meeting notes of consultation conducted with workers, survey results, feedback, exit interviews and associated analysis
- feedback from third parties 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 an assessment of measures to eliminate relevant unlawful conduct, in response to a review of the data and information collected.



(c) Examples of the type of data that may be collected

Topic	Examples of relevant data
Leadership (including accountability and power imbalances)	<ul style="list-style-type: none"> • Feedback from workers on leadership, including workers' views about: <ul style="list-style-type: none"> ◦ leaders' accountability for their own behaviour ◦ whether leaders hold others accountable for their behaviour (including other leaders) ◦ leaders' attitude towards gender equality, diversity and inclusion ◦ leaders' attitude towards preventing and responding to relevant unlawful conduct, as well as the effectiveness of measures implemented by leaders • Feedback from workers on their experiences of power imbalances at work and their perceptions about whether people are held accountable for unlawful behaviour.

Topic	Examples of relevant data
<p>Culture (including gender equality, diversity and inclusion)</p>	<ul style="list-style-type: none"> • Feedback from workers about their attitudes towards workplace culture, worker wellbeing and worker satisfaction. This could include, for example, feedback about workers’ willingness to raise concerns, feelings of safety, perceptions of leaders and managers at all levels, as well as experiences of intersectional discrimination. • Feedback from workers about their perceptions of whether the organisation/business is committed to gender equality, diversity and inclusion. • Feedback from workers about whether leaders and managers, workers and third parties are held accountable for poor behaviour. • Regularity of formal discussions about workplace culture, especially at senior leadership levels. • Gender balance across the entire organisation and, where applicable, at different levels of seniority and all stages of the worker lifecycle, including recruitment, promotion and retention. <ul style="list-style-type: none"> ◦ In larger organisations/businesses, this involves consideration of performance against gender equality and diversity targets; proportion of the workforce working flexibly (including uptake of parental leave by people of all genders) and their experiences of flexible working and inclusion; retention rates following workers taking parental leave; gender pay gap data; promotion and retention data; and career outcomes for people with caring responsibilities. This data could be collected via HR systems and through exit interview data and worker surveys and feedback. For further guidance, see the Champions of Change Coalition’s <i>2022 Impact Report</i>, linked in Appendix 1. • Demographic make-up of the workforce (including gender and age) and diversity of the workforce (such as predominance of certain visa types or language groups, LGBTIQ+ status, disability). This could be collected directly from workers (on a voluntary and anonymous basis), using surveys or HR systems.
<p>Knowledge</p>	<ul style="list-style-type: none"> • Workers’ understanding of, and knowledge about, relevant unlawful conduct. • Regularity and effectiveness of training and education about relevant unlawful conduct and workplace culture.



Topic	Examples of relevant data
<p>Risks arising from specific industry and workplace characteristics</p>	<ul style="list-style-type: none"> • Feedback from workers about when and where they feel at risk of experiencing relevant unlawful conduct. • Feedback from workers about the effectiveness of workplace initiatives designed to eliminate relevant unlawful conduct. • Feedback from workers (including anonymous feedback) in relation to their experiences of intersectional discrimination and systemic discrimination. This could include, 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. • Data that may indicate a particular area or team where relevant unlawful conduct is occurring but is not reported. This may include rates of worker absenteeism (for example, when workers suddenly take more sick leave); worker turnover (for example, when a work group has an unusually high number of resignations); exit interviews, workers' compensation claims, collective or trend data from EAP counselling services.

Topic	Examples of relevant data
<p>Support, reporting and response</p>	<ul style="list-style-type: none"> • Workers’ knowledge of available support options and reporting processes for those who witness or experience relevant unlawful conduct. • Workers’ experiences of relevant unlawful conduct and what happened after the conduct took place (including whether they decided to report the conduct and, if so, how that report was made such as through formal, informal and anonymous reports). • Worker satisfaction with, and trust of, reporting processes and supports provided (including outcomes and action taken). <ul style="list-style-type: none"> ◦ In a small organisation/business this might include a formal reflection following the resolution of individual reports, as well as obtaining worker feedback on an individual and aggregate basis. ◦ In a larger organisation/business, this might also include a more systemic analysis of data and trends. • Frequency with which supports are accessed, the nature of the supports most commonly utilised, and workers’ satisfaction with supports accessed (collected on a de-identified and confidential basis). • Nature and frequency of reports, nature of response, time taken to resolve reports, nature of outcomes (including formal, informal and anonymous) and career outcomes for those who make a report. <ul style="list-style-type: none"> ◦ In a small organisation or business, this might include reports by email, phone or social media. ◦ In a medium or large organisation or business, this might include reports made informally and formally and via digital and app-based reporting tools or whistle-blower reporting services. It might also include collecting de-identified details of all reports, including those that are not pursued. This includes reviewing the nature and frequency of reports, as well as their outcomes, to identify and assess potential risks. For example, while individual reports may have been found not to be proven, when viewed together, they may assist to identify systemic issues which require action to be taken. • In a large organisation/business, this may involve establishing a central register to record reports of, and information about, relevant unlawful conduct, so as to facilitate the assessment of trends and identification of the extent of that conduct.

Guidance about other potential data sources relating to sexual harassment can be obtained from the *Good Practice Indicators Framework for Preventing and Responding to Workplace Sexual Harassment*, available on the Respect@Work website, and linked in Appendix 1.



07

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Glossary of key terms used in these Guidelines

Agent (of a 'person conducting a business or undertaking' or employer)

An agent is someone who acts on behalf of an organisation or business. [section 4.4]

Bystander

Someone who witnesses or overhears relevant unlawful conduct.

Contact officer

A contact officer – sometimes known as a harassment officer, equal opportunity officer or equity contact officer – is a staff member who has been provided with additional training and assists people who experience discrimination and harassment in the workplace.

Contact officers provide an opportunity for their colleagues to talk informally about their concerns, identify issues, become informed and weigh up the best options for resolution.

Contact officers do not represent or speak on behalf of the organisation/business or the worker, and they do not provide legal advice.

Contract worker

A person (the first person) who does work for another person pursuant to a contract between the employer of the first person and that other person.

See definition in section 4(1) of the Sex Discrimination Act.

Control measures

Actions taken to eliminate, prevent, reduce and/or control risks.

See Appendix 3 for specific control measures relating to relevant unlawful conduct.

Commission agent

A person who does work for another person as the agent of that person, and who is remunerated, whether in whole or in part, by commission.

See definition in section 4(1) of the Sex Discrimination Act.

Culturally and linguistically diverse

The term 'culturally and linguistically diverse' is typically used to refer to people of non-English speaking background and people born outside of Australia, as well as people whose first language is not English. People may not identify with the term as it does not capture the complex nature of many Australians' cultural heritage. In the context of these Guidelines, culturally and linguistically diverse refers to racial, cultural, and religious people or communities who are not First Nations.

Culturally and racially marginalised (CARM)⁷³

In these Guidelines, the term 'culturally and racially marginalised' (CARM) is used to refer to individuals who are not white. This group includes people who are Black, Brown, Asian, or any other non-white group, who face marginalisation due to their race.

The term 'culturally' is added because these individuals may also face discrimination due to their culture or background. For example, a woman who is a Muslim migrant from South Sudan may face discrimination because of her race and her religion and cultural background.

It should be noted that First Nations peoples have a unique status in Australia. The term 'CARM' is not used to describe First Nations peoples and their experiences of colonisation.

Diversity

In these Guidelines, diversity refers to the mix of people in an organisation – being all the differences between people in how they identify in relation to their:

- social identity e.g., First Nations background, race, nationality, refugee and/or migrant status, age, gender, caring responsibilities, socio-economic background, LGBTIQ+ status, disability, culture, language and/or faith
- professional identity e.g., profession, abilities, thinking and behavioural styles, education, job function, organisational level and location.

This diversity definition also takes into account multiple intersecting dimensions of our identity which can be both visible or invisible.

Employee

An employee is a person who is employed or engaged by another person, including by way of part-time or temporary employment, work under a contract for services (a contractor) or work as a Commonwealth or State/Territory employee. [section 4.4].

Employer

An employer is a person who:

- employs another person, including by way of part-time or temporary employment (including as a Commonwealth or State/Territory employee)
- engages another person to perform work under a contract for services (a contractor) [section 4.2].

Gig worker

A gig worker is a person who does temporary or freelance work, especially an independent contractor engaged on an informal or on-demand basis.

Health and safety representative or 'HSR'

A HSR is a worker who is elected to represent workers on health and safety matters. They have responsibilities under WHS (Work Health & Safety) legislation.

Hostile workplace environment on the ground of sex

It is unlawful under the Sex Discrimination Act to subject another person to a workplace environment that is hostile 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.

See Information Guide, section 6, for full legal definition and examples.

Inclusion

Inclusion is about creating a workplace environment that enables the mix of people within it to work together effectively to improve performance and wellbeing. Research shows that the essential elements for people to feel included are:

- feeling respected for who they are in the workplace
- feeling connected to colleagues and that they belong in the work environment
- having equal access to opportunities and resources
- feeling able to contribute their perspective and talents.

Intersectionality/intersectional discrimination

Intersectionality/intersectional discrimination refers to the way that different aspects of a person's identity intersect with and impact one another. It highlights how the combined experience of multiple forms of discrimination is often greater than the sum of those discriminations alone.

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 First Nations, whether they are from culturally and linguistically diverse or culturally and racially marginalised (CARM) communities and their socio-economic class.

See section 5.1, Guiding Principle, Intersectionality, for more information.

Leader or manager

A person with responsibilities for managing other workers. This includes 'senior leaders' as well as team leaders, supervisors, executives, line managers, people managers and other managers.

LGBTIQ+

Lesbian, Gay, Bisexual, Trans and gender diverse, Intersex and Queer.

Organisation or business

A 'person conducting a business or undertaking' or an 'employer' with obligations under section 47C of the Sex Discrimination Act.

See Appendix 2 for an explanation of how the terms 'small organisation or business'; 'medium organisation or business'; and 'large organisation or business' are used in these Guidelines when providing examples of actions that could be taken to meet the positive duty.

Organisation/business without workers

In these Guidelines, 'an organisation/business without workers' refers to a sole-trader or self-employed person who does not have any workers. See Appendix 2 for more information.

Person-centred

In these Guidelines, 'person-centred' means ensuring that the individual who has experienced or reported the unlawful conduct is at the centre of decisions which relate to the incident.

See the factsheet: *Person-centred and Trauma-informed Approaches to Safe and Respectful Workplaces* linked in Appendix 1.

Person/s conducting a business or undertaking

A person conducts a business or undertaking whether they do it alone or with others and whether or not the business or undertaking is conducted for profit or gain. [section 4.2]

Positive duty

A duty under section 47C of the Sex Discrimination Act to take reasonable and proportionate measures to eliminate, as far as possible, relevant unlawful conduct.

Principal

A principal is someone who authorises another person, such as an agent, to act in their place.

See section 4(1) in the Sex Discrimination Act for specific definitions in relation to 'commission agents' and 'contract workers'.

Prevention and response plan

The actions that an organisation or business will take under each of the Standards to eliminate relevant unlawful conduct, as far as possible, can be recorded in writing in a prevention and response plan.

The prevention and response plan should be communicated to workers, implemented, include progress indicators, as well as be regularly reviewed and updated for effectiveness.

Relevant unlawful conduct

Conduct which an organisation or business is required to take reasonable and proportionate measures to eliminate, as far as possible, under the Sex Discrimination Act. This includes sex discrimination in a work context, sexual harassment and sex-based harassment in connection with work, conduct that creates a hostile workplace environment on the ground of sex and related acts of victimisation.

Report (of relevant unlawful conduct)

Report refers to a complaint or disclosure. 'Complaint' and 'complainant' have intentionally not been used in these Guidelines (except when referring to legislation or legislative schemes) due to negative associations with the term 'complain'.

Senior leader

A person with responsibility for the management and governance of an organisation or business. They are sometimes known as 'organisational leaders.'

In a small organisation/business, this is usually the business owner and any manager. In larger organisations/businesses, this usually includes any board (or equivalent), chief executive officer (CEO), executive leadership team, partners or executive manager.

Sex discrimination

Direct sex discrimination

Treating someone less favourably because of their sex, or a characteristic generally associated with people of that sex, compared to how a person of a different sex would be treated, in similar circumstances.

Indirect sex discrimination

Where an existing or proposed condition, requirement or practice (that is not reasonable) appears to treat everyone the same, but disadvantages, or is likely to disadvantage, people of a particular sex.

See Information Guide, section 3, for full legal definition and examples.

Sex-based harassment

Sex-based harassment involves behaviour that is sexist and demeaning in nature, but that is not necessarily sexual. 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. 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.

See Information Guide, section 5, for full legal definition and examples.

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.

See Information Guide, section 4, for full legal definition and examples.

Systemic discrimination

A general term for discrimination which is not directed towards any individual, but which exists as a result of the policies, structures and processes in place within an organisation or business, as well as the accepted rules, norms and attitudes.

Systemic discrimination occurs when the system creates processes that exclude some groups or individuals.

Systemic discrimination is sometimes referred to as 'structural discrimination' and includes things like a lack of access to flexible working arrangements and requirements to work full-time in order to obtain a leadership position.

Third party

In these Guidelines, a third party is a person who is not a fellow worker, but who comes into contact with a worker in the workplace, or while at work or engaged in work activities. For example, customers, clients, suppliers, patients and members of the public.

Further examples of third parties are included in section 4.4.

Transient workforce

Includes casual employees, employees on fixed-term or short-term contracts, contractors, labour hire workers, consultants and external advisers. Some people in the transient workforce are also referred to as 'gig workers'.

Trauma

The word 'trauma' describes events and experiences which are so stressful that they are overwhelming. The word 'trauma' also describes the impacts of the experience(s). Trauma is often experienced as emotional and physical harm. It can cause fear, hopelessness and helplessness. While people who experience trauma often have similar reactions, each person and their experience is unique.⁷⁴

Trauma-informed

An approach which is informed by an understanding of trauma and its potential wide-ranging and lifelong impacts.

See the factsheet: *Person-centred and Trauma-informed Approaches to Safe and Respectful Workplaces* linked in Appendix 1.

Union

A union is sometimes referred to as a trade union or a labour union.

It is an organised association of workers, often in a trade or profession, formed to represent, protect and further their rights and interests.

Vicarious liability

The Sex Discrimination Act provides that employers and principals can be held liable for unlawful conduct committed by their employees and agents in connection with their employment or duties as an agent. [section 4.6]

Vicarious trauma

Vicarious trauma refers to indirect exposure to other people's trauma, including through repeated exposure to written or visual details of traumatic events. It can have similar harmful effects on mental health as experiencing trauma directly.

Victimisation

Treating or threatening to treat someone badly or unfairly because they report unlawful behaviours, assert their rights under the law or help someone else to do so.

See Information Guide, section 7, for full legal definition and examples.

WHS (Work Health and Safety) laws

WHS laws in the jurisdiction in which the organisation or business operates.

Worker

A person is a 'worker' if the person carries out work in any capacity for an organisation or business. It is a broad concept that extends beyond the traditional employer/employee relationship. [section 4.4]



08



Appendices

Appendix 1: Resources

The following table provides links to relevant resources developed or sourced by the Commission and referred to in the Guidelines.

This Appendix will be updated with additional resources as they are developed.

Australian Human Rights Commission, factsheets relating to the positive duty available on the Commission website:

Causes and Risk Factors of Sex Discrimination, Sexual Harassment and Other Unlawful Behaviours

Effective Education and Training

Person-centred and Trauma-informed Approaches to Safe and Respectful Workplaces

Seeking Support: Counselling and Support Services

Steps to Meet the Positive Duty

What is the Positive Duty?

Australian Human Rights Commission, guidelines relating to special measures:

Guidelines: Special measures under the Sex Discrimination Act 1984 (Cth), 2018

https://humanrights.gov.au/sites/default/files/document/publication/AHRC_SDA_Special_Measures_Guidelines%202018.pdf

Guidelines to understanding 'Special measures' in the Racial Discrimination Act 1975 (Cth), 2011

https://humanrights.gov.au/sites/default/files/content/pdf/race_discrim/special_measures2011.pdf

Targeted recruitment of Aboriginal and Torres Strait Islander people: A Guideline for Employers, 2015

https://humanrights.gov.au/sites/default/files/document/publication/AHRC_Targeted_recruitment_ATSI_people_guideline2015.pdf

Australian Human Rights Commission, positive duty resources available on the Commission website:

Information Guide on the Positive Duty under the Sex Discrimination Act 1984 (Cth): Relevant Unlawful Conduct, Drivers, Risk Factors and Impacts.

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

A Resource for Small Business on the Positive Duty under the Sex Discrimination Act 1984 (Cth).

Australian Human Rights Commission, posters and signage available for download:

The Commission will publish posters and signage available for download in late 2023.

Champions of Change Coalition, example of public leadership statement about sexual harassment

Our position on sexual harassment - Champions of Change Coalition:

<https://championsofchangecoalition.org/our-position-on-sexual-harassment/>

Champions of Change Coalition, *The Leadership Shadow*

<https://championsofchangecoalition.org/resource/the-leadership-shadow/>

Champions of Change Coalition, *Sexual Harassment: A Guide to Confidentiality and Transparency*

https://championsofchangecoalition.org/wp-content/uploads/2021/05/Disrupting-the-System_3.-Sexual-Harassment-a-guide-to-confidentially-and-transparency.pdf

Champions of Change Coalition, *2022 Impact Report*

<https://championsofchangecoalition.org/resource/champions-of-change-coalition-2022-impact-report/>

Gender equality strategy examples and guidance

Aurecon, *Gender Equity and Equality*:

<https://www.aurecongroup.com/about/diversity-inclusion/gender-equality>

Department of Justice and Community Safety, Victoria, *Gender Equality Action Plan 2021-2025*:

<https://www.justice.vic.gov.au/about-the-department/gender-equality-action-plan-2021-2025>

The Workplace Gender Equality Agency has developed a gender strategy toolkit:

<https://www.wgea.gov.au/tools/gender-strategy-toolkit>

Our Watch, *Workplace Equality and Respect: People Survey Tool*

<https://workplace.ourwatch.org.au/resource/workplace-equality-and-respect-people-survey-tool/>

Respect@Work Council, *Good Practice Indicators Framework*

<https://www.respectatwork.gov.au/resource-hub/good-practice-indicators-framework-preventing-and-responding-workplace-sexual-harassment>

Respect@Work Council, *Guidelines on the Use of Confidentiality Clauses in the Resolution of Workplace Sexual Harassment Complaints*

<https://www.respectatwork.gov.au/sites/default/files/2022-12/Guidelines%20on%20the%20Use%20of%20Confidentiality%20Clauses%20in%20the%20Resolution%20of%20Workplace%20Sexual%20Harassment%20Complaints.pdf>

Respect@Work Website, *Reporting Avenues*

<https://www.respectatwork.gov.au/organisation/response/reporting/reporting-avenues>

Respectful Behaviour and Unlawful Conduct, model policies

The Commission will publish a model policy in late 2023.

See also the NSW Public Service Commission's Model Policy for the Prevention of Sexual Harassment in the Workplace:

<https://www.psc.nsw.gov.au/culture-and-inclusion/workplace-culture/sexual-harassment#sexual-harassment-model-policy>

Safe Work Australia, materials on workplace sexual harassment and managing psychosocial hazards at work

See: Workplace sexual harassment | Safe Work Australia

<https://www.safeworkaustralia.gov.au/safety-topic/hazards/workplace-sexual-harassment>

Victorian Equal Opportunity and Human Rights Commission, *Sample Prevention and Response Plan*

Sample plan to be published in late 2023

Victorian Equal Opportunity and Human Rights Commission, example of risk assessment tool contained in the appendices to *Guideline: Preventing and Responding to Workplace Sexual Harassment*

Risk Assessment tool: Risk Matrix

https://cms.humanrights.vic.gov.au/wp-content/uploads/2020/09/Resource-Guidelines-Workplace_sexual_harassment-Aug20.pdf

Appendix 2: Organisation/business definitions

'Organisation/business without workers' refers to a sole-trader or self-employed person who does not have any workers. While the sole-trader or self-employed person may themselves be a worker, this category refers to an individual who does not have any *other* workers of any kind working for, or within, their organisation/business – whether employed by them or another organisation or business.

'Small organisations and businesses' refers to organisations and businesses that generally have fewer than 20 workers.

Small organisations and businesses are less likely to have dedicated HR staff or an executive leadership team. They are more likely to be directly managed and controlled by the owner of the organisation or business, who is responsible for making all major decisions, setting expectations and holding people accountable at work.

Some small community organisations that employ people may have a board, but this is generally not a common feature of small organisations and businesses.

Small organisations and businesses are more likely to have less formal ways of communicating policies and information to workers, such as meetings, emails or text messages and noticeboards, rather than a staff intranet or a suite of formal and detailed written policies.

Small organisations and businesses do not have the same scale of workers to support internal training and professional development or workplace counselling services. They will often not have the number of senior staff to separate support and investigation functions internally in a feasible or practical way.

Small organisations and businesses may have more limited financial resources compared to larger organisations and businesses, but this will not always be the case. Where organisations and businesses meet the characteristics above, but have considerable financial resources, it may be reasonable to expect that they also consider the examples described as most relevant to medium organisations and businesses.

'Medium organisations and businesses' refers to organisations and businesses that generally have between 20 and 199 workers.

Medium organisations and businesses are more likely to have several teams or departments, each with its own manager or team leader. They are more likely than small organisations and businesses to have a formal hierarchy of management and may have a leadership team.

Medium organisations and businesses may have more formalised policies and procedures in place than small organisations and businesses, including employee handbooks or standard operating procedures.

They are also more likely to have a staff member or team to manage HR and compliance.

They may have established systems for performance management and career development.

Because of their size and structure, they are more likely to have workplace communication tools such as an intranet.

'Large organisations or businesses' refers to organisations and businesses that generally have 200 or more workers.

They are likely to have a CEO and an executive leadership team. Many large organisations and businesses will also have a board.

Large organisations and businesses are more likely to have a highly developed organisational culture, including stated core values and a public brand or identity associated with their culture and values. Large organisations and businesses may also have multiple workplaces under their management and control and may have multiple workplace cultures that develop.

Because of their size and structure, they are more likely to have a comprehensive suite of workplace policies and dedicated HR and legal teams. They may also have dedicated staff responsible for compliance and risk management.

Large organisations and businesses are more likely to have larger financial resources to draw on and be able to engage external experts, workplace investigators and supports. They are more likely to have formal professional development and performance management programs, as well as to give staff access to an Employee Assistance Program.

Large organisations and businesses are also more likely to have regular corporate communications through multiple channels (including, for example, via a staff intranet) and regular communications with clients and other stakeholders (such as through newsletters, articles and other publications).

Appendix 3: Examples of specific control measures

Set out below are some examples of control measures that might be implemented to address the risk of relevant unlawful conduct within a particular organisation or business. When considering the below control measures, it is important to take into account the needs of a diverse workforce and to use an intersectional approach. It is important to ensure that any control measures implemented are specific to the assessed risks. The control measures below are not organised by size of the organisation or business. Rather, any of these measures could be reasonable and proportionate for any organisation or business, depending on the identified risk.

Physical work environment and security			
Ensuring a safe working environment for workers in their usual place of work and in other circumstances such as during travel, including when workers are in a vehicle together, at conferences, off-site, at client or customer premises and any other location where work is performed.	Preventing or monitoring access to the workplace by third parties when people are working alone or at night (e.g. via a security card or code).	Implementing procedures for requesting prompt attendance by security when customers engage in relevant unlawful conduct or other disrespectful behaviour.	Talking to other businesses that share your worksite or premises about how to manage shared areas such as bathroom and kitchen facilities to ensure that these areas are safe for workers, as well as what you will do if a worker is likely to be or is being subjected to relevant unlawful conduct at the worksite or premises.
Improving natural surveillance in areas such as offices, storerooms and other segregated areas (e.g. using semi-opaque glass or screens).	Ensuring that there are no areas where workers could become trapped. For example, avoiding rooms with keyed locks, moving furniture and partitions, fixing doors to remain open while cleaning a room.	Ensuring that the layout of the workplace provides good visibility of work areas and avoids restrictive movement (e.g. consider how furniture and partitions are arranged).	Ensuring that internal and external lighting provides good visibility, including in car parks.
Implementing supervision and security protocols to monitor and respond to workers and customers who are under the influence of alcohol and who pose a risk to the safety of others in the workplace.	Where workers work and live at remote worksites, using site planning and environmental safety protocols to control risks posed by the remote nature of the site (e.g. layout and allocation of accommodation at remote sites; access to support services remotely; enhanced lighting and secure walkways).	Providing facilities and amenities that give privacy and security, such as private and secure change rooms and toilets.	Providing communication systems like phones, intercoms or duress alarms.

Safe work systems and procedures			
Safe systems of work are implemented to minimise risk (e.g. requiring two people to be rostered on to a retail shop in the evening if there is evidence of a risk of relevant unlawful conduct occurring during those hours).	Where workers provide feedback about behaviour of a co-worker or the work culture that suggests that relevant unlawful conduct has occurred or may occur, taking steps such as engaging in discussions with individuals or groups about the conduct; using strategies designed to motivate respectful behaviour; and conducting close supervision.	Providing regular supervision and communication with workers, particularly when workers are at remote locations or working from home.	Conducting reference checks before hiring workers, to understand whether any disrespectful behaviour concerns arose in previous workplaces.
Avoiding sharing workers' personal phone numbers on internal contact lists and rosters, to minimise the risk of workers being subjected to relevant unlawful conduct by their colleagues after-hours. Phone numbers should only be shared with consent of individuals (for e.g. where individuals wish to contact their colleagues to swap shifts).	Where workers are working away from the workplace controlled by their employer, identifying whether there are risks of relevant unlawful conduct occurring and how they can be managed. For example, health care workers conducting home visits may conduct an initial visit in pairs and identify whether there are risks before conducting future visits alone.	Where workers are working away from the workplace controlled by their employer, conducting one-on-one discussions with workers before they depart, reminding them of the prohibition on relevant unlawful conduct, outlining the support and reporting avenues available to them, and discussing strategies and processes for addressing any issues that arise.	Where workers are working at a site controlled by another organisation or business, making safe working environments at the site a contractual term of engagement.
Ensuring diverse recruitment panels to minimise the risk of discrimination in recruitment.	Encouraging workers to keep records and screen shots if inappropriate behaviour occurs online or through phone communication.	Regularly evaluating work systems and practices, in consultation with workers and their representatives, to see if they contribute to circumstances where relevant unlawful conduct is more likely to occur.	Acting in a consistent manner when dealing with reports of relevant unlawful conduct, including providing sufficient and appropriate feedback to workers who have raised concerns. See further in <i>Standard 6: Reporting and response</i> .
Collecting de-identified details of all reports of relevant unlawful conduct, including those that are not pursued formally by the impacted person, to help identify systemic issues at the workplace. See further in <i>Standard 7: Monitoring, evaluation and transparency</i> .	Limiting or not offering alcohol at work events.	When a report about relevant unlawful conduct is made, the subject(s) of the report and the workforce more generally are reminded that victimisation is prohibited and consequences will apply for those who engage in it.	

Workplace policies

Implementing a workplace policy that sets standards of behaviour for all workers and information about rights and responsibilities in relation to relevant unlawful conduct. See further in *Standard 2: Culture* and *Standard 3: Knowledge*.

Introducing policies about, and monitoring the responsible use and service of, alcohol.

In advance of work-related events (such as corporate retreats/ conferences and Christmas parties), reinforcing workplace policies and what behaviours are expected of workers. This includes ensuring that responsible service of alcohol policies are followed and that workers know where to get support if they experience or witness inappropriate behaviour at the event.

Developing workplace policies and procedures which set out control measures to eliminate relevant unlawful conduct, particularly where workers have a role in implementing and maintaining those controls.

Implementing policies which enable all employees, regardless of sex, to access flexible working arrangements and take steps to ensure that employees are not disadvantaged for taking up these opportunities.

Implementing workplace policies and procedures in relation to responding to relevant unlawful conduct and ensuring that these are well understood by workers and implemented consistently across all areas of the business and all levels of worker. See further in *Standard 3: Knowledge*, *Standard 2: Culture* and *Standard 6: Reporting and response*.

Conduct of third parties who come into contact with workers (such as clients, customers and patients)

Clearly communicating to clients and customers that relevant unlawful conduct is against the law and is unacceptable and that they must not engage in relevant unlawful conduct when interacting with the organisation or business (e.g. in service agreements or contracts, signs at the workplace, through emails and on the organisation or business' website). See example signage linked in Appendix 1.

Refusing service to, or banning from the workplace, people with a history of relevant unlawful conduct (e.g. patrons at pubs or clients at health services).

If service is necessary, such as for medical care or compulsory education, putting in place additional measures to protect workers and others, such as ensuring that workers are not isolated or rostered on alone.

Preventing public access to the work areas when people are working alone or at night (e.g. via a security card or code or asking guests to leave the room while workers clean).

Ensuring that the business or organisation's marketing campaigns and uniforms are designed in a way that avoid sexualisation of workers or the work environment.

08 Appendices

<p>Implementing workplace and public campaigns to stop relevant unlawful conduct and promote respectful behaviour.</p>	<p>Providing security personnel, video surveillance and communication systems such as phones, intercoms or duress alarms.</p>	<p>When clients/customers and other third parties call the organisation or business and are placed on hold, playing to them a pre-recorded message which advises that relevant unlawful conduct is unacceptable (instead of, or in conjunction with, traditional 'hold' music).</p>	<p>Not requiring workers to use their private mobile phones or personal social media accounts to engage with customers/clients.</p>
<p>Providing safe access to facilities for workers to use, or private facilities that are separate from customers.</p>	<p>Ensuring that internal and external lighting provides good visibility, including in car parks.</p>	<p>Improving natural surveillance in work areas (e.g. spacing out furniture, using clear or semi-opaque glass).</p>	<p>Avoiding situations where workers can become trapped (e.g. moving furniture and partitions, fixing doors to remain open while cleaning a room), and avoiding situations where workers might be restricted in moving closely past customers.</p>
<p>Using furniture, barriers, screens, or high counters to separate workers from the public.</p>	<p>Avoiding the need for workers to work alone where possible (e.g. working in pairs, closing the business with security personnel present, or providing a safe escort to a worker's transport).</p>	<p>Providing workers with a safe place to retreat to avoid relevant unlawful conduct from third parties.</p>	<p>Training workers in how to deal with difficult customers or clients; when and how to escalate issues to senior workers; and procedures to report relevant unlawful conduct. See further in <i>Standard 3: Knowledge</i>, <i>Standard 5: Support</i> and <i>Standard 6: Reporting and response</i>.</p>
<p>Training leaders and managers in how to deal with difficult customers or clients and their responsibilities in addressing relevant unlawful conduct. See further in <i>Standard 1: Leadership</i>, <i>Standard 2: Culture</i>, and <i>Standard 3: Knowledge</i>.</p>	<p>Establishing procedures for dealing with unacceptable behaviour from customers or clients and how workers and managers can respond. See further in <i>Standard 6: Reporting and response</i>.</p>	<p>Telling workers about their right to cease unsafe work. See further in <i>Standard 3: Knowledge</i>, <i>Standard 5: Support</i> and <i>Standard 6: Reporting and response</i>.</p>	

Endnotes

- 1 *Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022* (Cth) (**Respect@Work Act**).
- 2 Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (2020) <<https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020>>.
- 3 The positive duty is found in s 47C of the *Sex Discrimination Act 1984* (Cth).
- 4 *Sex Discrimination Act 1984* (Cth) ss 47C(1), 47C(2)(a)(i)–(iv).
- 5 *Sex Discrimination Act 1984* (Cth) ss 47C(1), 47C(2)(b), 47C(4)(a).
- 6 *Sex Discrimination Act 1984* (Cth) ss 47C(1), 47C(2)(b), 47C(4)(a).
- 7 *Sex Discrimination Act 1984* (Cth) ss 47C(1), 47C(2)(c), 47C(4)(b).
- 8 *Sex Discrimination Act 1984* (Cth) ss 47C(1), 47C(2)(d), 47C(4)(c).
- 9 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.
- 10 Australian Human Rights Commission, *Time for Respect: Fifth national survey on sexual harassment in Australian workplaces* (2022) <<https://humanrights.gov.au/time-for-respect-2022>>; Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (2020); Australian Human Rights Commission, *Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces* (2021) <<https://humanrights.gov.au/set-standard-2021>>.
- 11 Australian Human Rights Commission, *Time for Respect: Fifth national survey on sexual harassment in Australian workplaces* (2022).
- 12 Australian Human Rights Commission, *Time for Respect: Fifth national survey on sexual harassment in Australian workplaces* (2022) 12.
- 13 Australian Human Rights Commission, *Time for Respect: Fifth national survey on sexual harassment in Australian workplaces* (2022) 52–54.
- 14 The concept of ‘substantive equality’ recognises that there is not currently a level playing field for everyone in society. Some people face individual disadvantage and some groups, including women, face structural barriers to equal participation in public life. This means that treating everyone the same, or ‘formal equality’ may not result in equal opportunities or outcomes. The Respect@Work Act amended the *Sex Discrimination Act 1984* (Cth) to state that one of its objects is to ‘achieve substantive equality between men and women’, so far as is practicable.
- 15 Workplace Gender Equality Agency, *Australia’s Gender Equality Scorecard: Key results from the Workplace Gender Equality Agency’s Employer Census 2021-22* (December 2022) 4, 27 <<https://www.wgea.gov.au/sites/default/files/documents/WGEA-Gender-Equality-Scorecard-2022.pdf>>.
- 16 Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (2020) 257–275.
- 17 Deloitte Access Economics, *The Economic Costs of Sexual Harassment in the Workplace: Final Report* (March 2019) 5 <<https://www2.deloitte.com/au/en/pages/economics/articles/economic-costs-sexual-harassment-workplace.html>>.
- 18 The Scottish Human Rights Commission identifies common principles of a human rights-based approach as ‘The PANEL Principles’ (Participation, Accountability, Non-discrimination, Empowerment and Legality). See, ‘The Panel Principles’, *Scottish Human Rights Commission* (Web Page) <<https://www.scottishhumanrights.com/projects-and-programmes/human-rights-based-approach/>>. For relevant international instruments, see, eg, the *Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 1 March 1980, 1249 UNTS 13 (entered into force 3 September 1981).

- 19 Courts have previously had regard to guidance material published by the Commission in the context of claims alleging a breach of the *Sex Discrimination Act 1984* (Cth). See, for example, *Richardson v Oracle Corporation Australia Pty Ltd* [2013] FCA 102 [159]–[164]. See also Revised Explanatory Memorandum, Anti-Discrimination and Human Rights Legislation Amendment (Respect At Work) Bill 2022 (Cth) [117]–[118].
- 20 See, eg, *Equal Opportunity Act 2010* (Vic) s 15. The Australian Capital Territory has also introduced a new positive duty that will be phased in progressively over several years, see *Discrimination Amendment Act 2023* (ACT).
- 21 *Sex Discrimination Act 1984* (Cth) s 4(1) (see definition of ‘employment’ and associated notes). In respect of Commonwealth employees, the employer is deemed to be the Commonwealth (*Sex Discrimination Act 1984* (Cth) s 108). In respect of State/Territory employees, the employer is deemed to be the applicable State or Territory (*Sex Discrimination Act 1984* (Cth) s 109).
- 22 *Sex Discrimination Act 1984* (Cth) s 4(1) (see definition of ‘person conducting a business or undertaking’ which provides that it has the same meaning as in the *Work Health and Safety Act 2011* (Cth)). See *Work Health and Safety Act 2011* (Cth) s 5.
- 23 Individuals who are in a partnership that is conducting a business or undertaking will both individually and collectively be a ‘person conducting a business or undertaking’.
- 24 *Work Health and Safety Act 2011* (Cth) s 5(4).
- 25 *Work Health and Safety Act 2011* (Cth) ss 5(7), 5(8).
- 26 *Work Health and Safety Act 2011* (Cth) s 5(5).
- 27 *Work Health and Safety Regulations 2011* (Cth) reg 7(1).
- 28 *Sex Discrimination Act 1984* (Cth) ss 47C(1), 47C(2)(a)(i)–(iv).
- 29 *Sex Discrimination Act 1984* (Cth) ss 47C(1), 47C(2)(b), 47C(4)(a).
- 30 *Sex Discrimination Act 1984* (Cth) ss 47C(1), 47C(2)(b), 47C(4)(a).
- 31 *Sex Discrimination Act 1984* (Cth) ss 47C(1), 47C(2)(c), 47C(4)(b).
- 32 *Sex Discrimination Act 1984* (Cth) ss 47C(1), 47C(2)(d), 47C(4)(c).
- 33 *Sex Discrimination Act 1984* (Cth) ss 47C(1), 47C(2), 47C(3).
- 34 *Sex Discrimination Act 1984* (Cth) ss 47C(1), 47C(2), 47C(3).
- 35 *Sex Discrimination Act 1984* (Cth) ss 47C(1), 47C(4), 47C(5).
- 36 *Sex Discrimination Act 1984* (Cth) s 4(1) (see definition of ‘employment’ and associated notes).
- 37 *Sex Discrimination Act 1984* (Cth) s 4(1) (see definition of ‘worker’ which provides that it has the same meaning as in the *Work Health and Safety Act 2011* (Cth)). See *Work Health and Safety Act 2011* (Cth) s 7.
- 38 Except a person volunteering with a wholly ‘volunteer association’ with no employees (whether incorporated or not).
- 39 *Sex Discrimination Act 1984* (Cth) ss 47C(1), 47C(4)(a), 47C(5).
- 40 *Sex Discrimination Act 1984* (Cth) ss 47C(1), 47C(4)(a), 47C(5).
- 41 *Sex Discrimination Act 1984* (Cth) ss 47C(1), 47C(4)(b), 47C(5).
- 42 *Sex Discrimination Act 1984* (Cth) ss 47C(1), 47C(4)(c), 47C(5).
- 43 Australian Human Rights Commission, *Everyone’s Business: Survey on Sexual Harassment of Members of the Shop, Distributive and Allied Employees’ Association* (2019) 11 <https://humanrights.gov.au/sites/default/files/document/publication/ahrc_sda_survey_report_2019.pdf>.
- 44 Australian Human Rights Commission, *Everyone’s Business: Survey on Sexual Harassment of Members of the Shop, Distributive and Allied Employees’ Association* (2019) 11.
- 45 *Sex Discrimination Act 1984* (Cth) s 47C(6).

- 46 *Sex Discrimination Act 1984* (Cth) s 106.
- 47 *Sex Discrimination Act 1984* (Cth) s 106(2).
- 48 *Australian Human Rights Commission Act 1986* (Cth) s 35B(1) (commences 12 December 2023).
- 49 Revised Explanatory Memorandum, Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Bill 2022 (Cth) [165].
- 50 *Australian Human Rights Commission Act 1986* (Cth) Division 4A of Part II (entire Division 4A of Part II commences 12 December 2023).
- 51 See, eg, Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (2020) 616–751.
- 52 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.
- 53 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.
- 54 Such groups might include the Champions of Change Coalition or the Diversity Council of Australia.
- 55 ‘Establishing a positive workplace culture: definition, tips & why it’s important’, *Royal Melbourne Institute of Technology* (Web Page, 5 August 2020) <<https://studyonline.rmit.edu.au/blog/positive-workplace-culture>>.
- 56 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.
- 57 See, eg, ‘Support for defined entities to comply with the Gender Equality Act’, *Victorian Commissioner for Gender Equality in the Public Sector* (Web Page) <<https://www.genderequalitycommission.vic.gov.au/support-defined-entities>>; ‘Promoting gender equality’, *Victorian Commissioner for Gender Equality in the Public Sector* (Web Page) <<https://www.genderequalitycommission.vic.gov.au/promoting-gender-equality>>.
- 58 Organisations and businesses should also ensure that they understand their own obligations under the *Sex Discrimination Act 1984* (Cth), including their positive duty, and should have up-to-date knowledge about relevant unlawful conduct. This is addressed in *Standard 1: Leadership*.
- 59 For further information on effective sexual harassment training see, eg, UN Women, *Stepping Up to the Challenge: Towards international standards on training to end sexual harassment* (2020) 6–14 <<https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2020/Discussion-paper-Towards-international-standards-on-training-to-end-sexual-harassment-en.pdf>>.
- 60 See Jerome S Bruner, *The Process of Education* (Cambridge MA: Harvard University Press, 1960).
- 61 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.
- 62 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.

- 63 Safe Work Australia, *Managing psychosocial hazards at work: Code of Practice* (July 2022) <https://www.safeworkaustralia.gov.au/sites/default/files/2022-08/model_code_of_practice_-_managing_psychosocial_hazards_at_work_25082022_0.pdf>; Safe Work Australia, *Preventing workplace sexual harassment: National guidance material* (January 2021) <<https://www.safeworkaustralia.gov.au/sites/default/files/2021-06/Guide%20for%20preventing%20workplace%20sexual%20harassment.pdf>>.
- 64 See, eg with respect to sexual harassment Australian Human Rights Commission, *Time for Respect: Fifth national survey on sexual harassment in Australian workplaces* (2022) 130.
- 65 Australian Human Rights Commission, *Time for respect: Fifth national survey on sexual harassment in Australian workplaces* (2022) 130.
- 66 Australian Human Rights Commission, *Time for respect: Fifth national survey on sexual harassment in Australian workplaces* (2022) 149.
- 67 'Good practice reporting framework', *Respect@Work* (Web Page) <<https://www.respectatwork.gov.au/organisation/response/reporting/good-practice-reporting-framework>>. See also UN Women, *Stepping Up to the Challenge: Towards international standards on training to end sexual harassment* (2020) 5–7.
- 68 'Good practice reporting framework', *Respect@Work* (Web Page) <<https://www.respectatwork.gov.au/organisation/response/reporting/good-practice-reporting-framework>>.
- 69 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.
- 70 'Collecting and using data', *Respect@Work* (Web Page) <<https://www.respectatwork.gov.au/organisation/response/measuring/characteristics-effective-measuring-process>>.
- 71 'Collecting and using data', *Respect@Work* (Web page) <<https://www.respectatwork.gov.au/organisation/response/measuring/characteristics-effective-measuring-process>>.
- 72 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.
- 73 'A note on language: Culturally and Racially Marginalised Women at work', *Diversity Council of Australia* (Web Page) <<https://www.dca.org.au/note-language-culturally-and-racially-marginalised-women-work>>.
- 74 'Understanding Trauma', *Blue Knot* (Web Page) <https://blueknot.org.au/wp-content/uploads/2021/08/39_BK_FS_UnderstandingTrauma_JULY21.pdf>.

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