

Guidance in preparing a 'Prevention and Response Plan' to comply with changes in the Sex Discrimination Act.

Under the Sex Discrimination Act, organisations and businesses have a positive duty to eliminate discrimination, sexual harassment and victimisation in the workplace. The Australian Human Rights Commission (AHRC) has new powers to investigate and enforce compliance with *the positive duty*, which will commence on 12 December 2023.

As part of Optometry Australia's commitment to creating a culture of [Respect. Always!](#) the following resource helps members collate a 'Prevention and Response Plan' to prepare for enforcement of *the positive duty*. This resource complements a series of [Respect. Always! videos](#), designed to support members in situations where they may experience workplace harassment and/or discrimination.

What is *the positive duty*?

The *positive duty* is a legal obligation which was introduced into the Sex Discrimination Act 1984 (Cth) late last year. It requires organisations and businesses such as optometry practices to take 'reasonable and proportionate measures' to eliminate the following behaviour as far as possible:

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

Compliance with *the positive duty* can be investigated and enforced by AHRC as of 12 December 2023.

How to prepare for enforcement of *the positive duty*

Businesses can prepare by first reviewing the four guiding principles of *the positive duty* outlined by the AHRC. These are:

- **Be consultative** – talk to workers about what they need for a safe and respectful workplace.
- Aim to achieve **gender equality** – where people have equal rights, rewards, opportunities and resources regardless of gender.
- **Think about your people and acknowledge all needs.** Do your workers have different intersecting identities that may compound their experience of discrimination and harassment? For example, is a particular individual a woman and/or gender diverse, young, from a racial minority, or do they have a disability?

- Be **person-centred** and **trauma informed** – support individual choice, safety, dignity and avoid causing harm.

There are seven standards of *the positive duty* as set out in the diagram below.



Figure 1. The seven standards of *the positive duty* under the *Sex Discrimination Act 1984 (Cth)*.
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Addressing the standards

Each standard should be addressed within a documented 'Prevention and Response Plan'. A summary of each standard follows. Click on each section/page number for full details of each, as outlined by the AHRC.

Standard 1: Leadership. [Section 6.1 page 29](#)

- ✓ Businesses must understand their obligations under the Sex Discrimination Act and have up-to-date knowledge about relevant unlawful conduct.
- ✓ Businesses 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.
- ✓ Businesses regularly review the effectiveness of these measures and update workers.

Questions to help apply Standard 1:

- Do businesses understand their obligations under the [Sex Discrimination Act](#)?
- Do businesses have up-to-date knowledge about workplace sexual harassment, sex discrimination, and other relevant unlawful conduct?
- Do businesses know about the causes and impacts of relevant unlawful conduct, how to identify and respond to it, and where to go for advice, information, and support?
- Have businesses put in place measures to prevent and respond to relevant unlawful conduct?
- Are these measures documented in a **prevention and response plan**?
- Do businesses check whether these measures are working and update them? Do they role model respectful behaviour in the business?
- Have businesses made it clear that they are committed to creating a safe, respectful, diverse and inclusive workplace?
- Have businesses set clear expectations about what behaviour is acceptable in the workplace?

Standard 2: Culture. [Section 6.2 page 39](#)

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

Questions to help apply Standard 2:

- Is the business culture safe and respectful?
- Is the workforce diverse and inclusive?
- Is there attention paid to gender balance when recruiting or promoting people?
- Are all workers supported to report relevant unlawful conduct when it occurs?
- Are reports of relevant unlawful conduct handled in a way that minimises harm?
- Are all people who engage in relevant unlawful conduct held accountable for their actions?

Standard 3: Knowledge [Section 6.3 page 46](#)

Businesses develop, communicate and implement a policy regarding respectful behaviour and unlawful conduct. They support workers (including practice owners/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 practices and working relationships. This includes their role in preventing and responding to relevant unlawful conduct.

Questions to help apply Standard 3:

- What do workers know about relevant unlawful conduct?
- Do they know about their rights and responsibilities in relation to creating a safe, respectful and inclusive workplace and working relationships?
- Is this information included in staff inductions and training?
- Does education and training include focus on the safe and respectful workplace that you wish to create?
- Does the practice have a policy about respectful behaviour and relevant unlawful conduct and is it consistently enforced?

Standard 4: Risk management [Section 6.4 page 52](#)

Businesses:

- ✓ recognise that relevant unlawful conduct is an equality risk and a health and safety risk.
- ✓ take a risk-based approach to prevention and response. This involves regularly identifying and assessing the risk of relevant unlawful conduct occurring and implementing effective control measures to address the identified risks.
- ✓ regularly review the control measures to determine whether they remain effective or require adjustment.

Questions to help apply Standard 4:

- Does the business understand that relevant unlawful conduct can violate a person's right to equality, non-discrimination and human dignity and is also a health and safety risk?
- Is the business taking a risk-based approach to preventing relevant unlawful conduct?
- Has the business identified the risks present, and taken steps to manage these risks?
- Is the business checking to see if the approach is effective?

Standard 5: Support [Section 6.5 page 61](#)

- ✓ Businesses ensure that appropriate support is available to workers (including Practice owners/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.

Questions to help apply Standard 5:

- What supports has the business made available for workers who have experienced or witnessed relevant unlawful conduct?
- Who can your workers speak to about these experiences inside the organisation or business?
- What support services outside the practice can workers access?
- Do managers and workers know about these supports?
- Can workers access support without talking to leadership or management?

Standard 6: Reporting and response [Section 6.6 page 68](#)

- ✓ 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.

Questions to help apply Standard 6:

- If workers experience or witness relevant unlawful conduct, how can they report it? Are there both formal and informal options for reporting?
- Has the business advised workers how they can report relevant unlawful conduct?
- How will the business respond to a report from its workers?
- Will the response by the business be consistent, timely and prioritise workers' safety and wellbeing?
- Will the consequences for people who engage in relevant unlawful conduct be consistent and appropriate in the circumstances, regardless of the seniority or importance of the person engaging in the conduct?

Standard 7: Monitoring, evaluation and transparency [Section 6.7 page 75](#)

Businesses:

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

Questions to help apply Standard 7:

- Does the business know what relevant unlawful conduct its workers experience or are at risk of experiencing?
- Is it collecting relevant data?
- Is the organisation or business using this data to prevent and respond to risks and incidents of relevant unlawful conduct if/when they occur?
- Is the business upfront with its workers about the presence or risk of relevant unlawful conduct?

- Has the business communicated to its workers about what steps it has taken to address incidents and risks of relevant unlawful conduct?
- Is the business checking to see if what it is doing is working and updating if necessary?

Adapted from *2023 A Resource for Small Business on the Positive Duty under the Sex Discrimination Act 1984 (Cth)*. © Australian Human Rights Commission. This document is intended for general information purposes only and should not be regarded as legal advice.

For more information about *the positive duty* under the Sex Discrimination Act visit the **Commission's website**.

Resources include *Guidelines for Complying with the Positive Duty*, an *Information Guide: Relevant Unlawful Conduct, Drivers, Risk Factors and Impacts*, a *Quick Guide*, *Small Business Resource*.