Article Information

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Webinar Q&As: Explanation of 'Beat the Clock' 2025: Understanding the Respect@Work laws and new obligations imposed on companies to prevent sexual harassment in the workplace

Throughout the webinar we addressed a number of questions from participants. Below are answers to questions that we didn't get the time to address directly, and elaborations on answers that we felt are worth repeating. Thank you to everyone who attended the presentation. To view the recording of the on-demand webinar, please register here.

Q: You have mentioned that you need to report on actions taken to educate employees about their obligations under the new legislation. How often is an employer expected to undertake such training? What about communicating expectations outside of scheduled training? How often should management be considering reiterating such expectations?

A: Relevant training should be undertaken by employees as part of their onboarding in the first instance. We would recommend that employers consider running 'refresher' training every year for employees. Other steps that employers can take to communicate the expected standards of behaviour include preparing policies that outline employees' obligations and the expectations of the employer in relation to bullying, discrimination and harassment (if such policies do not already exist) and displaying posters that outline these standards.

Q: I have seen instances of employees who, when given warnings for poor performance, claim they feel psychological harm, harassment etc. Are there defences for employers to protect themselves in such circumstances?

A: The Regulations do not provide "defences" to claims of psychological harm, nor are there "defences" in relation to the Positive Duty. Generally (and specifically in relation to the Positive Duty), the onus is on the employer to demonstrate that their actions did not amount to harassment etc., or that they took all reasonable steps to prevent the conduct. The simplest way to defend against these kinds of allegations is to have contemporaneous, written records. In relation to your example, employers should ensure that any history of poor performance by an employee is recorded in writing prior to issuing a warning to that employee for poor performance.

Under workers' compensation schemes in a number of states, employers often have the defence that performance management, conducted reasonably, is "reasonable management action" and does not give rise to rights to compensation for psychological injury. Further, the Fair Work Act provides that 'reasonable management action carried out in a reasonable manner' does not amount to workplace bullying.

Q: Are the reporting requirements under Workplace Gender Equality Agency Reporting mandatory for all sized organisations?

A: The Workplace Gender Equality Agency Reporting program is a mandatory program for all non-public sector 'relevant employers', as set out in the Workplace Gender Equality Act 2012. A 'relevant employer' is defined as any entity that employs 100 or more employees, whether they be a standalone organisation with a single ABN or a corporate structure, for at least 6 months of a reporting period.

Q: Do you have a link to the Exposure Draft of the Occupational Health & Safety (Psychological Health) Regulations (Vic)? Do the draft Regulations go further than other states in relation to high work demands?

Link to Exposure Draft.

A: Victoria's draft regulations set a higher standard than other state laws as it specifically defines 'high job demands' as a psychosocial hazard that requires employers to proactively identify, assess and control the psychosocial risks in the workplace. This includes developing a prevention plan to address the hazard, as well as reporting to the Authority any reportable psychosocial complaints received by the employer. Other legislatures either do not define psychosocial/psychological hazards or refer to broad elements such as the 'design and management of work' (e.g. QLD and NT) or hazards that 'may cause psychological harm' (e.g. ACT). Queensland, Tasmania and the Northern Territory all require employers to implement control measures to manage psychosocial risks, akin to traditional health and safety risks, however this is not as stringent as Victoria's prevention plan obligation. In Tasmania and the Northern Territory, the legislation imposes a specific duty to implement these control measures with an aim to eliminate or minimise, so far as is reasonably practicable, the psychosocial risk. Other states do not have any reporting requirements regarding 'high work demands' that mirror Victoria's draft regulations.

Q: What does 'demeaning' mean? How is it demeaning to suggest to a man that his wife could pick up the kids?

A: To 'demean' someone, by definition, is to debase or degrade another person. For example, some circumstances that classify as 'demeaning behaviour' include:

- Asking intrusive personal questions based on a person's sex;
- Making inappropriate comments and jokes to a person based on their sex;
- Displaying images or materials that are sexist, misogynistic or misandrist;
- Making sexist, misogynistic or misandrist remarks about a specific person; or
- Requesting a person to engage in degrading conduct based on their sex.

In the example used, it would be demeaning to suggest to a man that his wife 'pick up the kids' as it reinforces traditional gender roles that childcare and domestic responsibilities are a woman's role. This may undermine the man's role as an equal partner in parenting duties.

Revised Explanatory Memorandum, Sex Discrimination and Fair Work (Respect at Work) Amendment Bill 2021 (Cth) 40-4.

Q: What examples of internal advice can in-house lawyers give to their HR departments on this Positive Duty? You recommended that training for employees be stepped up as an example. Any examples of other steps we can advise to our internal HR areas?

A: As the Positive Duty requires employers to take **reasonable** and proportionate measures to eliminate sexual harassment, discrimination, harassment on the ground of sex, hostile workplace environments, and associated victimisation as far as possible, employers will need to have regard to their business circumstances and what is reasonable for them (e.g. in relation to cost and frequency). One further example of advice you could give to your internal HR teams is to review and update the relevant workplace policies. Remember to also be mindful of the important role managers play in reinforcing an employer's conduct requirements. As leaders, managers should always model safe, respectful and inclusive language and conduct, and such requirements could be reflected in role descriptions. You may also wish to advise your internal HR teams to consider implementing specific training/further education for managers in this area.

Q: Does an organisation need to submit or lodge any documents of proof of taking active steps for the Positive Duty to any agency?

A: Employers are not required to lodge any documents to prove that they are taking active steps in relation to the Positive Duty. However, employers should be aware that the Australian Human Rights Commission can instigate inquiries into compliance with the Positive Duty. Further, an employer will be held vicariously liable for the breaches of any of its employees **unless** the employer can demonstrate that they have taken all reasonable steps to prevent the contravention from occurring. With this in mind, employers should ensure that they maintain records of the steps they have taken (e.g. content and frequency of training) to prevent such conduct.

Q: Is it correct that NFP boards have no liability (under the Positive Duty or generally) due to the Volunteers Act?

A: The circumstances of liability in relation to volunteer-run Boards is complex, therefore seeking legal advice specific to your circumstances is always recommended. Generally speaking, questions of liability will depend on whether an organisation is an entirely volunteer run organisation and has no employees.

We presume the reference to "the Volunteers Act" in this question is a reference to the South Australian Volunteers Protection Act 2001. This legislation has a broad exception to 'civil liability' under **Section 4,** providing an individual volunteer with protection from liability in civil claims, when an act, or omission to act, was in 'good faith and without recklessness'. However, there are some exceptions. If an individual is acting recklessly or beyond the ambit of their specified activities or instructions they will **not** be protected.

Irrespective of whether harassment and discrimination laws apply to an organisation and its volunteers (noting they may apply in limited circumstances, or only to the employees), it is considered organisational best practice to comply with the laws to the fullest extent possible. This will assist to create a safe working environment and also help prevent against other potential negative 'side effects' including preventing reputational damage, and maintaining registration as a charity with the ACNC.

Q: Are there any prohibitions where an employer positively discriminates, for example, by only allowing C level promotions to females unless approved by the CEO, to try to improve the gender equality statistics?

A: The ability to 'positively discriminate' as it is sometimes referred to, is the practice of invoking 'positive' or 'special measures' with an aim to endorse or support 'substantive equality' between two groups of people. For example, the Government may provide a specific grants or funding in order to encourage increased representation of a in particular gender in a particular form of employment. Another example of a special measure that is not gender based, may be an employment opportunity that will only accept applications from Aboriginal and Torres Strait Islander peoples whereby cultural understanding and Community connection is vital to the disbursement of the role. Similar special measures echo through discrimination legislation at both the State/Territory and Federal Level.

Generally speaking, special measures are allowed under federal anti-discrimination laws. However, there are significant evidentiary requirements for employers seeking to rely on these special measures and independent legal advice should be sought to ensure an appropriate documentary strategy can be implemented to ensure compliance with relevant laws (both State/Territory and Federal).

Q: Is the requirement to have a plan to manage or eliminate sexual harassment and sex and gender based harassment only in Queensland?

A: Queensland based PCBU's are required to prepare and implement a 'prevention plan' from 1 March 2025 when a **risk** of sexual and gender-based harassment is identified and control measures are required in order to eliminate, or minimise the risk. This falls under **section 55H(1)** of the Work Health and Safety Regulation 2011 (QLD).

In addition to the prevent plans in QLD relating to sexual and gender-based harassment, in Victoria, written 'prevention plans' for psychosocial hazards will be required, likely by the end of 2025. The draft Regulations (which are still subject to change) expressly required employers that identify hazards such as aggression or violence, bullying, exposure to traumatic content or events, high job demands, and sexual harassment, to prepare written prevention plans that must comply with certain requirements set out in the draft Regulations. The Victorian Government has said the Regulations are anticipated to be finalised and made in October 2025, and take effect on 1 December 2025.

There is no equivalent obligation to prepare a 'prevention plan' in other States, Territories or under Federal Legislation

(yet). However, the **positive** duty to prevent sexual harassment in the workplace applies and one way in which an business may evidence compliance with this positive duty is by conducting a risk assessment and putting together a 'plan' to control those risks and to regularly review control measures. The Guidelines for Complying with the Positive Duty (2023) identifies 'The Seven Standards' that an organisation or business will be required to meet to satisfy their positive duty under the Sex Discrimination Act 1984 (Cth).

Q: Are the psychosocial safety obligations mandatory or more of a guidance/ recommended approach at this stage?

A: The psychosocial safety obligations are mandatory. A person conducting a business or undertaking (PCBU) and their officers (employees) must ensure, so far as is reasonably practicable that their workers are not exposed to psychosocial hazards in the workplace. The PCBU must implement control measures to manage the risks of psychosocial hazards.

Q: Do the Queensland-specific employer obligations also apply to employers that are registered/licensed in other Australian states but have some employees working remotely out of Queensland?

A: Employees are protected by the Work Health and Safety Act in the jurisdiction in which they are located and work. If a PCBU is located and operates its business outside of the State of Queensland, for example in South Australia, but has employees based in Queensland, then the Work Health and Safety Act 2011 (Qld) will apply in respect of those employees working in that State and the business will need to comply with the QLD Act in respect of those employees.

Generally speaking, the Work Health and Safety Act in the State or Territory in which the business operates will apply and a PCBU will need to ensure that it complies with the WHS laws in any State/Territory in which it operates. If a PCBU operates its business across State borders, then the business will need to comply with the relevant WHS laws in each of the jurisdictions in which it operates.

Q: How do organisations proactively manage psychosocial hazards beyond just implementing policies to address this issue?

A: There are many other steps an employer can take over and above implementing a workplace policy. Safe Work Australia's "Managing psychosocial hazards at work – Code of Practice" lists various factors that pose psychosocial risks to employees. These include, but are not limited to: high job demands, poor organisational change management, inadequate reward and recognition, poor organisational justice (treating employees inconsistently and inequitably), sexual harassment, bullying, violence and aggression, and remote/isolated work. This non-exhaustive list is a useful starting point for employers seeking to identify and proactively manage potential workplace hazards.

Examples of proactive management detailed in the Code of Practice include (again this is not an exhaustive list):

- Planning shifts to allow for adequate rest and recovery;
- Fostering systems for escalating problems and receiving support from managers or other leaders;
- Holding regular team meetings to discuss staff workloads, support needs and any potential challenges;
- Consulting with workers regarding organisational change and providing workers with the reasons for the change;
- Develop leaders' abilities to provide constructive feedback, recognise good performance, and appropriately deal with poor performance; and
- Ensure workers receive recognition for their achievements.

Q: Do you consider that employers self regulating or external oversight will be more prominent in this area in the future?

A: Whilst it is difficult to speculate, there has been a trend toward greater external oversight and regulation is steadily increasing. This was evidenced by the recent changes to the Sex Discrimination Act giving the AHRC greater investigative and enforcement powers. It is important for employers to clearly understand the breadth of their legal obligations, arising both from State/Territory and Federal legislation. Of course, your legal advisors can always assist with this. However, there is also a significant amount of information available for employers to access for free via Safe Work Australia, the Australian Human Rights Commission, State/Territory WHS regulators, and State/Territory equal opportunity commissions.

We have linked to this some of this information elsewhere in this document.

New WHS Code of Practice: Sexual and Gender-based Harassment

Attendees should be aware that shortly following our webinar, the Federal Government approved a new federal code of practice regarding workplace sexual and gender-based harassment.

The Work Health and Safety (Sexual and Gender-based Harassment) Code of Practice 2025 is available to download here: https://www.legislation.gov.au/F2025L00326/latest/text and
here: https://www.safeworkaustralia.gov.au/doc/model-code-practice-sexual-and-gender-based-harassment

Employers are reminded that work health and safety codes of practice are admissible in court proceedings they can be used to determine what is reasonably practicable in the circumstances.