

Positive Duty

It's A Legal Obligation

**ARE YOU
COMPLIANT?**



Who Does This Apply To?

- **All Australian organisations and businesses**, that have obligations under the Sex Discrimination Act, regardless of size or resources
- This includes **sole traders, small, medium, large businesses** and **government entities**

Note: In this document we use organisation as a collective term



Positive Duty Was Introduced In December 2022

It imposes a **legal obligation** under the Sex Discrimination Act, to take **proactive** and meaningful action to prevent **relevant unlawful conduct** from occurring in the workplace, or in connection to work



What Is Relevant Unlawful Conduct?

- **Discrimination** on the grounds of sex in a work context
- **Sexual harassment** in connection with work
- Sex-based **harassment** in connection with work
- Conduct creating a workplace environment that is **hostile** on the grounds of sex
- Related acts of **victimisation**

What Does This Mean?

- You must take **proactive** action to prevent discrimination and harm from occurring
- It's a shift from responding to harm after it happens, to **preventing it before it occurs**



THE 7 STANDARDS

to satisfy the
Positive Duty



Leadership

01

- Senior leaders must **understand** their **obligations**
- Senior leaders must ensure **appropriate measures** are developed, recorded in writing, communicated to workers and implemented
- Senior leaders must regularly **review** the **effectiveness** of these measures
- Senior leaders must be **visible** in their commitment to safe, respectful and inclusive workplaces that value diversity and gender equality
- Senior Leaders must **role model** respectful behaviour

Culture

Organisations must foster a culture that:

- Is **safe, respectful and inclusive**
- Values **diversity** and **gender equality**
- **Empowers** workers (including leaders and managers) to **report** relevant unlawful conduct
- Minimises **harm**
- Holds people **accountable** for their actions

02

Knowledge

03

- Develop, communicate and implement a **policy** regarding respectful behaviour and unlawful conduct
- **Support** workers (including leaders and managers) to engage in safe, respectful and inclusive behaviour
- **Educate** everyone on:
 - standards of behaviour
 - what constitutes unlawful conduct
 - consequences for engaging in such conduct
 - rights and responsibilities in relation to safe, respectful and inclusive workplaces
 - working relationships, including their role in preventing and responding to relevant unlawful conduct

Risk Management

Organisations:

- Recognise that relevant unlawful conduct is an equality **risk** and a health and safety risk
- Take a **risk-based approach** to prevention and response

04

Support

05

Organisations:

- Ensure appropriate **support** is available to workers (including leaders and managers) who experience or witness relevant unlawful conduct
- **Inform workers** about available support, and how they can access the support, regardless of whether they report the conduct

Reporting & Response

Organisations:

- Ensure 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**
- Minimise **harm** to, and **victimisation** of, people involved
- Apply **consistent and proportionate** consequences

06

Monitoring, Evaluation & Transparency

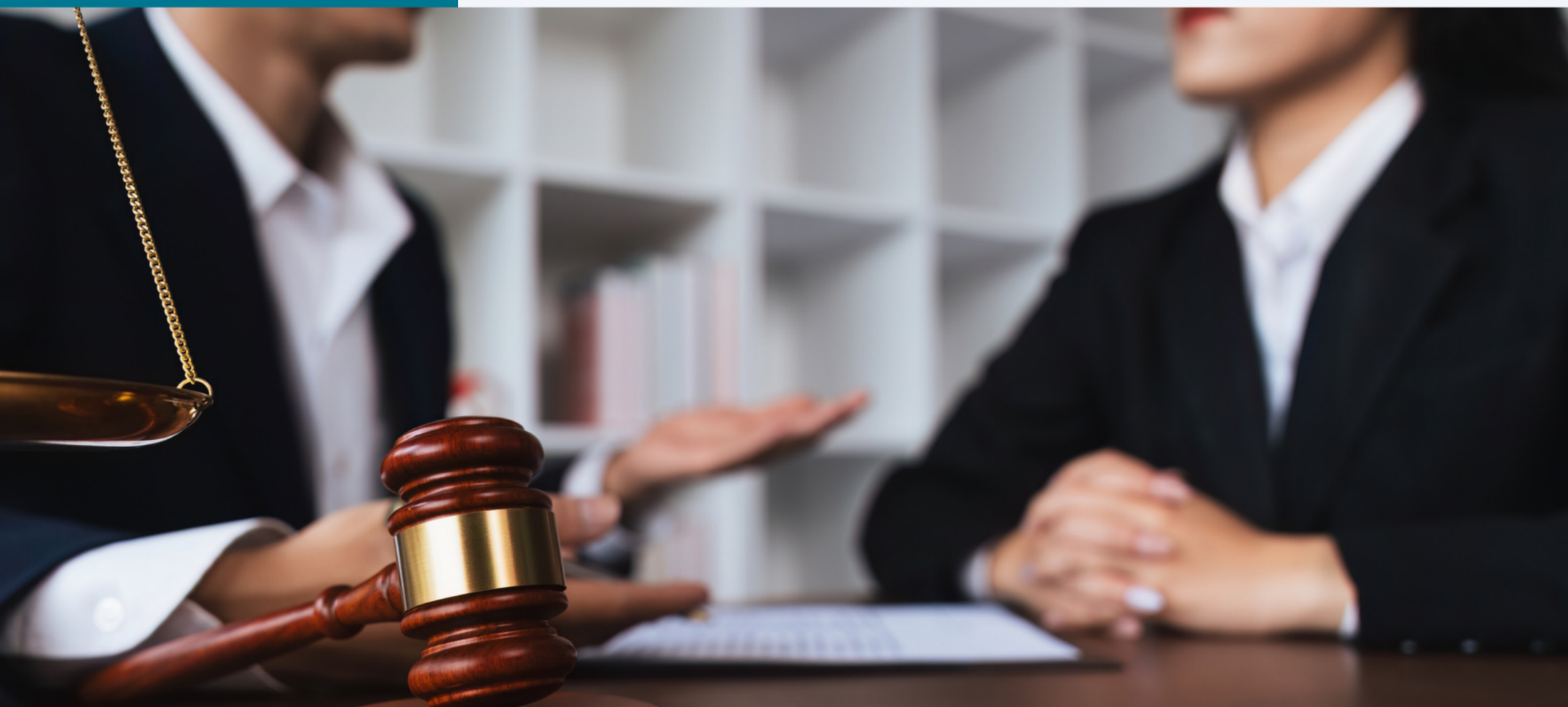
Organisations must:

- Collect appropriate **data** to understand the nature and extent of relevant unlawful conduct
- Use the data to **assess and improve culture**
- Develop **measures** for preventing and responding to relevant unlawful conduct
- Be **transparent** about reported behaviours that could constitute relevant unlawful conduct and take actions to address it

07

From 12 December 2023

The Commission has new **powers to investigate and enforce compliance** with the Positive Duty



The Commission Can Now

- Commence an **inquiry** when it 'reasonably suspects' non compliance with the positive duty
- Conduct inquiries into compliance with the positive duty and provide **recommendations to achieve compliance**
- **Issue a compliance notice** specifying action that an Organisation must take, or refrain from taking, to address any non-compliance

The Commission Can Also

- Apply to the **federal courts** for an order to direct compliance
- Enter into **enforceable undertakings** with an organisation to do, or refrain from doing, certain things
- Commence an inquiry **without the consent** of an organisation
- **Apply investigative powers** to compel the production of information and documents, and examine witnesses

What Does This Mean For Your Organisation?

- Ensure you have **robust systems** in place to comply with the Positive Duty obligations
- Ensure you are **proactively** creating a safe, harassment and discrimination free environment
- **Audit** any current systems and processes you may have and refresh these as necessary



**Samantha
D'Angelo**



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How We Can Help!

- Assistance with Positive Duty Compliance
- Education & Awareness Programs
- Tailored Training Programs for all employees including Senior Leadership
- Harassment, Discrimination & Bullying Workshops
- Coaching Programs
- Policy Development
- HR Consulting

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