

Operative date: The Respect@Work Act 2022 came into effect on 13 December 2022. Compliance powers will take effect from the 13 December 2023.

Click [here](#) for full briefing notes

POSITIVE DUTY & OTHER SEX DISCRIMINATION ACT CHANGES

What is it, and what is new?

The Respect@Work Act changes the Sex Discrimination Act 1984 (SDA) to establish a positive duty to prevent sexual harassment and discrimination and to provide new powers for the Australian Human Rights Commission (AHRC) to investigate and enforce that duty.

What are the key rights and requirements?

- » Conduct is prohibited that subjects another person to a workplace environment that is hostile on the grounds of sex.
- » Employers and persons conducting a business or undertaking (PCBUs) will have a positive duty to take reasonable and proportionate measures to eliminate sex discrimination, hostile environments, sex or sexual based harassment and victimisation at work.
- » The AHRC has powers to monitor and assess compliance with this positive duty. The AHRC will also be able to investigate allegations without there being a complainant and will have power to inquire into systemic discrimination.
- » Unions will be able to make applications on behalf of multiple workers to the federal court where they have experienced unlawful discrimination
- » The Commonwealth public sector will have to report to the Workplace Gender Equality Agency.
- » Objects of the SDA will now include the achievement of substantive equality between men and women.
- » Definition of sex based harassment has been changed to lower the threshold – conduct is now only required to be of a ‘demeaning’ nature rather than of a seriously demeaning nature.
- » Timeframes for all anti-discrimination complaints will be extended from 6 months to 2 years, and all anti-discrimination legislation will provide that victimisation can be both the subject of civil action as well as a criminal complaint.

Strategic considerations

Coordinate:

- » As employers and PCBUs have a positive duty, and can also be held responsible for the behaviour of customers or visitors, how do we coordinate across a supply chain to ensure these obligations are enforced?
- » With the AHRC able to investigate without a complainant, unions and delegates will be able to trigger AHRC involvement from arms distance. How do we create shared resources to educate and equip delegates to use this, and other measures, to take a trauma informed approach to assisting with sexual harassment matters?

Growth:

- » These new entitlements create opportunities for delegates to educate workers about the changes and the need to be active union members. How do we best engage and grow from this opportunity?
- » How do we educate and promote successful union actions in this space in a way that engages those potential members most affected by, or who have strong values about, sexual harassment (for example women workers)?

Precedent:

- » In determining whether employer or PCBU has complied with the positive duty, the nature, size and resources of the business will be taken into account. This will need to be tested and a coordinated approach taken to initial test cases.

**EQUIP
PLAN
WIN**

EQUIP

- **IR LAW FORUMS**
(7 - 19 Feb) - Respect, Equity,
Bargaining 1/2/3 and Electives
- **LEGISLATION
BRIEFING NOTES**
- **FACT SHEETS**

PLAN

- **STRATEGIC LEADERSHIP
MEETING (20 - 21 Feb)**
- **UNION INTERNAL
PLANNING**

WIN

- **MOVEMENT WIDE
EDUCATION**
- **COORDINATION**
- **GOOD PRECEDENTS**
- **GROWTH AND POWER**