



# FOSTERING PSYCHOSOCIAL SAFETY AND RESPECT AT WORK

Whitepaper



## This whitepaper is for:

- Health and safety leaders and professionals
- Senior operational management
- People and culture professionals
- Risk and compliance leaders

## What you'll learn

- 1 The evolution of the Respect at Work Bill
- 2 The key standards to satisfy the positive duty
- 3 The parallels with the introduction of the WHS Act
- 4 The role of technology in creating safe workplaces

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## Introduction

The Australian workforce is undergoing a major overhaul, with new laws passed to address deep-rooted behaviour patterns. Respect at Work<sup>1</sup> stands as the most significant evolution in workplace law in recent times. It arrives in the wake of multiple high-profile cases, the #MeToo movement, and a recent nationwide survey showing disappointing progress.

The Respect at Work Bill 2022<sup>2</sup> makes important amendments to the Sex Discrimination Act 1984

and the Australian Human Rights Commission Act 1986, setting rigorous standards to combat sex-based discrimination in the workplace.

From the 12th of December 2023, Australian businesses must comply with the new positive duty<sup>3</sup> obligations. The time has already passed to put measures in place to create safe, respectful and inclusive workplaces.

## What is the positive duty?

Positive duty refers to a move from a reactive, complaints-based approach to taking proactive steps against sexual harassment and discrimination<sup>4</sup>. Under this new law, employers and “persons conducting a business or undertaking” (PCBUs) must take “reasonable and proportionate measures” to prevent “unlawful conduct”, rather than responding after the fact.

The new amendment to prevent harassment has broadened to include not just employees but also contractors and volunteers<sup>5</sup>. It also no longer requires a person to make a complaint of unlawful behaviour for the organisation or business to be held to account.

The behaviours that the bill aims to eliminate are<sup>3</sup>:

- 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.

Sex Discrimination Commissioner Dr Anna Cody said<sup>6</sup> “This is an opportunity for Australian workplaces to become what they should be – safe, inclusive, gender-equal, respectful and free from sexual harassment and sex discrimination.”

## How can we comply with the positive duty?

To comply with the positive duty, organisations need to take “reasonable and proportionate measures” to eliminate these forms of unlawful conduct, as far as possible. This means organisations have a legal obligation to actively take steps to prevent and eliminate sexual harassment and sex discrimination in their workplace.

### **The Australian Human Rights Commission has provided guidelines on how to comply with the positive duty<sup>5</sup>**

#### **1 Consultation**

Organisations need to engage in open discussions with employees about their needs for a safe and respectful workplace, including their perspectives on potential risks and ways to mitigate and eliminate any unlawful conduct.

#### **2 Gender equality**

All efforts to fulfil the positive duty should aim towards achieving gender equality, ensuring that individuals of all genders have equal rights, opportunities, rewards, and access to resources.

#### **3 Intersectionality**

Organisations need to consider intersectionality to recognise how various aspects of an individual’s identity intersect and influence one another. It acknowledges that people’s lives are shaped by their identities, relationships, and social factors, leading to intersecting forms of privilege and oppression.

#### **4 Person-centred & trauma-informed**

Adopting person-centred and trauma-informed approaches in the workplace is a complementary way to address unlawful conduct. These approaches guarantee that workplace systems, policies, and practices prioritise the safety and dignity of individuals while also supporting the healing process.

## The catalyst - how we got here

The #MeToo social movement of 2017 saw 12 million people share their personal stories of sexual assault and harassment in the workplace. This tidal wave of accusations revealed this behaviour to be a global systemic issue, and one that needed laws and structures in place to enforce accountability.

In 2020, the positive duty was a key recommendation of the landmark Respect@Work Report<sup>7</sup>, led by former Sex Discrimination Commissioner Kate Jenkins AO.

In 2022, the Australian Human Rights Commission conducted the Time for Respect<sup>8</sup> fifth national

survey to assess the scale of workplace sexual harassment. The results were unsettling - 1 in 3 people have experienced sexual harassment in the past five years<sup>9</sup>. The Commission had reported similar results in 2003, 2008, 2012 and 2018, and this lack of progress was another strong indicator that Australia requires a legal obligation to take preventative action.

To read more about the positive duty, visit the Australian Human Rights Commission's website<sup>3</sup> for extensive information and resources.

## The safety and workforce satisfaction benefits of diversity and inclusion

Diversity, equity, and inclusion have been proven to benefit business performance<sup>10</sup>. This McKinsey report also found that diverse teams are linked to better decision making and higher employee satisfaction. Notably, BHP has found that diverse mining crews at its sites have a 67 percent lower injury rate than non-diverse teams, showing clear

safety benefits.

The report concludes: "Those companies that lead in fostering a diverse employee base will have an edge in the competition for talent and will gain meaningful advantages in terms of safety, productivity, innovation, and leadership."

## The positive duty and critical industries

A 2022 survey<sup>11</sup> conducted by the Mining Energy Union found that a staggering 43% of women and 18% of men working in mining had experienced sexual harassment over the past 12 months. Factors include the male-dominated workforce, isolated sites, gender inequality, and hierarchical power imbalances. The percentage of male perpetrators of workplace sexual harassment in mining is higher than the national rate at 83% compared to 79%<sup>12</sup>.

The mining industry must make significant strides towards workplace safety and respect, as underscored by the Supporting Safe and Respectful Workplaces report. The collective industry aim must

be to embed safety and respect as core principles, emphasising the immediate need for industry change.

Energy and resources are critical pillars of the Australian economy, and yet "Australia has seen mining job vacancies more than double since February 2020"<sup>14</sup>. There has also been a 63% drop in mining engineering enrollment in Australia since 2014<sup>15</sup>. While the skills shortage is complex and multi-faceted, the new positive duty may drive progress towards strong psychosocial safety records, and consequently entice women and minority groups into critical sectors.

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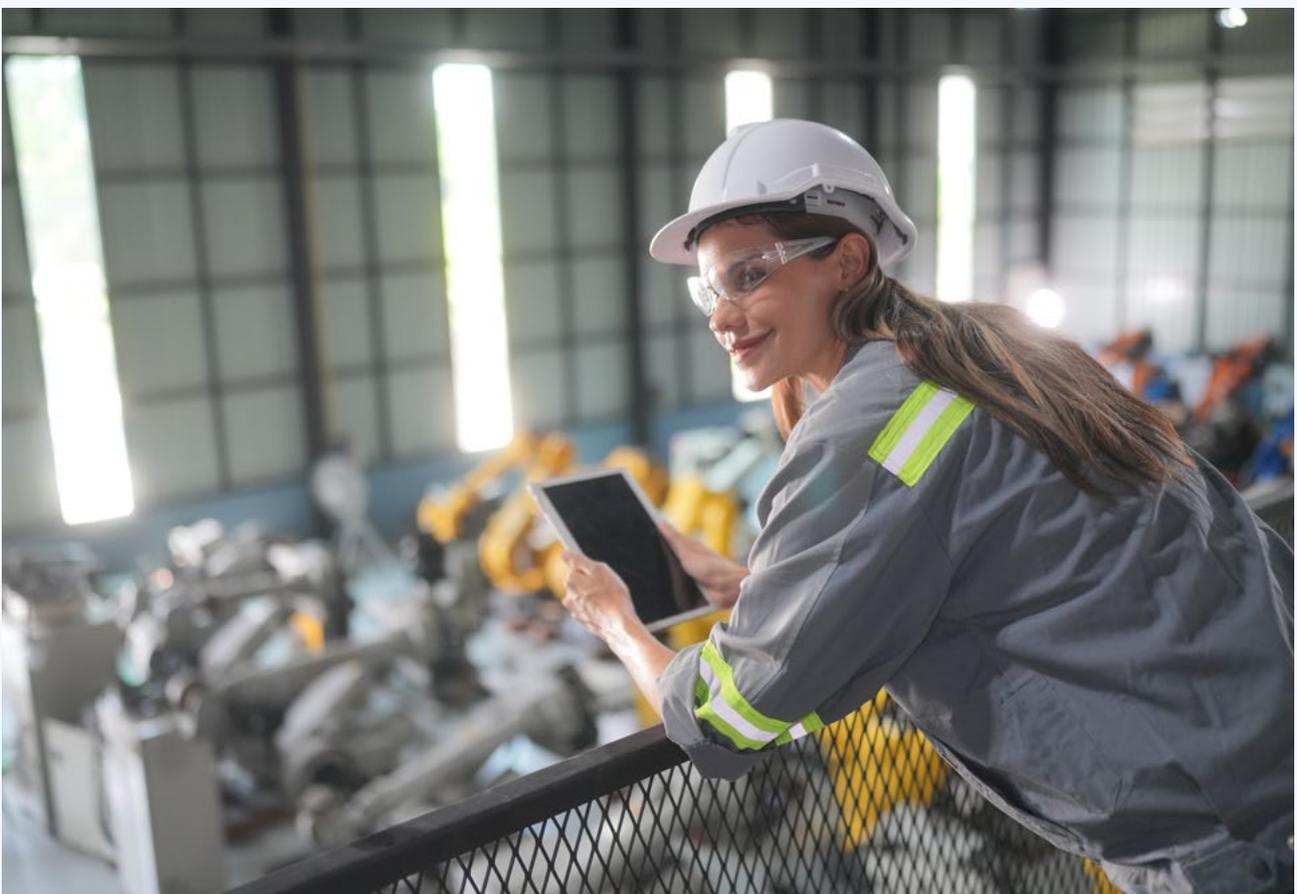
**This is an opportunity for Australian workplaces to become what they should be – safe, inclusive, gender-equal, respectful and free from sexual harassment and sex discrimination.**

**– Dr Anna Cody  
Australian Human  
Rights Commission**

## The consequences of non-compliance for employers and PCBU's

Aside from the clear goal of ensuring every worker is safe and protected from harassment, other key business considerations include:

- Legal repercussions: Employers may face legal action and be held accountable for any incidents, leading to financial penalties.
- Reputation and business impact: Negative publicity can severely tarnish a company's reputation, resulting in business losses and challenges in both retaining and attracting employees.
- Drop in shareholder value: Negative effects on your brand can diminish both immediate and future shareholder value.
- Employee grievances and potential litigation: Harassed or discriminated employees have the right to file complaints with the Australian Human Rights Commission, triggering investigation and potential legal action.
- Productivity Decline: A work environment tainted by harassment and discrimination can result in unhappy employees, reduced worker morale and poor retention rates.
- The Australian Human Rights Commission can now enforce the positive duty with the power to conduct enquiries, issue compliance notices, enter into enforceable undertakings with an organisation, and apply to the federal courts for an order to direct compliance with a notice.<sup>5</sup>





# The Australian Human Rights Commission's Seven Key Standards

1 Leadership

2 Culture

3 Knowledge

4 Risk management

5 Support

6 Reporting & response

7 Monitoring, evaluation & transparency

## The seven key standards

While the policy intentionally uses flexible terms like 'reasonable' and 'appropriate' to suit all employer-employee situations, there are clear standards that can guide our path forward.

Seven key standards have been established by the HR Commission to satisfy the positive duty: Leadership, Culture, Knowledge, Risk management, Support, Reporting and response, and Monitoring, evaluation and transparency.

### The Australian Human Rights Commission has provided guidelines on how to comply with the positive duty<sup>5</sup>

#### 1 Leadership

Senior leaders must understand their legal obligations under the Sex Discrimination Act and lead by example.

#### 2 Culture

Organisations should create a safe, respectful, and inclusive workplace culture. It should motivate workers to report instances of misconduct by asserting that their wellbeing will be prioritised.

#### 3 Knowledge

Comprehensive policies on respectful behaviour and the repercussions of misconduct should be published and circulated. This includes clear behavioural expectations such as bystander training, mechanisms to detect inappropriate actions, and a thorough understanding of rights and responsibilities within the workspace.

#### 4 Risk management

Unlawful conduct should be considered to be not just an equality risk, but also a health and safety risk. Organisations should take a risk-based approach to prevention and response, by:

- a regularly identifying and assessing the risk of relevant unlawful conduct and the health and safety impact 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

It's the shared responsibility of HR and HSE to ensure cases of bullying, discrimination and sexual harassment are dealt with appropriately. As one example, a 'Sustainability Team' could operate as a hybrid between the two departments. Reports must be dealt with carefully and decisively, and the levels of incident disclosure should vary within the organisation.

## 5 Support

Support is available to workers (including leaders and managers) who experience or witness unlawful conduct.

First responders should be adequately trained to lead trauma-informed investigations, ensuring psychosocial care is provided to victims. Workplace bullying, harassment and assault can result in stress, anxiety, and severe mental health risks, especially without adequate support networks in place.

## 6 Reporting & response

The reporting channels to safely escalate complaints and issues are regularly communicated to workers, and responses to unlawful conduct are trauma-informed and timely, with the same rigour as a root cause analysis for serious safety incidents. Consequences are consistent and proportionate.

Our research led us to an independent group that has set up an anonymous whistleblower forum for reporting incidents in the technology sector, [www.askthegrapevine.com](http://www.askthegrapevine.com).

They publicly share and give advice on how incidents should have been dealt with. Their mission statement is “to explore the systematic challenges faced by women and other minorities in the tech space and to push for actionable and meaningful change”.

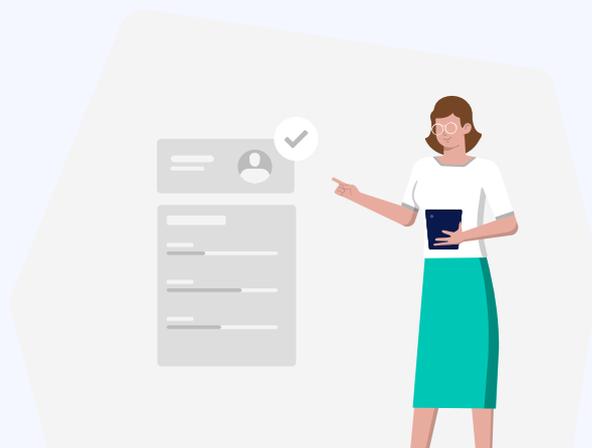
Another start-up directly addressing the issue of under-reporting of incidents is RespectX: [www.respectx.com.au](http://www.respectx.com.au). Their research uncovered that 33% of workers per year experience psychosocial harm, only 18% report it and only 4% of incidents are recorded using existing company systems.

## 7 Monitoring, evaluation & transparency

Data is collected by organisations to understand the nature and extent of unlawful conduct concerning their workforce. This data should be used to monitor and improve the work culture, and to develop processes for preventing and responding to behaviours that could constitute relevant unlawful conduct. Organisations are transparent about the nature and extent of reported behaviours concerning their workers and actions taken to address them.

Industry is at the trial-and-error stage of designing effective processes for reporting and monitoring. There’s little research or determination on the best practice for whistleblower channels, who the first responder should be, and the next steps following the report of an incident. Reporting mechanisms must be inclusive and protect the privacy of those who report so that people are not ashamed to use them.

We also need to report statistics in a way that doesn’t name and shame alleged perpetrators. For example, by omitting the specifics of an incident, but categorising it appropriately with tags such as ‘high potential’ or ‘medium impact.’



## Positive duty and its parallels with the introduction of the WHS Act

When the Work Health and Safety Act 2011 passed, industry managed to shift from simply 'ticking the box' by having policies and procedures in place, to actually 'living and breathing' safety across the dimensions of leadership, culture, risk management and reporting. The result is a workforce today that intrinsically believes that workplace safety is important.

The Intelligent Miner<sup>16</sup> writes that since the 1980's, organisations have progressively elevated safety to be a core part of business strategy, a move that's led

to a dramatic decrease in incidents and accidents. "Diversity, equity, and inclusion (DE&I) practices must become a core part of businesses. DE&I are not solely HR issues, they are operational and leadership issues, because inclusion happens where the work gets done."

It should be our collective goal to place diversity, equity and inclusion as a core part of business - deeply ingrained into organisational cultures and values.

## There's power in data analytics and innovation

Technology can play an important role in creating safe, inclusive and diverse workplaces. Some progressive organisations are using AI to break down language barriers, and screen candidates to remove subconscious biases. Digital technology that gathers real-time workforce data can provide insights into workforce demographics, helping to assess the positive impact of diversity, equity and inclusion on productivity, morale, and safety.

Technology can also help organisations make informed choices during hiring and onboarding, connecting organisations in the resourcing ecosystem to the same collaborative datasets.

Workforce compliance management systems like MyPass can assign workers and contractors with a unique identifier that is transferable cross-industry. This makes it possible to standardise and share safety-critical information using one common dataset.

## How MyPass helps to foster psychosocial safety

In this new era of workplace safety and respect, there are a number of ways that MyPass contributes to solving this important issue through preventative tools and transparency.

### **(#3) Knowledge:**

#### **Using MyPass to share workplace standards and training, and build rigour around rights and responsibilities**

MyPass is a valuable tool for knowledge dissemination within organisations and industry-wide. Utilising a centralised hub, the platform allows for the easy publication and circulation of comprehensive policies and training on respectful behaviour and the consequences of misconduct. Through MyPass, clear expectations for behaviour can be communicated to all workers

and contractors, ensuring a shared understanding of rights and responsibilities in the workplace. Employers gain real-time insights into workers' compliance with training and induction programs related to respectful behaviour, ensuring that they are equipped to recognise and call out unlawful conduct in the workplace.

### **(#7) Monitoring, evaluation and transparency:**

#### **Confidentially flag poor behaviour and implement robust internal review processes**

MyPass can be used to report behaviour that violates an organisation's code of conduct. It can be used to confidentially flag concerns about an individual, and ensure this flag is investigated before they can return to work. MyPass Skills Passports assign each worker with a unique identifier, which inadvertently prevents repeat offenders from rejoining the team through

another contractor or by creating a new profile. Both good and bad performances are traceable, meaning this history follows workers throughout their tenure at an organisation. This feature in MyPass enables organisations to track and monitor the effectiveness of their initiatives to prevent and respond to unlawful conduct.

In light of the new positive duty, it's clear that technology, exemplified by solutions like MyPass, plays a critical role in progressing towards more inclusive, diverse, and equitable workplaces across Australia. The path ahead is both a challenge and an opportunity that demands leadership, innovation and collective action.

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We all need to do our part to ensure that we are protecting everyone in the workplace. By working together cross-industry and using collaborative technology solutions we can create safer workplaces for all.



— **Matthew Smith**  
Chief Executive Officer

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## About MyPass Global

MyPass® empowers safe, agile and connected communities. Our workforce competency assurance platform provides a single source of truth to help companies in high-risk industries reduce their risk and cost of operations. MyPass® simplifies workforce compliance and competency management by empowering workers to take ownership of their training and credentials using a portable, digital Skills Passport, without compromising data privacy and security.

We have been helping companies such as BHP, Woodside and Shell improve safety performance, reducing injury frequency rate by 30% and achieving 47% higher completion rate of business conduct and healthy workplace training.

## Let's Talk

To discuss how we can help improve your workplace health and safety, get in touch with the MyPass team.

[mypassglobal.com/en/talktous](https://mypassglobal.com/en/talktous)



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