

# The new positive duty requirements

## For employers, organisations, PCBU's

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**NTWorkSafe**



# Acknowledgment of Country

# Topics

- Brief introduction: workplace sexual harassment impacts
- The Positive Duty in the NT Work Health & Safety Act and the NT Anti-discrimination Act
- Categories of unlawful conduct
- Five minimum standards to ensure compliance
- Positive Duty Tool for PCBU's
- Where to find resources tools and information

“Workplace sexual harassment is prevalent and pervasive: it occurs in every industry, in every location and at every level, in Australian workplaces.

Australians, across the country are suffering the financial, social, emotional, physical and psychological harm associated with sexual harassment. This is particularly so for women”

(Respect@Work: National enquiry into Sexual Harassment in Australian Workplaces, 2020)

# Snapshot

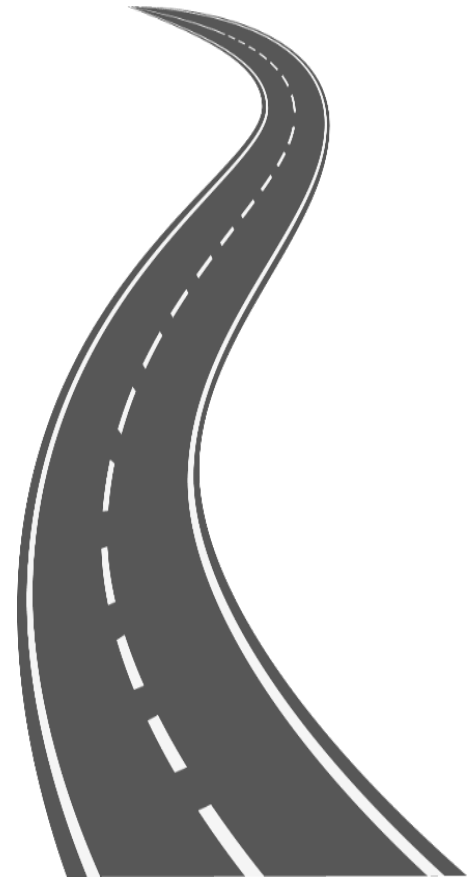
## Fifth National Survey on Sexual Harassment in Australian Workplaces – 2022

### In the past 5 years:

- One in three Australian workers
- 41% of women – 26% of men
- Over 50% ongoing harassment
- Less than one in five made a formal complaint

### Targets of harassment reported:

- Complaints process complicated, risky
- Half observed **no changes** to workplace following a complaint
- Workplaces need to do more to address the problem



# The costs: People



- Decreased job satisfaction and productivity
- Decreased ability to perform role = negative impacts on career progression
- Injury to self-esteem and confidence
- Decreased commitment to the organisation
- Financial losses
- Behavioural changes: social withdrawal, alcohol and substance use
- Impacts on families and relationships

# The Costs: Workplaces



- Increased absenteeism & decreased productivity
- Increased staff turnover
- Damage to reputation
- Incurred costs due to workers compensation, insurance premiums and legal costs
- \$3.8 billion in 2018

# Respect at Work Legislation 2022



Designed to:

- Clarify definitions of sexual harassment
- Strengthen worker protections
- Streamline legal processes
- Improve reporting processes and encourage reporting
- Requires employers to do more to prevent harassment and discrimination from occurring

# Respect at Work: Amendments

Work, Health & Safety law

*Work, Health and Safety  
National Uniform Legislation Act  
2011*

Anti-discrimination law

*NT Anti-Discrimination Act  
1992*

Employment law

*Fair Work Act 2009*

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Fair Work  
Commission

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# Amendments to the model WHS regulations:

1 July 2023: Part 3.2 General Workplace Management - Division 11: Psychosocial risks

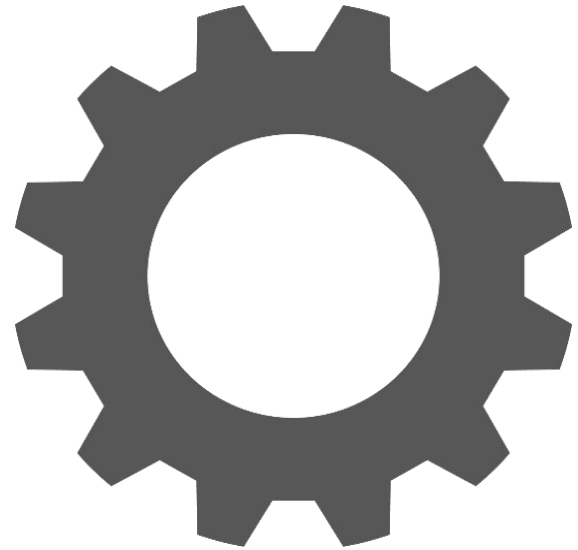
## 55A - Meaning of psychosocial hazard

A psychosocial hazard is a hazard that:

(a) arises from or relates to:

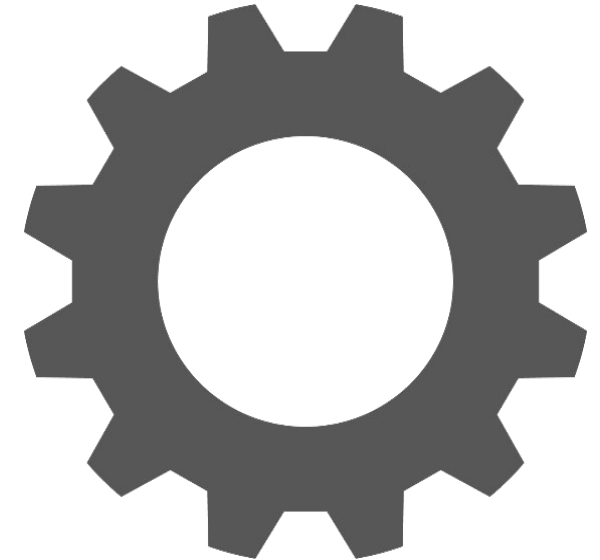
1. the design or management of work; or
2. a work environment; or
3. a plant at a workplace; or
4. workplace interactions or behaviours; and

(b) may cause psychological harm (whether or not it may also cause physical harm).



# WHS Act Section 19 – Division 11

*“A PCBU must ensure, so far as is reasonably practicable, workers and other persons are not exposed to risks to their psychological or physical health and safety, including risks from psychosocial hazards such as sexual and gender-based harassment”*



# Codes of Practice



## Codes of Practice:

Sexual and gender-based harassment

Managing psychosocial hazards at work

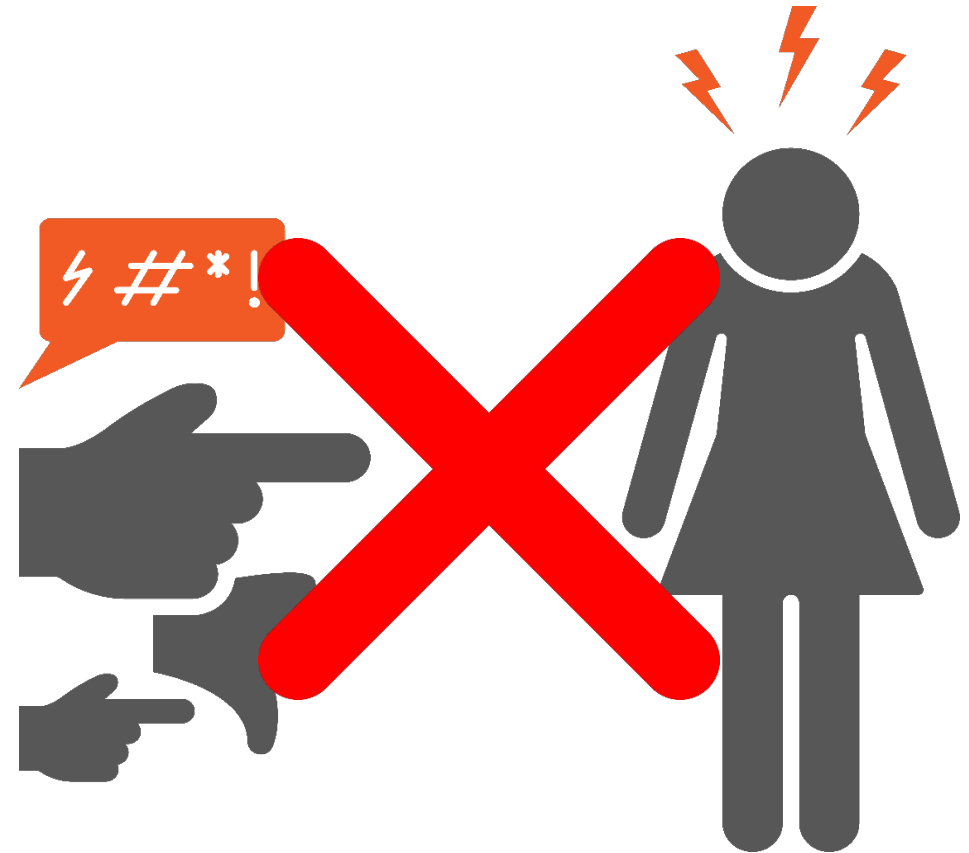
# NT Anti-Discrimination Act 1992

Amendments in 2022 introduced a new Part 2A that provided:

A Positive duty to take positive action to prevent and eliminate:

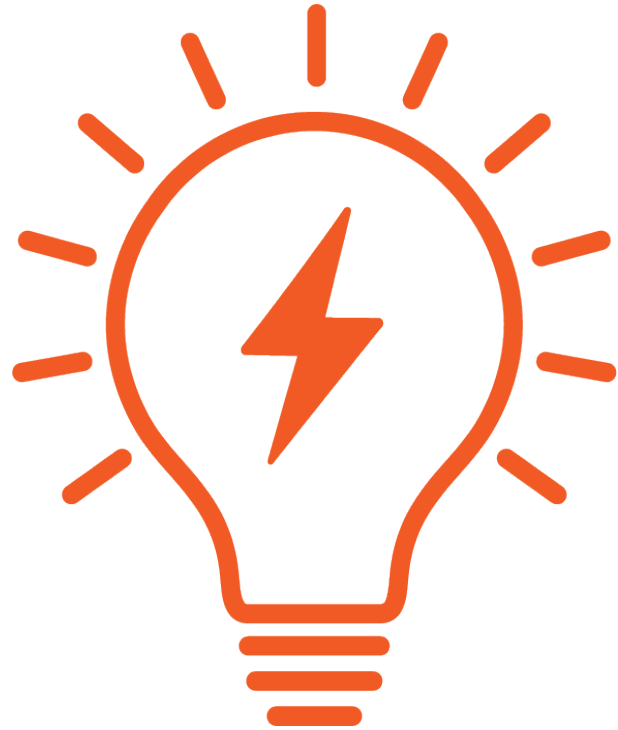
- Discrimination,
- Sexual harassment, and
- Victimisation

to the greatest extent possible.



# The Positive Duty

NT Anti Discrimination Act 1992



Introduces a new **positive duty** to eliminate sexual harassment on all employers and PCBU's

- Proactive – focus on prevention
- Shifts the responsibility to the employer
- Increased transparency, accountability and action

# Positive Duty: who does it apply to?

Requires PCBU's take steps to eliminate unlawful conduct engaged in by:

- themselves
- their employees, workers and agents; and
- by third parties (such as customers, clients, patients and members of the public) towards employees and workers.



# Positive Duty: who does it apply to?

## Individuals

- Contractors
- Subcontractors
- Labour hire workers
- Outworkers
- Apprentices and trainees
- Volunteers
- Clients and suppliers

## Businesses & Organisations

- Companies
- Unincorporated bodies
- Not for profits
- Sole traders
- Partnerships
- Self-employed persons

# Positive Duty: where does it apply?



- Work
- Clubs
- Education
- Accommodation
- Goods services & facilities
- Insurance or superannuation
- The administration of laws and Govt. Programs

# Positive Duty: when does it apply?



- At every stage of employment
- During normal work hours
- Work related travel
- Work related functions
- Online
- Where one person is a worker performing functions in relation to work, the physical location, time etc. does not matter, where such a relationship exists.

# Positive Duty: unlawful conduct

*PCBUs must take reasonable and proportionate measures to eliminate, as far as possible, certain conduct that is unlawful including:*

1. Sex discrimination in a workplace context
2. Sexual harassment in connection with work
3. Sex-based harassment in connection with work
4. Conduct that amounts to subjecting a person to a hostile work environment on the grounds of sex, and certain acts of victimisation

# 1. Sex discrimination

Sex discrimination occurs when someone is treated unfairly, or is unreasonably disadvantaged, because of their sex.

Two kinds of sex discrimination:

## **Direct discrimination**

A person or group are treated less favourably based on their background or certain characteristics

## **Indirect discrimination**

Unreasonable rules or policies apply to everyone but disadvantage some people or groups due to characteristics

## 2. Sexual harassment in connection with work

### **Workplace sexual harassment is:**

- Unwelcome conduct
- Of a sexual nature
- Which a reasonable person would find offensive, humiliating or intimidating

### **Unwelcome conduct is conduct that is:**

- Not welcome
- Not agreed or consented to
- Not returned or mutual.



**inappropriate physical contact**



**intrusive questions about a person's private life or physical appearance**



**sharing or threatening to share intimate images or video without consent**



**images or videos that are sexually suggestive or that constitute a sexual advance**



**unwelcome touching, hugging, cornering or kissing**



**repeated or inappropriate invitations to go out on dates**



**sexually suggestive comments or jokes that offend or intimidate**



**requests or pressure for sex or other sexual acts**



**sexually explicit gifts, images, videos, cartoons, drawings, photographs, or jokes**



**actual or attempted rape or sexual assault**



**being followed or watched inappropriately, or someone loitering inappropriately, either in person or via technology**



**sexually explicit comments made in person or in writing, or indecent messages (SMS, social media), phone calls or emails—including the use of emojis with sexual connotations**



**sexual gestures, indecent exposure or inappropriate display of the body**



**technology-facilitated unwelcome conduct of a sexual nature—including on virtual meetings**



**Inappropriate staring or leering**



**repeated or inappropriate advances on email or other online social technologies**

Source: [Respect@Work.com.au](https://www.respectatwork.com.au)

### 3. Sex-based harassment

Any unwelcome conduct of a demeaning nature because of a person's sex (or a characteristic generally related to their sex)..

Previously 'seriously demeaning', now is '**demeaning**'

Examples:

- Asking intrusive personal questions based on a person's sex
- Making sexist, misogynistic or misandrist remarks about a specific person

## 4. Hostile workplace environments

A workplace will be considered '*hostile on the ground of sex*' if:

- It results from conduct in a workplace, and
- A reasonable person, looking at the situation as a whole, anticipates that certain conduct would be offensive, intimidating or humiliating to a person of one sex in general, rather than a particular person.

## 4. Hostile workplace environments continued...

- Displaying offensive material – obscene images or pornographic material
- Using offensive language
- The circulation of emails, text messages, or online interactions including social media containing any of the above.
- The conduct does not need to have been directed at any particular person: and
- The conduct does not need to have actually resulted in an individual being offended, intimidated or humiliated, or a complaint being made.

## 5. Certain acts of victimisation

Taking or threatening retaliatory action, against someone because they have asserted or intend to assert their rights under the law, or because they took action in support of a complaint.

# Meeting compliance

To satisfy the positive duty requirements

- the nature and circumstances of the organisation
- the size of the PCBU – sole operators, small, medium and large enterprises
- available resources and budget
- the cost and practicality of the measures needed to eliminate conduct



# Meeting compliance

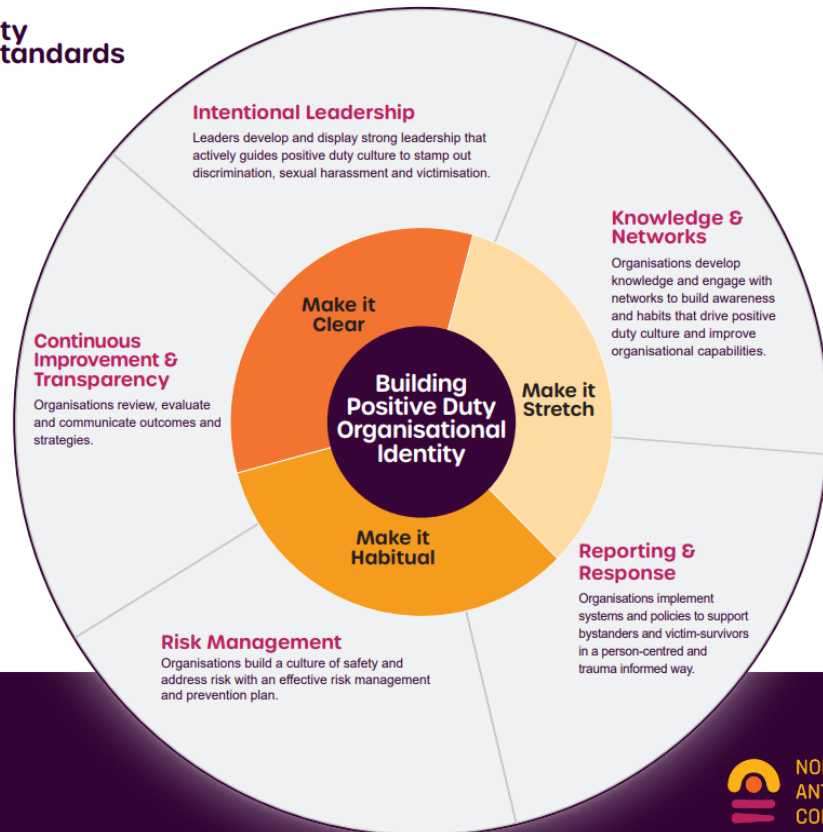
## Reasonable and proportionate measures

Small Business	2 or more employees	<ul style="list-style-type: none"><li>• Implement a discrimination, harassment and bullying policy</li><li>• Communicate the policy to all employees regularly</li><li>• Check in on staff regularly</li></ul>
Medium Business	Around 50 -100 employees	<ul style="list-style-type: none"><li>• Create policies addressing specific areas of risk based on the business/industry</li><li>• Specific training for leaders/management</li><li>• Allocate manager with responsibility to address behaviour</li></ul>
Large Business	Over 100 employees	<ul style="list-style-type: none"><li>• A broad action plan including specific policies</li><li>• Mandatory training for all employees</li><li>• Data collection on complaints</li><li>• EAP – supports provided</li></ul>

# NT ADC

## Minimum standards 1-5

### Positive Duty Minimum Standards



### 1. Intentional leadership

- Leadership and culture

### 2. Knowledge and Networks

- Education

### 3. Reporting and Response

- Prevention and Response plan and Policy

### 4. Risk Management

- Work design and environment

### 5. Continuous improvement

- Consultation, transparency

# Minimum Standards 1

## Intentional Leadership

- Establish SH and Discrimination as CORE issues
- Leaders set the tone from the top, must be respectful and model zero-tolerance
- Ask, are sexist comments or jokes viewed as “just having a laugh” in your workplace?

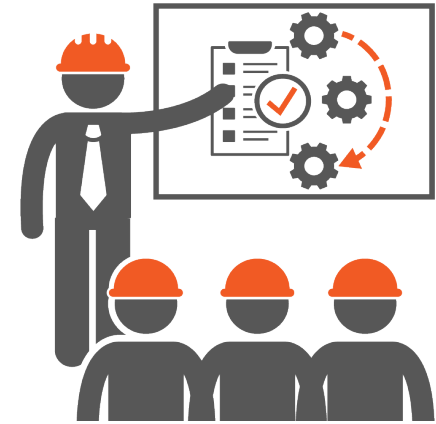


# Minimum standards 2

## Knowledge and Networks

Provide regular, ongoing training and education, in a variety of ways:

- during recruitment
- internal and external training
- schedule refresher training
- bystander intervention training
- visual cues in the workplace
- specific training for managers
- community of practice



# Minimum standards 3: reporting and response

## Prevention and response plan

- Evaluate and revise:
  - the existing design and systems of working
  - existing hazards and risks data
- How prevention will be incorporated in WHS frameworks
- How hazards will be monitored
- Steps to educate workers re: the plan



# Minimum standards 3: reporting and response



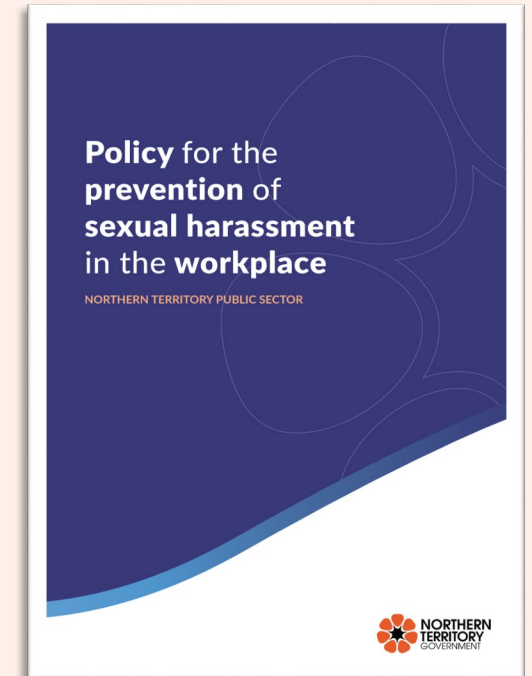
## Prevention and response plan continued

- Ensure workers understand rights and obligations
- Encourage complaints
- Complaints handling procedure:
  - who handles complaints
  - timeframes
  - outcomes
- How workers can give insights and feedback

# Minimum standards 3: reporting and response

## Policy

- Tailored to the workplace and workforce
- Nil-tolerance
- What to do if an employee is a target, or a witness
- Must be enacted throughout workplace processes, procedures and operations.



# Minimum standards 4

## Risk management: work design and physical environment

Follow the 4-step Risk Management process:

1. Identify hazards
2. Assess Risks
3. Control Risks
4. Monitor and review



## 1. Identify hazards

- Consult workers
- Collect & review data
- Consider work tasks & design
- Physical work environment
- Observe & consider work and behaviours
- Consider workforce structure
- Reporting mechanisms

## 2. Assess risks

- The duration of risk
- The frequency of risk
- The severity of risk
- Interactions with other risks

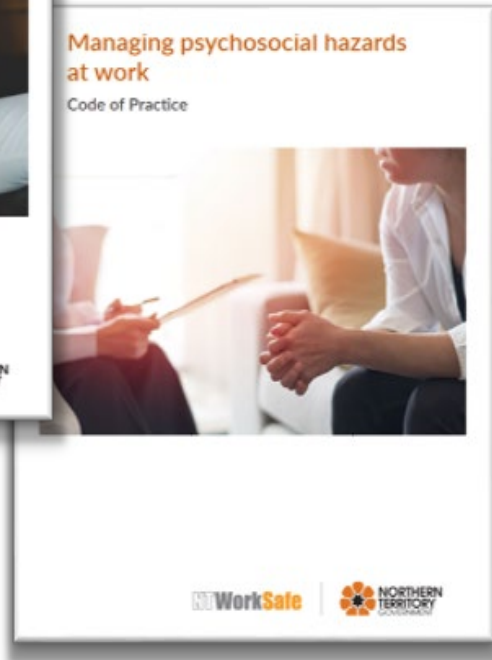
## 3. Control risks

- Select the most effective and reliable control measures
- Eliminate risk wherever possible, otherwise minimise risk
- Ensure measures are implemented and maintained via training and supervision

## 4. Monitor and Review

- Maintain measures, review effectiveness
- Review when new hazard or risk is identified
- Use reports to inform and improve controls

# Minimum standards 4: Resources



Codes of Practice: [worksafe.nt.gov.au](https://worksafe.nt.gov.au)

## 1. Sexual and gender-based harassment

- Risk Management pages 12-34

## 2. Managing psychosocial hazards at work

- Risk Register Template (Appendix C, pg 54)

Interpretive Guideline:

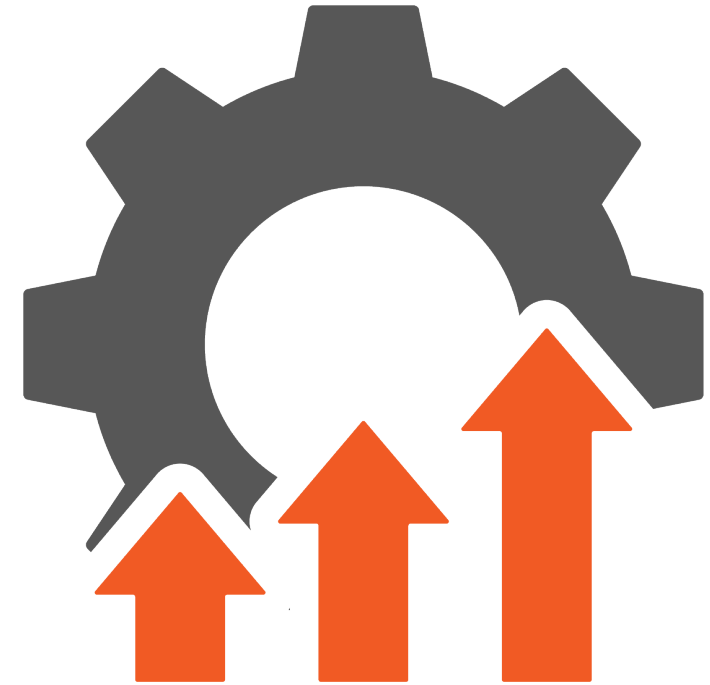
## ‘The meaning of Reasonably Practicable’

([www.safeworkaustralia.gov.au](https://www.safeworkaustralia.gov.au))

# Minimum standards 5

## Continuous Improvement and transparency

- Continuously monitor and review measures and ensure workplace culture is respectful and professional
- Retain detailed records of:
  - assessments,
  - compliance activities
  - actions taken to comply with positive duty



# Enforcement



The Positive duty will  
be in force in the NT  
from 6 January 2025

# Enforcement: NT Anti-discrimination Commission

After January 2025 the NT ADC will have the power to:

- conduct inquiries into compliance with the positive duty
- issue and enforce compliance notices
- apply to courts for an order to direct compliance with a compliance notice
- force employers to enter into enforceable undertakings specifying actions the organisation must take or avoid.



NORTHERN TERRITORY  
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COMMISSION



# Enforcement: NT WorkSafe processes

## NT WorkSafe May:

- Visit a workplace to check if a breach has occurred and ensure reasonable steps are being taken to prevent workplace SH
- Review policies/practices and processes
- Interview staff
- Take photos or recordings
- Under section 155 and 171 of WHS Act (2011)  
NT WorkSafe can obtain information,  
and/or require production of documents  
and answers to questions



# Enforcement: NT WorkSafe

If a workplace is not meeting its obligations to protect its workers from harm including sexual harassment, NT WorkSafe may:

- Issue an improvement notice
- Issue a prohibition notice, or
- If a serious breach has occurred NT WorkSafe may investigate and prosecute



## Your positive duty and WHS requirements

### Did you know: new sexual harassment laws can find employers vicariously liable for the actions of workers?

Under Work, Health and Safety (WHS) legislation all person's conducting a business or undertaking (PCBU's) must ensure workers and others are not exposed to risks or hazards to their physical or psychosocial health and safety in the workplace.

To address workplace sexual harassment and discrimination a positive duty has been introduced under the *Anti-Discrimination Act 1992* (NT) requiring all employers take meaningful and proactive actions to prevent and eliminate, the following 'relevant unlawful conduct' from the workplace:

- Sexual harassment
- Harassment on the ground of sex
- Discrimination on the ground of sex
- Hostile workplace environments, and
- Related acts of victimisation

*In force from:  
6 Jan 2025*

The new laws provide greater protection to workers while making both harassers and employers accountable for their actions.

Employers and organisations can avoid liability if they can demonstrate every reasonable measure was taken to prevent workplace discrimination, sexual harassment and victimisation from occurring.

NT Worksafe recommends you apply: The four-step Risk Management approach

- 1. Identify Hazards:** Identify when, where and how discrimination, harassment and victimisation could occur in the workplace and who is likely to be affected. Hazards and risks will be unique to your workplace, activities and worker population.
- 2. Assess Risks:** Consider the potential duration, frequency and severity of the risk, how it may impact or interact with other psychosocial hazards, and review existing controls. Assess whether each risk can be eliminated, or minimised.
- 3. Control risks:** Introduce control measures to eliminate the risk wherever possible or minimise the risk as far as possible. Consider factors such as systems of work, how work is managed, environment, workplace interactions, education and training and how workers are supervised.
- 4. Monitor and review:** Review control measures for safety, relevance and effectiveness and monitor for new hazards or risks. Engage and consult with your workers at every step.

Your obligations under the positive duty are in addition to your existing WHS obligations as a PCBU.

Visit [worksafe.nt.gov.au](https://worksafe.nt.gov.au) for more information and use the checklist overleaf to check your WHS measures align with positive duty requirements.

# Checklist Tool

Brief guide outlines:

unlawful conduct  
4-step Risk-management process

## Positive duty checklist

### Knowledge and leadership

Be aware of your new and expanded obligations under the positive duty laws and take additional steps to prevent harassment, discrimination and victimisation.



### Consult with your workers

Promote a positive workplace culture where people can speak up about harassment and discrimination and find out what they need for a safe, inclusive and respectful workplace.



### Assess risk

Conduct formal risk assessments to identify areas where unlawful conduct may occur.



### Develop a prevention and response plan

Identify the reasonable and proportionate measures you will take to eliminate the risk of harassment, discrimination and victimisation occurring. Ensure you have a Sexual Harassment Prevention Policy and a Complaints and Response Procedure.



### Implement action plans

Roll out the necessary changes. Monitor for effectiveness and make adjustments where necessary.



### Provide regular and targeted training

Educate and train workers at every level of the organisation regarding prohibited conduct, expected standards of behaviour and what to do if they experience or witness sexual harassment.



### Retain records

Including evidence of assessments, consultation, compliance activities and actions taken to meet your positive duty obligations.



# Checklist Tool

Prompts to assess readiness

Prompt discussion



Scan the QR code  
to download the  
checklist OR visit  
[worksafe.nt.gov.au](https://worksafe.nt.gov.au)

# For more information:



## Respect@work

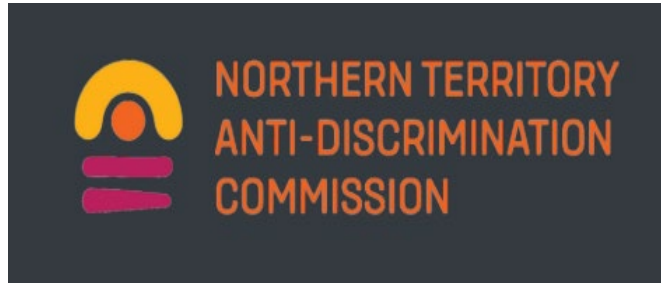
- Resources Hub: comprehensive range of materials
  - Industry specific tools and resources
  - Risk Identification Tool



## The Australian Human Rights Commission

- Guidance materials for compliance
- Policy templates
- Vietnamese/Italian/Punjabi/Greek/Chinese/Arabic languages.

# For more information:



## NT Anti-Discrimination Commission

- Tailored face to face training including:
  - Positive duty for leaders
  - Bystander intervention

## Our Watch

- Educational videos
- Action plan template

## Champions of Change Coalition

- Example leadership statement

# Benefits of a safe and respectful workplace culture

- Enables people to shine – supports wellbeing
- Sexual harassment and other psychosocial hazards cannot thrive
- Improved staff retention
- Improved job performance & productivity
- Overall team success
- Supporting equal participation in the workforce
- A good reputation attracts customers, investors and the best people/staff

# Key takeaways



- Australia no longer relies on a complaints-based system to respond to workplace sexual harassment, discrimination or victimisation
- After January 6th 2025, PCBU's in the NT must be able to **demonstrate meaningful and proactive** measures taken to **prevent** and **eliminate** workplace sexual harassment, discrimination and victimisation

# *Thank you*



Questions/feedback welcome:  
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