



Australian  
Human Rights  
Commission

# Positive Duty under the *Sex Discrimination Act 1984* (Cth)

## Compliance and Enforcement Policy

December 2023

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|           |                                                                                               |           |
|-----------|-----------------------------------------------------------------------------------------------|-----------|
| <b>1</b>  | <b>About this Policy.....</b>                                                                 | <b>3</b>  |
| 1.1       | <i>Introduction.....</i>                                                                      | 3         |
| 1.2       | <i>Principles and approaches underlying this Policy .....</i>                                 | 4         |
| <b>2</b>  | <b>What is the positive duty in the Sex Discrimination Act?.....</b>                          | <b>5</b>  |
| <b>3</b>  | <b>Guidance material relating to the positive duty .....</b>                                  | <b>6</b>  |
| <b>4</b>  | <b>Respect@Work Information Service .....</b>                                                 | <b>6</b>  |
| <b>5</b>  | <b>Research and analysis .....</b>                                                            | <b>6</b>  |
| <b>6</b>  | <b>The Commission's approach to compliance .....</b>                                          | <b>7</b>  |
| <b>7</b>  | <b>The Commission's compliance and enforcement powers relating to the positive duty .....</b> | <b>10</b> |
| <b>8</b>  | <b>Voluntary engagement and compliance .....</b>                                              | <b>10</b> |
| <b>9</b>  | <b>Inquiries .....</b>                                                                        | <b>11</b> |
| 9.1       | <i>Commencing inquiries.....</i>                                                              | 11        |
| 9.2       | <i>Notification requirements and opportunity to make submissions .....</i>                    | 12        |
| 9.3       | <i>Powers to obtain information and documents during inquiries.....</i>                       | 13        |
| 9.4       | <i>Notification of findings and recommendations following an inquiry ...</i>                  | 14        |
| 9.5       | <i>Inquiries into intelligence agencies.....</i>                                              | 14        |
| <b>10</b> | <b>Compliance notices.....</b>                                                                | <b>14</b> |
| 10.1      | <i>Reconsideration of a compliance notice .....</i>                                           | 15        |
| 10.2      | <i>Review of a compliance notice .....</i>                                                    | 16        |
| 10.3      | <i>Enforcing a compliance notice.....</i>                                                     | 16        |
| <b>11</b> | <b>Enforceable undertakings.....</b>                                                          | <b>16</b> |
| 11.1      | <i>Accepting undertakings .....</i>                                                           | 17        |
| 11.2      | <i>Purpose and key features of an enforceable undertaking.....</i>                            | 18        |
| 11.3      | <i>The terms of an enforceable undertaking .....</i>                                          | 19        |
| 11.4      | <i>Enforcing undertakings.....</i>                                                            | 20        |
| <b>12</b> | <b>Privacy and the protection of information.....</b>                                         | <b>20</b> |
| <b>13</b> | <b>Accountability.....</b>                                                                    | <b>21</b> |
| 13.1      | <i>Feedback and complaints .....</i>                                                          | 21        |
| 13.2      | <i>Internal and external review .....</i>                                                     | 21        |
| 13.3      | <i>Other obligations .....</i>                                                                | 22        |
| <b>14</b> | <b>Glossary .....</b>                                                                         | <b>23</b> |
| <b>15</b> | <b>References.....</b>                                                                        | <b>26</b> |

# 1 About this Policy

## 1.1 Introduction

The Australian Human Rights Commission (**Commission**) is Australia's national human rights institution. It is an independent statutory authority, established under the *Australian Human Rights Commission Act 1986* (Cth) (**AHRC Act**).<sup>1</sup>

The Commission has a range of duties, functions and powers with respect to human rights, including undertaking inquiries, intervening in court proceedings, examining laws and conducting educational programs and public awareness campaigns. The Commission also has the power to inquire into, and attempt to conciliate, complaints of unlawful discrimination under Australia's federal anti-discrimination legislation.

From 12 December 2023, the Commission will have new powers to ensure compliance with the positive duty in section 47C of the *Sex Discrimination Act 1984* (Cth) (**positive duty**).

The purpose of this Compliance and Enforcement Policy (**Policy**) is to provide simple and clear information about how the Commission intends to perform its functions in relation to the positive duty.

This Policy also outlines how the Commission will exercise its functions to ensure that duty holders receive the support, guidance and information necessary to comply with their obligations under the positive duty.

The Commission's compliance and enforcement functions under the AHRC Act include:

- to inquire into a duty holder's compliance with the positive duty
- to ensure compliance with the positive duty.

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<sup>1</sup> The Australian Human Rights Commission is established as a body corporate under the AHRC Act. It is a 'corporate Commonwealth entity' for the purposes of the *Public Governance, Performance and Accountability Act 2013* (Cth).

The Commission also has statutory functions:

- to promote an understanding and acceptance, and public discussion, of the positive duty
- to undertake research and educational programs in relation to the positive duty.

The law relating to the Commission's positive duty functions is set out in Division 4A of Part II of the AHRC Act, in full effect from 12 December 2023.

Important terms used in this Policy are defined in its glossary. Sources that are referred to in this Policy, or inform this Policy, are listed at the end of this document.

## **1.2 Principles and approaches underlying this Policy**

This Policy is informed by the responsibilities and expectations that apply to the Commission under the AHRC Act, the *Public Governance, Performance and Accountability Act 2013* (Cth), other legislation and policies.<sup>2</sup>

The Commission's operations are determined independently of the Government by the President and its Commissioners. The Commission will exercise its compliance and enforcement powers consistently with its vision of human rights, for everyone, everywhere, everyday.

Under section 10A of the AHRC Act, it is the duty of the Commission to ensure that its functions are performed with regard for:

- the indivisibility and universality of human rights, and
- the principle that every person is free and equal in dignity and rights.

The Commission's compliance and enforcement powers will be exercised in the public interest, with independence, fairness, integrity and professionalism. The Commission will also ensure that its duties are performed with efficiency, accountability and for the greatest possible benefit to the people of Australia.

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<sup>2</sup> These include the Australian Government's *Regulator Performance Guide*, as well as principles stated in guides like the Australian National Audit Office's *Administering Regulation: Achieving the Right Balance* and the Administrative Review Council's *The Coercive Information-Gathering Powers of Government Agencies*.

The Commission will adhere to the best practice principles for Commonwealth regulators in the *Regulator Performance Guide (RMG-128)*, including building trust and public confidence in its operations.

In line with the best practice principle of 'continuous improvement', this Policy will be monitored and reviewed within two years and updated as needed to reflect improvements in operations, processes and approaches.

A review of this Policy will also occur before the independent statutory review required by section 4 of the *Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022* (Cth).

## **2 What is the positive duty in the Sex Discrimination Act?**

The positive duty in section 47C of the *Sex Discrimination Act 1984* (Cth) (**Sex Discrimination Act**) requires employers and 'persons conducting a business or undertaking' (**PCBUs**) to take reasonable and proportionate measures to eliminate, as far as possible:

- discrimination on the ground 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 ground of sex
- related acts of victimisation.

This conduct is referred to as '**relevant unlawful conduct**' in this Policy.

In determining whether an employer or PCBU complies with the positive duty, section 47C(6) of the Sex Discrimination Act requires the Commission and the Court to consider:

- a) the size, nature and circumstances of the business or undertaking
- b) its resources, financial or otherwise
- c) the practicability and the cost of measures to eliminate the conduct
- d) any other relevant matter.

### 3 Guidance material relating to the positive duty

The Commission has published comprehensive resources for employers and PCBU's about how they can comply with the positive duty in the Sex Discrimination Act, including:

- [Guidelines](#)
- [An Information Guide](#)
- [A Quick Guide](#)
- [A Resource for Small Business](#)
- [Factsheets](#)

The [Guidelines for Complying with the Positive Duty under the Sex Discrimination Act 1984 \(Cth\)](#) will be used by the Commission in assessing compliance with the positive duty.

Additionally, a court may consider whether employers and PCBU's have followed the Commission's Guidelines when assessing compliance with the positive duty.<sup>3</sup>

### 4 Respect@Work Information Service

The Commission provides a free, confidential Respect@Work Information Service that offers information to individuals, employers and PCBU's on rights and responsibilities in relation to the positive duty, sexual and sex-based harassment and sex discrimination in the workplace.

Further information about the Respect@Work Information Service can be found here: [Respect@Work Information Service](#)

### 5 Research and analysis

The Commission will monitor potential non-compliance with the positive duty by conducting continuous research and environmental scanning.

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<sup>3</sup> Courts have previously had regard to guidance material published by the Commission in the context of claims alleging a breach of the *Sex Discrimination Act 1984 (Cth)*. See, for example, *Richardson v Oracle Corporation Australia Pty Ltd* [2013] FCA 102 [159]–[164]. See also Revised Explanatory Memorandum, Anti-Discrimination and Human Rights Legislation Amendment (Respect At Work) Bill 2022 (Cth) [117]–[118].

We may also conduct research programs under our research and education function to study understanding and awareness of the positive duty. This will assist the Commission to prioritise and allocate resources for education and training, and for compliance and enforcement activities.

## **6 The Commission's approach to compliance**

The AHRC Act gives the Commission a discretion about how it exercises its compliance and enforcement functions in relation to the positive duty. The Commission is committed to using its resources strategically to provide the greatest benefit for the community.

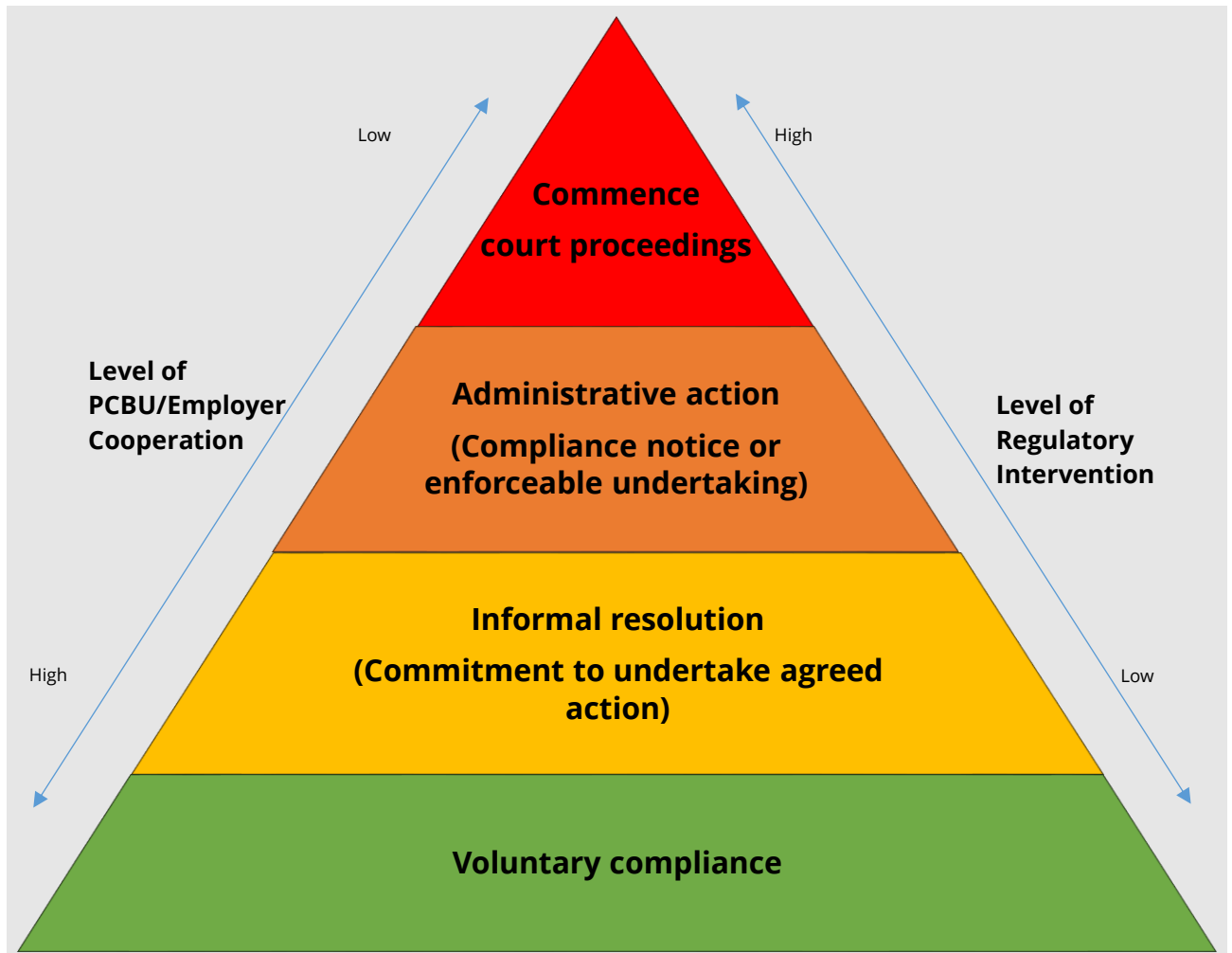
In discharging its regulatory role, the Commission is mindful of the need to ease the overall burden on individuals by proactively initiating action to address relevant unlawful conduct, rather than relying on individuals to bring complaints.

The Commission will use a risk-based, intelligence-led and data-driven approach to compliance and enforcement, focusing its resources on activities and inquiries that will provide the greatest impact for meaningful cultural change.

A leading objective of the Commission is to help employers and PCBU's to improve their own practices through voluntary compliance measures. The Commission considers that the participation and cooperation of employers and PCBU's will build trust and confidence in the positive duty as a measure to reduce sex discrimination, sexual harassment and sexist behaviour, and to support equality in Australian workplaces.

**Figure 1 outlines the Commission's approach to compliance.**

Higher levels of cooperation by employers and PCBU's in meeting their positive duty obligations will result in less need for regulatory intervention by the Commission.



**Figure 1 Compliance Pyramid**



The Commission is not able to pursue all matters that come to its attention and will be selective in its compliance and enforcement activities.

In deciding whether to engage in compliance and enforcement activities, the Commission will first undertake an assessment process to confirm that it has jurisdiction. It will also consider whether potential compliance and enforcement activities would be in the public interest. This involves an assessment of whether any proposed activity would be an efficient, effective and ethical use of public resources.

Additionally, the Commission will consider practical issues, such as whether the Commission is appropriately positioned to engage in compliance and enforcement activities. Available resources and the activities and jurisdiction of other government agencies and regulators will also be considered.

Other relevant considerations include, but are not limited to:

- the objects of the Sex Discrimination Act
- the nature and seriousness of the suspected non-compliance with the positive duty
- the number of people affected, and whether any suspected non-compliance appears to be of a significant scale
- whether the suspected non-compliance involves vulnerable workers or disadvantaged groups within the community
- the level of public concern relating to the suspected non-compliance
- whether the suspected non-compliance appears to demonstrate a blatant disregard of laws or repeat offending
- the likelihood of compliance and enforcement activities having a broad impact, including cultural or systemic change across an industry or class of employers and/or PCBU
- whether the action taken by the Commission may set an example to other employers or PCBU about conduct that is unlawful under the Sex Discrimination Act
- whether action will ensure that an employer or PCBU complies with the positive duty in the future

- consistency with the Commission's commitment to person-centred and trauma-informed practices
- the likelihood of obtaining sufficient admissible evidence to support a finding of non-compliance in court
- whether there are other appropriate ways of addressing the suspected non-compliance
- any action taken by the employer or PCBU to remedy or address suspected non-compliance and its willingness to work cooperatively with the Commission to achieve voluntary compliance.

Where an employer or PCBU chooses to self-report potential non-compliance with the positive duty, this may influence the Commission's decision as to the appropriate compliance approach.

## **7 The Commission's compliance and enforcement powers relating to the positive duty**

To ensure compliance with the positive duty, the Commission has the power to:

- conduct inquiries into compliance with the positive duty by employers and PCBUs, and provide recommendations to achieve compliance
- issue compliance notices specifying action that employers and PCBUs must take, or refrain from taking, to address any non-compliance
- apply to federal courts for an order to direct compliance with a Commission-issued compliance notice
- enter into enforceable undertakings with employers or PCBUs, where the employer or PCBU agrees to do, or refrain from doing, certain things.

The Commission's functions relating to positive duty inquiries are performed by the President of the Australian Human Rights Commission and the President's delegates.

## **8 Voluntary engagement and compliance**

It is the Commission's preferred regulatory approach to work collaboratively with employers and PCBUs to assist them to achieve voluntary compliance with the

positive duty. This will often be the more effective and efficient way of supporting meaningful cultural change in Australian workplaces and eliminating relevant unlawful conduct.

The Commission considers that education and capacity-building is critical to producing well-informed employers and PCBUs that are committed to compliance and leading practice.

If the Commission identifies any areas of non-compliance, the Commission may first offer to work with an employer or PCBU on a voluntary basis (where appropriate) to support them to meet their legal obligations. The fact that an employer or PCBU has engaged cooperatively with the Commission will be considered when deciding whether to take enforcement action and which enforcement action to take.

As discussed below, the Commission has a suite of compliance and enforcement powers that can be utilised if efforts to achieve voluntary compliance are not successful.

## **9 Inquiries**

### **9.1 Commencing inquiries**

The AHRC Act gives the Commission a discretion about what matters it may inquire into, and flexibility in how it chooses to conduct its inquiries into suspected non-compliance with the positive duty. Safeguards in the AHRC Act and the general law require the Commission to exercise its inquiry functions fairly and in accordance with the principles of procedural fairness.

All inquiries are impartial. The Commission may seek information and evidence from parties and other sources and will make decisions based on the available information.

The Commission can commence an inquiry when it ‘reasonably suspects’ that an employer or PCBU is not complying with the positive duty.

Reasonable suspicion requires less than a reasonable belief, but more than a possibility. The reasonableness of any suspicion will be judged in light of the facts available to the Commission at the time.

The Commission can form this suspicion in a variety of ways. Potential breaches of the positive duty can come to the Commission's attention through multiple avenues that include, but are not limited to, the following:

- environmental scanning, research or academic literature
- information or advice provided by other government agencies or regulators
- information received from impacted individuals, including through the [Positive Duty Form](#) or the Commission's Respect@Work Information Service
- information obtained in the course of performing the Commission's other functions, including complaint-handling
- engagement with stakeholders
- information received from unions and worker representatives
- reports in the media and social media.

The Commission can commence a positive duty inquiry without the consent of an employer or a PCBU.

Under section 14 of the AHRC Act, the Commission can hold an inquiry in such a manner as it sees fit and, in informing itself, it is not bound by the rules of evidence.

## **9.2 Notification requirements and opportunity to make submissions**

As soon as practicable after commencing a positive duty inquiry, the Commission must give the employer or PCBU a written notice setting out the grounds on which the Commission has commenced the inquiry.

Before making any formal findings that an employer or PCBU is not complying with the positive duty, the Commission must also give the employer or PCBU a reasonable opportunity to do either, or both, of the following:

- make oral submissions to the Commission in relation to compliance, in person or by representative
- make written submissions to the Commission in relation to compliance.

This is a choice for the employer or PCBU.

### **9.3 Powers to obtain information and documents during inquiries**

The Commission has powers to compel the production of information and documents during positive duty inquiries, as well as to examine witnesses.

Where the Commission has reason to believe that a person is capable of giving information or producing documents relevant to a positive duty inquiry, the President may serve a written notice requiring the person to give information or documents to the Commission.

Where documents are produced to the Commission, the Commission may:

- take possession of, and may make copies of, or take extracts from, the documents
- retain possession of the documents for such period as is necessary for the purposes of the inquiry.

In similar circumstances, the President may also require a person to attend a particular place, on a specific date and time, to answer questions relevant to a positive duty inquiry. The President may administer an oath or affirmation to a person required to attend and answer questions, as well as examine the person on oath or affirmation.

It is an offence punishable by up to 12 months imprisonment to knowingly give false or misleading information to the Commission during the course of a positive duty inquiry, or to knowingly produce a document containing false or misleading information in response to a compulsory notice.<sup>4</sup>

Under section 26 of the AHRC Act, it is also an offence to hinder, obstruct, molest or interfere with:

- the President or their delegate participating in a positive duty inquiry, or
- a person acting for or on behalf of the Commission, while the person is holding a positive duty inquiry or carrying out an investigation under the AHRC Act.

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<sup>4</sup> *Criminal Code Act 1995* (Cth) ss 137.1, 137.2.

## 9.4 Notification of findings and recommendations following an inquiry

Under section 35E of the AHRC Act, if as a result of an inquiry, the Commission finds that a person is not complying with the positive duty, it must notify the employer or PCBU in writing and provide reasons for its decision. It may also provide recommendations for preventing the repetition or continuation of the non-compliance.

## 9.5 Inquiries into intelligence agencies

The Commission cannot undertake a positive duty inquiry in relation to an intelligence agency.<sup>5</sup>

If the President reasonably suspects that an intelligence agency is not complying with the positive duty, the President must refer the matter to the Inspector-General of Intelligence and Security (**IGIS**).

This means that intelligence agencies can still be subject to a robust inquiry into their compliance with the positive duty, however any inquiry will be conducted by the IGIS rather than the Commission.

# 10 Compliance notices

If the Commission finds, as a result of an inquiry, that an employer or PCBU is not complying with the positive duty, the President may issue them with a written compliance notice under section 35F of the AHRC Act.

The compliance notice must:

- set out the name of the person to whom the notice is given
- set out brief details regarding the non-compliance

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<sup>5</sup> Under s 11(4) of the AHRC Act, an ‘intelligence agency’ means: the Australian Secret Intelligence Service, the Australian Security Intelligence Organisation, the Office of National Intelligence, the Australian Signals Directorate, that part of the Defence Department known as the Australian Geospatial-Intelligence Organisation (including any part of the Defence Force that performs functions on behalf of that part of the Department), or that part of the Defence Department known as the Defence Intelligence Organisation.

- specify action that the person must take, or refrain from taking, in order to address the non-compliance
- specify a reasonable period (starting at least 21 days after the day the notice is given) within which the person must take, or refrain from taking, the specified action
- if considered appropriate – specify a reasonable period within which the person must provide the Commission with evidence that the person has taken, or refrained from taking, the specified action; and
- set out any other matters prescribed by regulation.

The President cannot issue a compliance notice to a person if they have accepted an enforceable undertaking from them, unless the enforceable undertaking has been withdrawn, cancelled or expired. The President may cancel an enforceable undertaking by written notice to a person, without any requirement for their consent. See section [11](#) below on enforceable undertakings.

## **10.1 Reconsideration of a compliance notice**

Under section 35G of the AHRC Act, if an employer or PCBU is given a compliance notice, they can request that the compliance notice be reconsidered by the President or their delegate. This is a free, accessible review process.

A request for reconsideration must:

- be made in writing
- set out the reasons for the request, and
- be given to the President within 21 days after the day the compliance notice is given.

If requested, the President or their delegate must reconsider the compliance notice expeditiously. If the President's reconsideration functions are performed by a delegate, the delegate must be a senior staff member and must not have been involved in giving the initial compliance notice.

After reconsidering a compliance notice, the President or their delegate must give a notice of decision that either:

- affirms the compliance notice

- varies the compliance notice, or
- revokes the compliance notice.

The President or their delegate must provide a written notice, setting out the reasons for their decision relating to the request for reconsideration.

## **10.2 Review of a compliance notice**

Under section 35H of the AHRC Act, an employer or PCBU may apply to the Federal Court or the Federal Circuit and Family Court of Australia (**Court**) to seek review of a compliance notice on the ground that:

- they have not failed to comply as set out in the compliance notice, and/or
- the compliance notice does not comply with the necessary requirements of the AHRC Act.

The application to the Court must be made within 21 days after the day the compliance notice was given to the employer or PCBU or, if they have asked for the compliance notice to be reconsidered, 21 days after the day they were given notice of the reconsideration decision.

The Court may confirm, vary or cancel the compliance notice.

## **10.3 Enforcing a compliance notice**

If the President considers that an employer or PCBU has not complied with a compliance notice, they can apply to the Court to seek orders to enforce the compliance notice.

If the Court is satisfied that the employer or PCBU has not complied with the compliance notice, the Court can make the following orders:

- an order directing the employer or PCBU to comply with the compliance notice
- any other order the Court considers appropriate.

# **11 Enforceable undertakings**

An enforceable undertaking is a legally binding written agreement between an entity or person (such as an employer or PCBU) and a regulator, which is



enforceable in court. The person is obliged to carry out, or refrain from carrying out, the specific action outlined in the agreement.

As enforceable undertakings require engagement and agreement between the regulator and the person suspected of not complying with the law, they are often a very good mechanism for achieving organisational change and systemic reform.

The President can accept enforceable undertakings under section 35K of the AHRC Act, which triggers section 114 of the *Regulatory Powers (Standard Provisions) Act 2014* (Cth) (**Regulatory Powers Act**). The Regulatory Powers Act provides a framework for accepting and enforcing undertakings relating to compliance with legislative provisions.

The following kind of enforceable undertakings can be given:

- a written undertaking given by a person that they will take certain action in order to comply with the positive duty
- a written undertaking given by a person that they will refrain from taking certain action in order to comply with the positive duty
- a written undertaking given by a person that they will take certain action directed towards ensuring that they do not contravene the positive duty, or are unlikely to contravene the positive duty, in the future.

An undertaking can be varied or withdrawn at any time. However, before it can be varied or withdrawn, the President must give their consent in writing to its variation or withdrawal. The President can also cancel the undertaking by written notice to the person, without any requirement for their consent.

The President cannot issue a compliance notice to a person if they have accepted an enforceable undertaking from them, unless the enforceable undertaking has been withdrawn, cancelled or expired.

The President may publish enforceable undertakings given in relation to the positive duty on the Commission's website.

## **11.1 Accepting undertakings**

The President is not required to accept a proposed enforceable undertaking.

In deciding whether to accept an enforceable undertaking, the President and their delegates may consider:

- the benefits of accepting the enforceable undertaking – including any benefits to the workplace, the industry and the community
- whether the enforceable undertaking reflects meaningful commitments that are designed to achieve compliance with the positive duty
- whether the enforceable undertaking is likely to assist with organisational reform
- whether the enforceable undertaking is likely to assist in communicating to industry peers, and to the community, the consequences of failing to comply with the positive duty, and the opportunities and benefits that adopting compliant practices can bring
- the cooperativeness of the employer or PCBU to date, its history of compliance, and whether there is reason to consider that it will comply with the enforceable undertaking in good faith
- whether an enforceable undertaking is an appropriate regulatory outcome in the circumstances. The President may consider that the non-compliance or suspected non-compliance is more appropriately addressed by a compliance notice.

## **11.2 Purpose and key features of an enforceable undertaking**

In general terms, an enforceable undertaking seeks to have a person (such as an employer or PCBU) voluntarily agree to:

- change its acts, practices, procedures or conduct to ensure that it complies with the law – in this case, the positive duty
- remedy the damage caused by any non-compliance with the law (for example, by making an apology or by making a payment to an individual or individuals to compensate for the damage)
- commit to future compliance measures to prevent a recurrence of the non-compliance (for example, conducting reviews and audits, providing training and implementing a framework based on the Commission's [Guidelines for Complying with the Positive Duty under the Sex Discrimination Act 1984 \(Cth\)](#)).

### 11.3 The terms of an enforceable undertaking

The AHRC Act does not require that an enforceable undertaking be expressed in any particular form. However, an undertaking must be in writing and must be expressed to be an undertaking under section 114 of the Regulatory Powers Act.

In addition, the President will generally expect that the terms of any enforceable undertaking include the following (at a minimum):

- the name of the respondent, the date the undertaking was accepted by the President and the date when the undertaking comes into effect
- be signed by the CEO or other senior executive of the respondent and the President (or approved delegate) – without the signature of both parties, the undertaking is not valid
- describe and acknowledge the non-compliance or suspected non-compliance that the President is concerned about
- describe the respondent's commitment to compliance with the positive duty
- outline specified steps the respondent will take to correct the suspected non-compliance and ensure that it is not repeated or continued. This will usually include a requirement for the respondent to complete reviews and establish a monitoring and reporting framework
- where appropriate, contain the details of any independent third party auditor and a mechanism for forwarding reports from the audits to the President
- outline what, if any, steps the respondent will take to notify individuals affected by the suspected non-compliance, where it has not already done so
- contain dates by which the respondent must complete each step
- be written in Plain English and easily understood
- be capable of clear implementation and include action that is capable of being measured or tested objectively
- be certain and capable of enforcement; for example, each step that the respondent is required to complete should be clear and unambiguous

- outline what, if any, steps the respondent will take to resolve the matter with individuals affected by the suspected non-compliance
- contain the respondent's acknowledgement that the President may publish the undertaking in full on the Commission's website. Any concerns the respondent has about publication should be raised and resolved as the terms of the undertaking are being negotiated.

## 11.4 Enforcing undertakings

If the President considers that a person has breached an enforceable undertaking accepted under section 35K of the AHRC Act – and that undertaking has not been withdrawn or cancelled – the President may apply to the Court for an order directing the person to comply with the undertaking (and/or one or more of the orders listed in Part 6 of the Regulatory Powers Act).

If the Court is satisfied that the person has not complied with the enforceable undertaking, under section 115(2) of the Regulatory Powers Act, the Court can make the following orders:

- an order directing the person to comply with the undertaking
- an order directing the person to pay to the Commonwealth an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the failure to comply with the undertaking
- any order directing the person to compensate any other person who has suffered loss or damage as a result of the failure to comply with the undertaking
- any other order that the court considers appropriate.

## 12 Privacy and the protection of information

In undertaking its compliance and enforcement activities, the Commission will ensure that necessary protections are given to personal and sensitive information. It will only disclose information where it is required or permitted by law. For more information see the Commission's [Privacy Policy](#).

The Commission and its staff are subject to a non-disclosure provision in section 49 of the AHRC Act. This limits the information that can be shared with other agencies and people.

The Commission may also be required to disclose information, including personal information, business information and information obtained in confidence, in response to a request under the *Freedom of Information Act 1982* (Cth) (**FOI Act**) if there are no applicable exemptions to release of the information. Wherever possible, the Commission will consult with impacted individuals and organisations about any request under the FOI Act before a decision is made about releasing information.

It will be the general practice of the President to publish enforceable undertakings on the Commission's website.

## **13 Accountability**

### **13.1 Feedback and complaints**

The Commission encourages feedback regarding our compliance and enforcement activities relating to the positive duty and invites people to contact us at: [positivedutyfeedback@humanrights.gov.au](mailto:positivedutyfeedback@humanrights.gov.au)

The Commission's complaints process allows any person to make a complaint about Commission staff and activities, including our compliance and enforcement activities.

### **13.2 Internal and external review**

For some decisions made by the President in relation to positive duty inquiries, there are internal and external review options.

For example:

- the President's decision to issue a compliance notice, and the scope of that compliance notice, can be reconsidered internally by the Commission under section 35G of the AHRC Act. See 'Reconsideration of a compliance notice' in section [10.1](#) above.
- an employer or PCBU can seek external review of a compliance notice by a Court under section 35H of the AHRC Act. See 'Review of a compliance notice' in section [10.2](#) above.

The Commission will provide information on these specific internal or external review rights when giving the relevant decision.

### 13.3 Other obligations

In undertaking relevant obligations under this Policy, the Commission will also conduct itself in accordance with the Commonwealth's Obligation to Act as a Model Litigant (Appendix B to the Legal Services Directions 2017). This means that in handling claims and litigation, brought by or against us, we are required to act honestly, fairly and in accordance with the highest professional standards.

The Commission's conduct more generally is subject to scrutiny under various statutory and accountability frameworks, such as the FOI Act, the *Public Interest Disclosure Act 2013* (Cth) and the *National Anti-Corruption Commission Act 2022* (Cth).

## 14 Glossary

|                                     |                                                                                                                                                                                                                                                                                                                          |
|-------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Compliance                          | When used on its own, <b>compliance</b> means satisfying the positive duty under the Sex Discrimination Act.                                                                                                                                                                                                             |
| Compliance and enforcement activity | This Policy refers to all Commission activities that promote compliance, or that deter or respond to non-compliance, as <b>compliance and enforcement activities</b> . This is a compound expression. We do not attempt to draw a line between what is a compliance activity and what is an enforcement activity.        |
| Compliance notice                   | <p>A <b>compliance notice</b> is a notice issued by the President under s 35F of the AHRC Act.</p> <p>A compliance notice may be given if the President finds that an employer or PCBU is not complying with the positive duty, following an inquiry into compliance with the positive duty.</p>                         |
| Compliance activities               | A <b>compliance activity</b> is any activity that the Commission uses to achieve an outcome in relation to compliance. The Commission is empowered to undertake compliance activities under our functions in the AHRC Act.                                                                                               |
| Court                               | The Federal Court or the Federal Circuit and Family Court of Australia.                                                                                                                                                                                                                                                  |
| Employer                            | <p>An <b>employer</b> is a person who:</p> <ul style="list-style-type: none"> <li>• employs another person, including by way of part-time or temporary employment (including as a Commonwealth or State/ Territory employee)</li> <li>• engages another person to perform work under a contract for services.</li> </ul> |

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|----------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Enforceable undertaking                            | An <b>enforceable undertaking</b> has the meaning given by the <i>Regulatory Powers (Standard Provisions) Act 2014</i> (Cth).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Guidelines                                         | The <b>Guidelines</b> refers to the ' <i>Guidelines for Complying with the Positive Duty under the Sex Discrimination Act 1984 (Cth)</i> ' published by the Commission.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Non-compliance or breach                           | <b>Non-compliance</b> or a <b>breach</b> is a failure to comply with the positive duty in the Sex Discrimination Act.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Person                                             | Depending on its use, a 'person' may refer to an individual and/or a body corporate in this Policy.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Person conducting a business or undertaking (PCBU) | <p>A <b>person who conducts a business or undertaking (PCBU)</b> has the same meaning in the Sex Discrimination Act as under the <i>Work Health and Safety Act 2011</i> (Cth).</p> <p>A person conducts a business or undertaking whether they do it alone or with others, and whether or not the business or undertaking is conducted for profit or gain. The term is a broad concept that extends beyond the traditional employer/employee relationship and includes all types of modern working arrangements and structures, such as:</p> <ul style="list-style-type: none"> <li>• public and private companies</li> <li>• unincorporated bodies or associations</li> <li>• partners in a partnership</li> <li>• government departments and authorities</li> <li>• local government councils</li> <li>• franchisors and franchisees</li> <li>• owners and operators of businesses</li> <li>• principal contractors and head contractors</li> <li>• not-for-profit organisations that engage and pay administrative staff</li> </ul> |



|                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|----------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                              | <ul style="list-style-type: none"> <li>• sole traders and self-employed people.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                              |
| Positive duty                                | The <b>positive duty</b> under section 47C of the Sex Discrimination Act requires employers and PCBU's to take reasonable and proportionate measures to eliminate, as far as possible, relevant unlawful conduct.                                                                                                                                                                                                                                                                       |
| Positive duty inquiry                        | A <b>positive duty inquiry</b> means an inquiry into an employer or PCBU's compliance with the positive duty.                                                                                                                                                                                                                                                                                                                                                                           |
| Risk-based, intelligence-led and data-driven | <p>Being <b>risk-based, intelligence-led and data-driven</b> supports regulatory function best practice principles. This means that we will:</p> <ul style="list-style-type: none"> <li>• manage risks proportionately</li> <li>• weigh efficiency and cost-effectiveness of our actions</li> <li>• maintain essential safeguards while minimising regulatory burden</li> <li>• leverage data and digital technology</li> </ul> <p>to support those we regulate to comply and grow.</p> |

## 15 References

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| <b>Legislation</b>                                                                                                                  |
| <i>Australian Human Rights Commission Act 1986 (Cth)</i>                                                                            |
| <i>Regulatory Powers (Standard Provisions) Act 2014 (Cth)</i>                                                                       |
| <i>Sex Discrimination Act 1984 (Cth)</i>                                                                                            |
| <i>Work Health and Safety Act 2011 (Cth)</i>                                                                                        |
| <b>Other documents that inform this Policy</b>                                                                                      |
| Administering Regulation: Audit Insights (2021)<br><a href="http://www.anao.gov.au">www.anao.gov.au</a>                             |
| Australian Government Cost Recovery Policy (2023)<br><a href="http://www.finance.gov.au">www.finance.gov.au</a>                     |
| The Australian Government Guide to Regulation (2014)<br><a href="http://www.cuttingredtape.gov.au">www.cuttingredtape.gov.au</a>    |
| Australian Government Investigations Standards 2022<br><a href="http://www.ag.gov.au">www.ag.gov.au</a>                             |
| Australian Government Guide to Policy Impact Analysis (2023)<br><a href="http://oia.pmc.gov.au">oia.pmc.gov.au</a>                  |
| The Coercive Information-Gathering Powers of Government Agencies (2008)<br><a href="http://www.arc.ag.gov.au">www.arc.ag.gov.au</a> |

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| Commonwealth Fraud Control Framework 2014<br><a href="http://www.ag.gov.au">www.ag.gov.au</a>                      |
| Commonwealth Risk Management Policy (2014)<br><a href="http://www.finance.gov.au">www.finance.gov.au</a>           |
| Prosecution Policy of the Commonwealth<br><a href="http://www.cdpp.gov.au">www.cdpp.gov.au</a>                     |
| Regulator Performance Framework (2014)<br><a href="http://www.cuttingredtape.gov.au">www.cuttingredtape.gov.au</a> |