

New Workplace Sexual Harassment Obligations for Medical and Dental Practitioners

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Medical and dental practitioners need to be aware of new obligations regarding sexual harassment in the workplace

Since December 2023, the Australian Human Rights Commission has had powers to investigate and enforce new obligations under the Sex Discrimination Act 1984 (Cth) (SD Act). Employers and persons conducting a business or undertaking (PCBU) must take reasonable and proportionate measures to eliminate, as far as possible, the following behaviours from occurring:

- a. workplace sexual harassment, sex discrimination and sex-based harassment;
- b. conduct that amounts to subjecting a person to a hostile workplace environment on the grounds of sex; and
- c. certain acts of victimisation.

Sexual harassment is a **common psychosocial hazard in the medical industry** and a risk which employers will need to closely manage in accordance with the guidelines set out below.

Guidelines for complying with this positive duty

The Australian Human Rights Commission (AHRC) has released 'Guidelines for Complying with the Positive Duty under the Sex Discrimination Act 1984 (Cth)' (Guidelines), which sets out the practical actions that the AHRC expects that organisations including hospitals, medical practices, and dental health clinics will implement, to eliminate unlawful conduct.

Under the Guidelines, employers and PCBUs are expected to have measures to address each of the following seven standards:

1. Leadership
2. Culture
3. Knowledge
4. Risk Management
5. Support
6. Reporting and Response
7. Monitoring, Evaluation and Transparency.

All organisations are expected to have measures to address each of the seven standards, but what is considered "reasonable and proportionate" for each employer or PCBU in the implementation of the standards will vary based on, among other things, its size and nature, resources, and the practicability and cost of implementing the measures. For example, a hospital will be held to a much higher standard than a small medical practice.

The Guidelines are extensive, and include:

- a. Appropriate training for senior leaders to ensure, among other things:
 - i. they remain up to date in their knowledge regarding the positive duty and the drivers and impacts of unlawful conduct;
 - ii. that appropriate measures are developed to prevent and respond to relevant unlawful conduct; and
 - iii. they make the prevention of unlawful conduct a leadership priority and demonstrate that such conduct will not be tolerated.
- b. Fostering a culture of safety and respect, which empowers workers and leaders to report sexual harassment and holds people accountable for any sexual harassment committed.

- c. Establishing policies and procedures concerning respectful behaviour and unlawful conduct and ensuring that it is communicated to all employees, is consistently followed and regularly reviewed.
- d. Undertaking risk management by identifying and assessing the risk of unlawful conduct and implementing control measures.
- e. Appropriate support is available to workers who experience or witness sexual harassment, including educating workers on what support and resources they can access whether they report the unlawful conduct or not.
- f. Appropriate options for reporting and responding to sexual harassment are provided and regularly communicated.
- g. Appropriate means to collect data to understand the nature and extent of sexual harassment, including where and why relevant unlawful conduct is happening, who is engaging in it, who is impacted by it, why it might occur, and to use this data to assess and improve their workplace culture.

An employer who complies with the Guidelines will be better placed to defend any claims under the SD Act than one who does not.

In summary, health practitioners must contribute to creating a safe workplace by being respectful towards patients and colleagues at work. Proven sexual harassment not only breaches the SD Act, but may also lead to dismissal, criminal charges and potential regulatory sanctions.

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