

Positive Duty: are boards ready to prevent workplace sexual harassment

Research undertaken by the Australian Institute of Company Directors (AICD) and Australian Council of Superannuation Investors (ACSI) shows an overwhelming majority of directors believe preventing sexual harassment in the workplace is a high priority issue for their boards.

But most directors are concerned their boards may not be fully prepared to meet new workplace sexual harassment standards when they come into force next week.

The new Positive Duty requiring companies to prevent sexual harassment and other hostile sex-based conduct in the workplace will be enforced by the Australian Human Rights Commission (AHRC) from December 12.

The Positive Duty requires companies to take reasonable and proportionate measures to eliminate sexual harassment, sex-based harassment, sex discrimination, hostile workplace environments and victimisation.

According to the new AICD/ACSI research, 85 per cent of ASX300 directors believe the prevention of workplace sexual harassment and other positive duty conduct is a high priority issue for their boards.

However most of the directors surveyed, including 80 per cent of women directors, don't believe their boards are fully equipped for the new legal landscape.

The AICD/ACSI research builds on a 2021 assessment of the state of sexual harassment reporting in Australia's largest companies by ACSI and AHRC, which found that boards were reactive, rather than preventative, in their approach to these issues within their organisations.

The latest report finds that board practices to prevent and respond to sexual harassment and other positive duty conduct have improved since 2021, with increased momentum from Australian boardrooms to take action.

But directors would like to see a greater effort from management to prioritise initiatives to prevent workplace sexual harassment and other positive duty conduct. These issues need to be considered proactively, not reactively, by management and the board.

The AICD/ACSI report highlights examples of better practice and outlines questions boards and investors can ask to ensure implementing a system to protect and support those in the workplace remains a priority.

Other key findings:

- Only 20% of women directors believe their boards had a very adequate understanding of the nature of positive duty conduct. 39% of men directors reported the same.
- 32% of women directors and 45% of men directors strongly agreed their organisation is well prepared to meet its positive duty obligations as an employer.
- Directors believe the positive duty should be viewed as an opportunity to drive cultural change rather than a compliance exercise.

- 70% of directors said their organisation has set targets to achieve gender balance in management roles via recruitment and promotion strategies.
- Leading organisations are integrating sexual harassment and other positive duty conduct into workplace health and safety risk management frameworks.
- But there has been slow progress overall in companies treating psychosocial hazards with the same priority as physical safety concerns.
- The underreporting of sexual harassment and other positive duty conduct within organisations remains a significant concern.
- Lack of trust and confidence in organisational systems, processes and outcomes is a key barrier to reporting.
- Organisations that are transparent and share information about sexual harassment and other positive duty conduct report a significant positive impact on workplace culture.

ACSI quote

“Sexual harassment is a material risk that can expose companies to significant reputational risk, have financial implications, affect operations and impact a company's social licence to operate. Long-term investors want to support the companies in which they invest to be well-run, safe for their people, and have cultures that effectively prevent and address workplace sexual harassment,” said Louise Davidson, ACSI CEO.

“Prevention of sexual harassment is a responsibility of the whole board not just women directors. I urge directors to educate themselves and ask questions of management on these issues.”

AICD quote

“It is without question that the prevention of workplace sexual harassment is relevant to various streams of the board's work including health and safety, oversight of organisational culture and risk management,” said Mark Rigotti, AICD MD &CEO.

“The AICD undertook this research with ACSI to understand how prepared boards are for their obligations, and to support directors in navigating this new landscape.”

“The Positive Duty presents an opportunity for employers to demonstrate their leadership and commitment to stamp out harmful conduct in the workplace, and to bring about important cultural change by fostering safe and more respectful workplaces.”

AHRC quote

“It is heartening to see the steps that organisations are taking to foster safer, respectful and more inclusive and diverse workplaces. But there is still a long way to go, and organisations must continue to build on the collective momentum we have seen over recent years,” said Dr Anna Cody, Sex Discrimination Commissioner at the Australian Human Rights Commission.

“Fulfilling this new positive duty obligation requires a shift from a traditionally reactive approach grounded in a complaints-driven model, to a proactive approach that places the responsibility for change in the hands of employers, where it belongs. Simply responding to reports of individual incidents is not enough.”

“The importance of diverse perspectives and experiences to understanding the nature and extent of the issues within an organisation is underlined in this research. Boards and directors will play a crucial role in championing this approach from the top.”

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About ACSI

Established in 2001, ACSI exists to provide a strong, collective voice on environmental, social and governance (ESG) issues on behalf of our members. Our members include Australian and international asset owners and institutional investors. Collectively, they manage over \$1 trillion in assets.

Our members believe that ESG risks and opportunities have a material impact on investment outcomes. As fiduciary investors, they have a responsibility to act to enhance the long-term value of the savings entrusted to them. Through ACSI, our members collaborate to achieve genuine, measurable and permanent improvements in the ESG practices and performance of the companies they invest in.

ACSI staff undertake a year-round program of research, engagement, advocacy and voting advice. These activities provide a solid basis for our members to exercise their ownership rights.

About AICD

The Australian Institute of Company Directors' (**AICD**) mission is to be the independent and trusted voice of governance, building the capability of a community of leaders for the benefit of society. The AICD's membership of over 50,000 reflects the diversity of Australia's director community, comprised of directors and leaders of not-for-profits (NFPs), large and small and medium enterprises (SMEs) and the government sector.

Every year we run hundreds of programs and courses on the theory of corporate governance and how to apply it in practice across different sectors and industries.

We also provide updates and new perspectives on governance and related topics, advocate for excellence, and analyse relevant policy on behalf of our members and the wider governance community.