PRACTICE GUIDANCE

Workplace gender equality and the law
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Acknowledgement of Country: Our Watch acknowledges the traditional owners of the land across Australia on which we work and live. We pay our respects to Aboriginal and Torres Strait Islander people.
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This guide aims to help you to:

- understand your legal obligations by providing information about:
  - current workplace protections for employees
  - key policy and practice considerations regarding family violence
  - the law in regards to workplace gender equality.

As part of your workplace’s efforts to achieve equality and respect, it is important that staff reviewing existing policies and introducing new policies understand the workplace’s legal obligations.

While Australia already has some legal safeguards for employees – particularly regarding gender equality – initiatives to bolster workplace protections for women experiencing family violence are still in progress. This guide contains a brief summary\(^1\) of key considerations for improving workplace policy and practice.

**Current workplace protections**

*Workplaces are already required by state and federal law to ensure all workers have safe working environments free from bullying, discrimination, sexual harassment and victimisation.* Employers are also required to accommodate the responsibilities of parents and carers under state and federal discrimination laws, and requests for flexible working arrangements is one of the 10 minimum employment entitlements provided to all Australian employees.

It is noted however, that despite these legal protections, women experience gender-based violence at work and have difficulty accessing flexible arrangements to assist with work-caring responsibilities.

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\(^1\) A full list of documents reviewed for the Practice guidance can be found in Appendix 1. Please note that legislation and legal policy can change, and we advise you to check these references regularly for any amendments.
Further, while many workplaces are including family violence leave provisions in their industrial agreements, it is not a widespread practice and there is no uniform, consistent practice to handle disclosures within workplaces and provide the necessary safety planning.

**Law reform initiatives**

There are several law reform initiatives currently in progress to bolster workplace protections for women experiencing family violence. These include:

- including paid family violence leave in the National Employment Standards, in enterprise bargaining agreements and other industrial instruments
- amending OH&S laws (for example, Occupational Health and Safety Act 2005 (VIC) and Regulations 2007) to include the impacts of family violence at work as an OH&S issue.

**Key policy and practice considerations**

While efforts to improve workplace-based legal protections for women experiencing family violence have yet to yield legislative reform, workplaces seeking to implement good/best practice can lead policy development and practice in their individual organisations and sectors.

Key policy and practice considerations for workplace prevention of violence against women include:

- the inclusion of paid family violence leave as a workplace entitlement
- the provision of flexible work arrangements
- the provision of workplace safety planning with specific measures to minimise the risk of employees being subject to violent or abusive behaviour at work and protocols for dealing with a crisis situation
- the inclusion of family violence in OH&S policies
- internal policies to manage disclosures of family violence in a sensitive and confidential manner
the provision of training for all staff to increase their understanding of workplace responses to family violence

clear communication across the organisation to promote awareness of organisational commitment and build capacity for appropriate responses to family violence disclosures

workplace support policies acknowledge that flexible working hours can provide additional workplace safety for staff experiencing violence.

A note about the international context
Both the Victorian Equal Opportunity and Human Rights Commission, and the ACTU note that enshrining family violence protections into Australian workplace and other laws is consistent with Australia’s obligations under a number of international conventions to which it is a signatory.2

Workplace gender equality and the law
Legal compliance is an important foundation for the promotion of gender equality in the workplace. There are a number of federal, state and territory laws that contain equal opportunity protections and promote gender equality.

In Australia, there are legal consequences for failure to comply with workplace laws, so it is important that workplaces understand their legislative obligations under federal, state or territory laws. Some of the relevant legislation to be aware of is:

Workplace Gender Equality Act 2012 (Cth)
At the federal level, there is the Workplace Gender Equality Act 2012 (Cth). The principal objectives of the Act are to:

- promote and improve gender equality in employment and in the workplace
- support employers to remove barriers to the full and equal participation of women in the workforce

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2 These include the International Covenant on Civil and Political Rights; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the Convention Against all Forms of Discrimination Against Women.
• promote the elimination of discrimination on the basis of gender in relation to employment matters

• foster workplace consultation between employers and employees on issues concerning gender equality in the workplace.

Depending on the size and nature of your business, you may need to report to the Workplace Gender Equality Agency annually against a standard set of gender equality indicators which focus on improved gender equality outcomes.

**Sex Discrimination Act, 1984 (Cth)**

The federal Sex Discrimination Act, 1984 (Cth) makes it unlawful to discriminate against a person on the basis of: sex, marital status, pregnancy or potential pregnancy, breastfeeding, and family responsibilities, as well as sexual orientation, gender identity and intersex status. The Act also makes it unlawful to sexually harass another person.

**The Equal Opportunity Act, 2010 (Vic)**

In Victoria, the Equal Opportunity Act, 2010 (Vic) requires organisations to take “reasonable and proportionate measures to eliminate discrimination, sexual harassment or victimisation as far as possible”. This is known as the ‘positive duty’ and aims to prevent discrimination, sexual harassment and victimisation occurring in areas of public life, including employment.
Appendix 1 | List of documents reviewed for this Practice guidance


