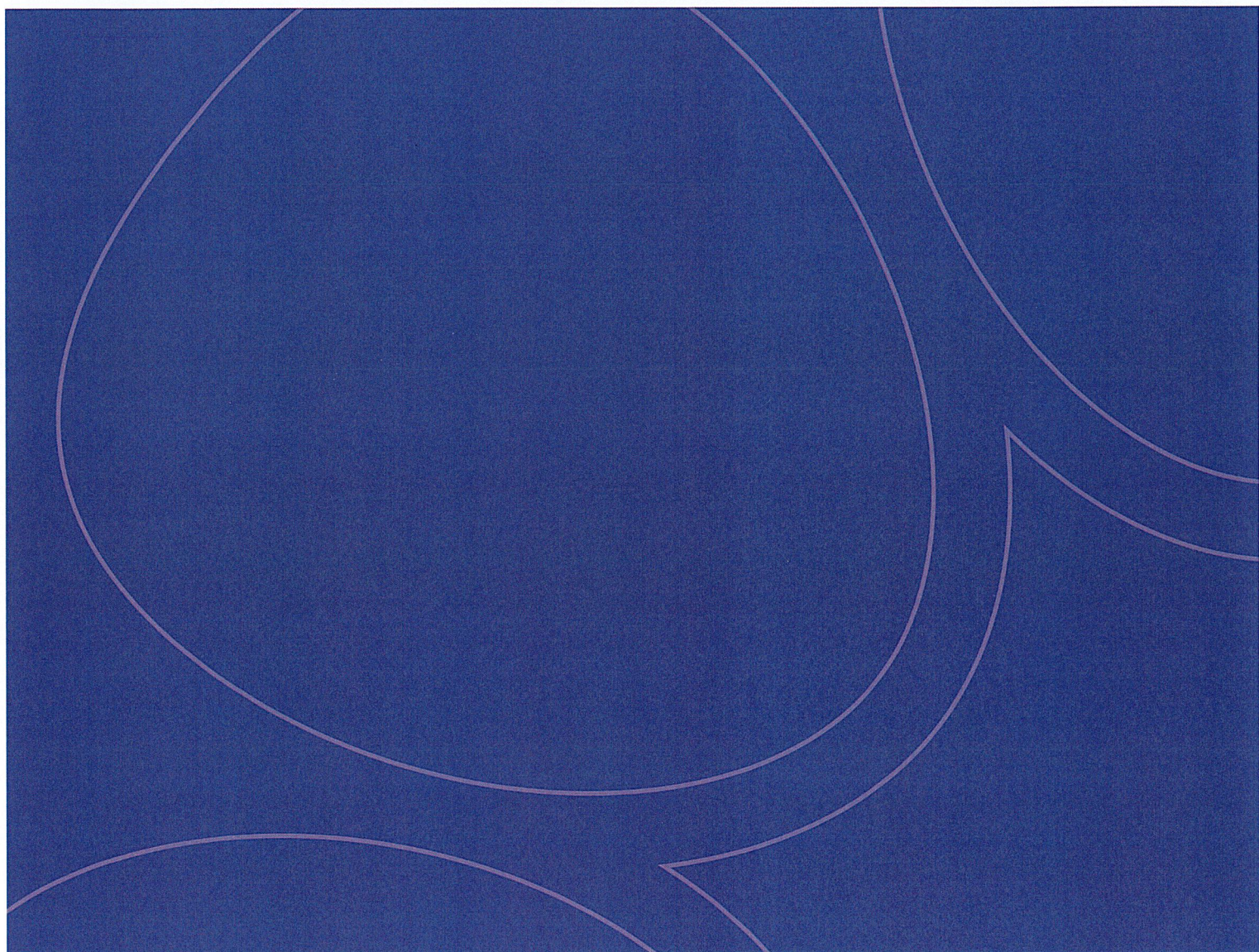


Policy for the application of the Positive Duty to eliminate discrimination, sexual harassment, and victimisation in the NTPS

Anti-Discrimination Act 1992



Document title	Policy for the application of the Positive Duty to eliminate discrimination, sexual harassment, and victimisation in the NTPS
Contact details	Office of the Commissioner for Public Employment
Approved by	Nicole Hurwood, Commissioner for Public Employment
Date approved	28 October 2024
Document review	1 July 2028
TRM number	03:F24:162

Version	Date	Author	Changes made
1.0	19 June 2024	Hanna Clee, AGD	27/8/2024

Acronyms	Full form
NTPS	Northern Territory Public Sector
PSEMA	<i>Public Sector Employment and Management Act 1993 (NT)</i>
The Act	<i>The Anti-Discrimination Act 1992 (NT)</i>
ECO	Executive Contract Officer
ADC	Northern Territory Anti-Discrimination Commission
EI	Employment Instruction
CEO	Chief Executive Officer
NT	Northern Territory
SDA	<i>Sex Discrimination Act 1984 (Cth)</i>

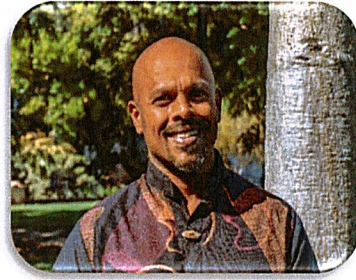
Contents

1. Foreword	4
2. Policy Statement	5
3. Definitions	5
4. Objectives	8
4.1. Scope	8
4.2. Responsibilities	8
4.2.1. Commissioner for Public Employment	8
4.2.2. Chief Executives / Managers	9
4.2.3. Employees	9
5. Legislation	10
5.2 Part 2A of the <i>Anti-Discrimination Act 1992</i>	10
5.3 <i>Sex Discrimination Act 1984 (Cth)</i>	11
6. Minimum Standards	11
6.1. Intentional Leadership	12
6.2. Knowledge and Networks	13
6.3. Risk Management	13
6.4. Reporting and Response	14
6.5. Continuous Improvement and Transparency	14
7. Case study examples of active steps towards meeting the positive duty.	15

1. Foreword



Nicole Hurwood,
Commissioner for
Public Employment



Jeswynn Yogarathnam,
Anti-Discrimination
Commissioner

The Commissioner for Public Employment is responsible for promoting and upholding the public sector principles outlined in the *Public Sector Employment and Management Act 1993 (PSEMA)*. Public Sector principles relate to, among other things, performance and conduct. The Commissioner is also responsible for the coordination of education for employees in conjunction with Chief Executive Officers (CEO).

Creating true and intentional equality of opportunity is about being proactive in creating an environment where people feel safe, respected and inclusive in bringing their authentic self to work. The Northern Territory Public Sector (NTPS) strives to create that environment by taking action to optimise the application of the positive duty to prevent and eliminate discrimination, sexual harassment and victimisation to the greatest extent possible. It is a bold ambition, but one which is necessary to create a successful public sector.

In November 2022, unprecedented reforms to the *Anti-Discrimination Act 1992 (the Act)* were enacted making it the most comprehensive and

protective equal opportunity Act in Australia. The Northern Territory is addressing discrimination, sexual harassment and victimisation proactively rather than reactively. This is achieved through the introduction of the positive duty by removing the onus on individuals and placing a legal duty at an organisational level where leaders set the tone in building an organisational identity that is responsive to systems that prevent and eliminate discrimination, sexual harassment and victimisation.

A positive duty to eliminate discrimination in regard to all 24 protected attributes including race, sex and disability is a testimony that the NT understands the intersectional context in which people can be treated unfairly. This is a huge accomplishment for the NT, and we are excited about taking leadership in this reform, as national positive duty leaders in Australia. The public sector should take pride in this achievement and champion the implementation of positive duty across all sectors as we incrementally build a culture of proactive engagement in our positive duty obligations.

The NT Anti-Discrimination Commission (ADC) has developed a set of minimum standards, as the body responsible for monitoring, oversight and enforcement of the obligations in the Act, including the positive duty.

This positive duty is more than just addressing issues as they arise, it requires proactive steps by agencies through prevention plans detailing actions to meet the minimum standards.

2. Policy Statement

The NTPS will undertake **positive action** to prevent and eliminate discrimination, sexual harassment and victimisation to the greatest extent possible, as a legal obligation of the positive duty introduced into the Act on 2 January 2024.

NTPS agencies will develop a prevention plan that outlines the positive action they are taking to prevent behaviours of discrimination, sexual harassment and victimisation, regardless of whether someone has made a complaint.

This policy applies where there are obligations to prevent discrimination, sexual harassment or victimisation in the exercise of areas of activity covered by the Act.

The NTPS is an employer and service provider, and all employees are responsible for prevention and elimination of discrimination, sexual harassment and victimisation to the greatest extent possible.

3. Definitions

In this policy, the definition of **accommodation** is adopted from the Act to include (but is not limited to):

- business premises
- a house or flat
- hotel or motel
- boarding house or hostel
- caravan or mobile home, or a caravan or mobile home site
- camping site
- building or construction site.

Administration of laws and government programs is an area of activity where conduct is prohibited under the Act, so there is no discrimination in the administration of laws or a Territory Government Program conducted by or on behalf of the Territory Government in the:

- performance of any function under a law of the Territory
- exercise of any power under a law of the Territory
- carrying out of any responsibility for administration of a law of the Territory.

There are 24 **Attributes** that are protected from discrimination under the Act. The positive duty applies to the protection from, and elimination of, discrimination for every attribute, and a person may have one or more attributes.

Policy for the application of the Positive Duty to eliminate discrimination, sexual harassment, and victimisation in the NTPS

The 24 attributes protected from discrimination under the Act:

Race	Language, including signed language	Sex	Gender identity
Sexual orientation	Sex characteristics	Age	Relationship status
Accommodation status	Employment status	Employment in sex work or engaging in sex work, including past employment in sex work or engagement in sex work	Pregnancy
Carer responsibilities	Breastfeeding	Disability	HIV/hepatitis status
Subjected to domestic violence	Trade union or employer association activity	Religious belief or activity	Political opinion, affiliation or activity
Irrelevant medical record	Irrelevant criminal record	The person's details being published under section 66M of the <i>Fines and Penalties (Recovery) Act 2001</i>	Association with a person who has, or is believed to have, an attribute referred to in this section.

Discrimination includes any distinction, restriction, exclusion or preference made on the basis of an attribute that has the effect of nullifying or impairing equality of opportunity, and harassment on the basis of a protected attribute. Discrimination is prohibited conduct under the Act.

Education is an area of activity also covered under the Act; this includes in accepting an application for admission, the admission of a student, processing of an application, arrangements or criteria used in deciding who should be offered admission, the terms and conditions on which a person is admitted as a student, or in the treatment of a student in any way in connection with their training or instruction.

Employee is defined to include employees of the NTPS (including employees covered by current NTPS Enterprise Agreements and executive contract officers (**ECO**) as well as persons seeking employment,

Policy for the application of the Positive Duty to eliminate discrimination, sexual harassment, and victimisation in the NTPS

contract employees, and consultants, agency on hire employees, students and volunteers. This policy also extends to school council employees. The legislation and instruments mentioned in this policy may apply to particular categories of employees.

Public Sector Officer means the same as Employee and are interchangeable.

Agency means the same as Department, Government Owned Corporation and Commission.

Goods, services and facilities (referred to as 'goods and services' in this policy, and whether or not supply is for reward or profit) is an area of activity where conduct is prohibited under the Act, so that there is no discrimination in supply or receipt of goods or services, the terms and conditions of supply or receipt, the way goods and services are supplied or received or by treating a person less favourably in connection with supply or receipt of goods and services.

The definition of **work** is adopted from the Act as work carried out in any capacity and at any place including but not limited to:

- where in a relationship of employment (including full time, part-time, casual, permanent and temporary employment)
- under a contract for services or an employee of a contractor or subcontractor
- remunerated in whole or in part on a commission basis
- as an outworker, or apprentice or trainee
- work experience placement, paid or unpaid (including a student)
- under a statutory appointment
- under a vocational training program or other occupational training or retraining program.

A **workplace** is a place where a person performs work.

Sexual harassment occurs when a person subjects another person to an unwelcome act of physical intimacy, makes unwelcome demands or requests for sexual favours, makes unwelcome remarks with sexual connotations or any other unwelcome conduct of a sexual nature that is intended to offend, humiliate, or intimidate (or where a reasonable person would consider the conduct causes offence, humiliation or intimidation), or the other person believes they will be subject to detriment if they object. Sexual harassment is prohibited conduct under the Act.

Victimisation occurs when a person subjects or threatens to subject another person or an associate of the other person to any detriment because they have made, or intend to make, a complaint or give evidence or information in connection with proceedings under the Act, have alleged or intend to allege that a person has committed an act which may contravene the Act, or has done anything in relation to a person under or by reference to the Act. Victimisation is prohibited conduct under the Act.

4. Objectives

NTPS agencies will take steps to meet or exceed the minimum standards set by the ADC in taking positive action through:

- Intentional Leadership
- Knowledge and Networks
- Risk Management
- Reporting and Response
- Continuous Improvement and Transparency.

4.1. Scope

Agency CEOs have the responsibility for their staff and their conduct. Accountability, in terms of meeting the minimum standards and positively eliminating discrimination, sexual harassment and victimisation, lies with the CEOs.

This policy applies to anyone in the NTPS with responsibilities under the Act. The positive duty therefore applies to all public sector officers as a prohibition from engaging in, and proactively prevent, discrimination, sexual harassment or victimisation:

- as an employer
- as a provider of accommodation
- as a provider of education
- as a provider of goods and services
- through the administration of laws and government programs.

The policy is applied through application of the minimum standards within the NTPS.

4.2. Responsibilities

NTPS agencies will develop and implement a positive duty prevention plan that outlines the proactive actions they are taking to address the 5 minimum standards (see clause 6) to comply with the Act. Prevention plans may be incorporated into an agency's established risk assessment tool or be developed as a dedicated, standalone prevention action plan. Agency positive duty prevention plans will demonstrate a strategic commitment to mitigating risk and promoting proactive positive outcomes.

Refer appendix 1 for prevention action plan example.

4.2.1. Commissioner for Public Employment

The Commissioner for Public Employment must:

- ensure NTPS employers, managers and employees are aware of this policy
- develop and make available training for employees, managers and employees on the positive duty to eliminate discrimination, sexual harassment and victimisation in the NTPS
- ensure NTPS CEOs are aware of their obligations to meet the minimum standards set by the ADC.

4.2.2. Chief Executives / Managers

Chief Executives and managers must:

- acknowledge that a legal obligation exists to take proactive and meaningful action to prevent discrimination, sexual harassment and victimisation from occurring in areas of activity covered by the Act
- take reasonable and proportionate measures to eliminate discrimination, sexual harassment and victimisation to the greatest extent possible
- be consultative in developing prevention plans and taking measures to ensure a safe and respectful workplace
- ensure managers appreciate that they play a crucial role in meeting the minimum standards established by the ADC
- Those with management responsibilities must also:
 - ensure employees are informed about what the positive duty is
 - promote awareness of this policy including to all new employees
 - ensure employees are trained appropriately so that they may identify and address issues relating to the implementation of the positive duty such as identifying and understanding discrimination, sexual harassment and victimisation
 - be a role model for employees about how to behave and set clear expectations of behaviour to proactively create a culture and environment that allows for the elimination of discrimination, sexual harassment or victimisation and encourages complaints and speaking out against instances of discrimination, sexual harassment or victimisation.

The Act calls for ‘reasonable and proportionate measures to eliminate... discrimination, sexual harassment or victimisation to the greatest extent possible.’

While every duty holder must comply with the minimum standards, the specific measures or actions required will vary according to the size of the organisation and the resources available.

Agencies should note that the NTPS is a large employer and the threshold to meet positive duty obligations is high.

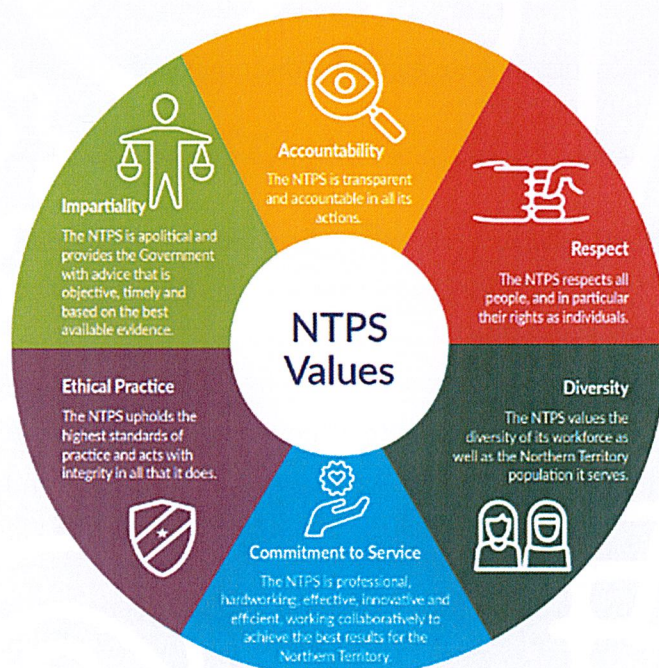
4.2.3. Employees

All employees must:

- adhere to this policy
- work together to positively change the culture and eliminate discrimination, sexual harassment and victimisation through application of the minimum standards
- model appropriate behaviour that positively contributes to the elimination of discrimination, sexual harassment and victimisation
- be informed about what discrimination, sexual harassment and victimisation is

Policy for the application of the Positive Duty to eliminate discrimination, sexual harassment, and victimisation in the NTPS

- participate in training and education on the application of this policy
- act in accordance with Employment Instruction (EI) 12 Code of Conduct; EI 13 Appropriate Workplace Behaviours and the NTPS's values, policies and procedures, and any other relevant agency policies related to conduct and behaviours in the workplace.



5. Legislation

5.1. Part 2A of the *Anti-Discrimination Act 1992*

The **positive duty** is a legal obligation introduced through Part 2A of the Act on 2 January 2024.

The purpose of the duty is to provide for the taking of positive action to prevent and eliminate discrimination, sexual harassment and victimisation to the greatest extent possible.

Section 18B establishes who the duty applies to and that reasonable and proportionate measures must be taken to eliminate that discrimination, sexual harassment or victimisation to the greatest extent possible. The Act sets out factors that must be considered in determining whether a measure is reasonable and proportionate:

- (a) the size of the person's business or operations
- (b) the nature and circumstances of the person's business or operations
- (c) the person's resources
- (d) the person's business and operational priorities
- (e) the practicability and the cost of the measure.

#note that the definition of 'person' includes a body corporate

5.2 Sex Discrimination Act 1984 (Cth)

In addition, there is a positive duty under Commonwealth law to eliminate sexual harassment and discrimination on the grounds of sex within a work context under the *Sex Discrimination Act 1984* (Cth) (SDA). This duty is enforced by the Australian Human Rights Commission and has operated since December 2023.

The positive duty under NT law is consistent with the Commonwealth's positive duty and the shift towards proactively preventing harassment and discrimination. Both duties require employers to take reasonable and proportionate measures to eliminate, so far as possible:

- discrimination on the ground of sex in a work context
- unlawful sexual harassment
- unlawful harassment on the ground of sex
- workplace environments that are hostile on the ground of sex
- related acts of victimisation.

The duty under the SDA is limited to sexual harassment in a work context. The positive duty under NT law is much broader, and compliance with the duty under the NT law should result in compliance with the Commonwealth's duty.

6. Minimum Standards

There are 5 minimum standards to follow to comply with the positive duty under the Act. The standards require actions to be taken to both prevent and respond to discrimination, sexual harassment and victimisation.

The standards outlined in 6.1 Intentional Leadership, 6.2 Knowledge and Networks and 6.3 Risk Management, are directed towards actions to prevent, and stop discrimination, sexual harassment and victimisation from happening in the first place. These standards emphasise:

- Cultivating a culture of respect and inclusivity through strong leadership (6.1)
- Leveraging expertise and collaborative networks to implement best practices (6.2)
- Identifying and addressing potential risks systematically (6.3)

The standards set out in 6.4 Reporting and Response and 6.5 Continuous Improvement and Transparency are about how responses to instances of discrimination, sexual harassment and victimisation can support prevention through robust reporting and complaint procedures and establishing monitoring and evaluation processes to be responsive. These standards emphasise:

- Implementing robust reporting and complaint procedures that are accessible and confidential (6.4)
- Ensuring prompt and fair responses to reported incidents (6.4)
- Establishing systematic monitoring and evaluation processes (6.5)
- Fostering transparency and continuous improvement in organisational practices (6.5)

Setting up an effective and transparent response framework demonstrates that breaches of the Act will not be tolerated and can help prevent such conduct from happening in the first place, as well as creating interplay with the standards in 6.1, 6.2 and 6.3 to prevent and stop discrimination, sexual harassment and victimisation in the first place.

Policy for the application of the Positive Duty to eliminate discrimination, sexual harassment, and victimisation in the NTPS

While these are the minimum standards to be met, the implementation will vary from agency to agency.

The minimum standards are established by the ADC, as the body responsible for monitoring, oversight and enforcement of the obligations in the Act, including the positive duty. Monitoring and enforcement of the positive duty by the ADC commences from January 2025.

Northern Territory Anti-Discrimination Positive Duty Minimum Standards



6.1. Intentional Leadership

Leaders must develop and display strong leadership that actively guides a culture of positive duty to stamp out discrimination, sexual harassment, and victimisation.

Leaders drive a culture of respect by building organisational capability. This will look like:

- Leaders, including managers and supervisors, being required to role model respectful behaviour, for instance through codes of conduct or performance review processes.
- Formal and informal training and education initiatives to ensure all employees understand their rights and responsibilities under the law.
- Support communication of policies and procedures and expectations of appropriate behaviour from their co-employees or peers and third parties, including clients, and convey information about related policies and processes.
- Ensuring agency clients and consumers know their right to receive a non-discriminatory and inclusive service and communicate rights under the Act in service delivery policy.

Policy for the application of the Positive Duty to eliminate discrimination, sexual harassment, and victimisation in the NTPS

- Encouraging and supporting bystanders to act safely to respond to discrimination, sexual harassment and victimisation.
- Holding people to account for unlawful workplace behaviour in a fair, consistent, and timely manner.

6.2. Knowledge and Networks

Agencies must develop knowledge and engage with networks to build awareness and habits that drive positive duty culture and improve organisational capabilities.

NTPS agencies must understand their obligations under the Act and have up-to-date knowledge about discrimination, sexual harassment and victimisation.

This will look like:

- Being familiar with the Act to understand what behaviour constitutes discrimination, sexual harassment and victimisation and what your obligations are.
- Ensuring leaders, managers, contact officers and human resource employees understand their responsibilities, including through formal and information education and training.
- Gathering relevant information about your agency's culture, processes and systems. Look at your policies, programs, practices and procedures (written or unwritten).
- Considering who you interact with and the functions of your agency. Who do your activities affect? Consult with internal and external stakeholders.
- Thinking about whether there is evidence of systemic discrimination or 'intersectional' discrimination because of multiple protected characteristics, for example, race and disability.

6.3. Risk Management

Organisations build a culture of safety and address risk with an effective risk management and prevention plan.

NTPS builds a culture of safety and address risk regularly.

This will look like:

- Being consultative in developing prevention plans and taking measures to ensure a safe and respectful workplace
- Regularly identifying and assessing risk factors for discrimination, sexual harassment, and victimisation, which may include seeking direct feedback from employees and clients
- Risk assessments identifying the likelihood of different forms of discrimination, sexual harassment and victimisation occurring and the potential harm that would flow to employees and clients if the risk were realised
- Recognising that some employees and clients are more vulnerable to discrimination, sexual harassment and victimisation than others
- Incorporating positive duty obligations into agency risk plans
- Identify risk and take proactive steps to eliminate or control workplace risk factors

Policy for the application of the Positive Duty to eliminate discrimination, sexual harassment, and victimisation in the NTPS

- Discrimination, sexual harassment and victimisation are prevented through the development and implementation of an effective prevention plan or incorporated into an established risk assessment tool. Agency prevention plans should include reference to the legal requirements of the Act in any service delivery, this policy and other relevant policies and EI's that covers the workplace and conduct of the employer and employees.

The planning process may involve:

- Analysing your information and identifying any areas of weakness, key issues and priorities
- Developing and documenting your plan of action. Take an approach that is relevant to your size, resources and functions
- Outlining the objectives you will commit to in order to prevent discrimination, sexual harassment and victimisation
- Consulting with employees and their representatives as well as affected members of the local community to help identify realistic and appropriate measures to eliminate discrimination
- Developing or updating policies and change practices aimed at preventing discrimination, sexual harassment, victimisation and vilification, and effective mechanisms to review and improve the policies
- Determining how the plan will be communicated and made available to employees and consumers
- Anticipating and planning for resistance to the prevention plan.

6.4. Reporting and Response

Organisations implement systems and policies to support bystanders and victim/survivors in a person-centred and trauma informed way

Discrimination, sexual harassment, and victimisation are addressed consistently and confidentially to hold perpetrators to account and responses put the victim/survivor at the centre.

This will look like:

- In consultation with employees and clients, developing a fair and confidential reporting and complaints procedure with safe and accessible options for raising and resolving concerns, that prioritises the complainants' wellbeing
- Ensuring employees and consumers know how and where to make a complaint or report and are supported to do so
- Any complaints that do arise being dealt with promptly and effectively
- Ensuring employees and clients/consumers are safe and supported throughout the complaints process, including through identifying and avoiding victimisation.

6.5. Continuous Improvement and Transparency

Organisations review, evaluate and communicate outcomes and strategies

Outcomes and strategies are regularly reviewed and evaluated for continuous improvement.

This will look like:

Policy for the application of the Positive Duty to eliminate discrimination, sexual harassment, and victimisation in the NTPS

- Regularly monitoring workplace culture, service delivery, any complaints received and employee knowledge of legal obligations in order to improve compliance and deal promptly with any issues that arise
- Regularly reviewing and updating prevention plans with the input of employees and their representatives, consumers, stakeholders
- Being open and transparent with employees, consumers and stakeholders on trends and lessons relating to measures to eliminate discrimination, sexual harassment and victimisation
- Monitoring and adapting should be part of the normal business planning cycle.

Monitor the work environment and foster an inclusive and respectful work environment.

- Treat all complaints seriously and take prompt and appropriate action to address them
- Assess immediate physical and psychological needs of an employee disclosing sexual harassment and other forms of discrimination
- Ensure steps taken and any communication protocols developed are victim led and trauma informed
- Ensure the relevant employee is kept informed about steps taken and timelines for steps to be taken and in a way that is safe for them
- Ensure natural justice is afforded to all parties during the complaint/investigation process
- Record and report incident, retain relevant data securely.

7. Case study examples of active steps towards meeting the positive duty.

Case study: Successful implementation of workplace diversity initiatives.

'A health clinic funded by the NT Government is located in an area with a large Aboriginal population and wants to work better with these patients. Employees meet and engage with the local Aboriginal organisations, including an Aboriginal Women's Service and the local Aboriginal Community Controlled Health Organisation.

In response to concerns raised by these organisations, the clinic develops referral protocols that are based on patient preference, rather than assumptions about Aboriginal patients.

The clinic could also make their service more welcoming to Aboriginal patients by encouraging employment of Aboriginal people, displaying information in local language to welcome Aboriginal patients to the clinic, providing cross-cultural and cultural safety training to employees and celebrating community celebrations, such as NAIDOC week.'

Case Example: Addressing employee grievances through policy review and employee education.

'The People Matter survey is conducted in an agency, with records of exit interviews reviewed along with policies and practices to help identify and prevent discrimination, harassment, and victimisation. The process reveals a high turnover of women because many are denied flexible working arrangements and are uncomfortable with the level of sexual banter in the office.






The review discovers that when employees raise these grievances they are not treated seriously or confidentially. Although the agency has policies on discrimination, sexual harassment, and grievance procedures, they are out of date and most staff aren't aware of them.

Management is informed, who agree to review policies and procedures and provide training for all staff on their rights and responsibilities. The flexible workplace policy is reinforced to encourage and support staff to achieve a balance between work and their other responsibilities.'

Appendix 1: Example only

Prevention plan

Prevention plan recommended steps:

	<p>Identifying workplace discrimination, sexual harassment and victimisation risk</p>	<p>Find out what could cause discrimination, sexual harassment and victimisation risk and where it could occur.</p>
	<p>Assessing Risk</p>	<p>How much harm could be caused by the risk to the individual and the organisation? Understand the nature of the harm that the risk has and the likelihood of it happening.</p>
	<p>Controlling Risk</p>	<p>What can be done to eliminate or minimise the risk? Implement the most effective and reliable control measures that are reasonably practicable.</p>
	<p>Reviewing control measures</p>	<p>Review the risks and control measures to ensure they are working as planned.</p>
	<p>Guiding legislation, policies and procedures</p>	<ol style="list-style-type: none"> 1. Policies for the application of the positive duty to eliminate discrimination, sexual harassment and victimisation in the NTPS. 2. NTPS Policy for the prevention of sexual harassment in the workplace. 3. EI 12 Code of Conduct. 4. E1 13 Appropriate Workplace Behaviours.

Adopted from the Safe Work Australia Code of Practice

Policy for the application of the Positive Duty to eliminate discrimination, sexual harassment, and victimisation in the NTPS

Risk register tool

An example of a simple and effective register.

No.	Identifying the risk	Assess the risk High, Medium or Low	Controlling risk	New risk rating High, Medium or Low	Reviewing control measures	Risk owner
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						
10.						

