

# Consultation – Review of the Anti-Discrimination Act 1977 (NSW) – Unlawful conduct

NSW Law Reform Commission

**Submission**

15 August 2025



# Introduction

1. The Australian Industry Group (**Ai Group**) welcomes the opportunity to provide feedback to the NSW Law Reform Commission (**Commission**) in response to Consultation Paper 24 – *Review of the Anti-Discrimination Act 1977* (NSW) – Unlawful conduct (**Consultation Paper**).
2. Ai Group is a registered employer organisation that represents traditional, innovative and emerging industry sectors. We have been acting on behalf of businesses across Australia for 150 years. We are a State Peak Council and operate an incorporated legal practice, Ai Group workplace lawyers. Ai Group and partner organisations represent the interests of more than 60,000 businesses employing more than 1 million staff. Our membership includes businesses of all sizes, from large international companies operating in Australia and iconic Australian brands to family-run SMEs. Our members operate across a wide cross-section of the Australian economy and are linked to the broader economy through national and international supply chains. We make this submission on behalf of our members.
3. We have ongoing representative engagement with employers of all sizes, through the provision of membership, consulting and training services, with a strong focus on workplace laws, including anti-discrimination and equality laws. This enables us to understand the key issues that employers are facing when managing these important issues which often overlap and interact. An important part of our role is to also develop constructive relationships with governments and regulators across the country to provide a voice for employers when legislative and policy issues are being considered.
4. Along with the broader community, we recognise that businesses and their workers play an important role in delivering equality. For this reason, an anti-discrimination framework that is simple to understand, not overly complex and recognises that employers can comply in different ways is needed to ensure that the legislation is practical, fair and capable of being complied with.
5. It is important that the priorities for changes to anti-discrimination law consider and address the needs and interests of obligation-holders as well as those with attributes to which the protective purposes of legislation are directed. This is important both for a proper balancing of interests and regulatory impacts, but also recognises the value of balanced, practical measures and obligations for both groups. Clear, transparent, supportive rules help employers and those seeking to exercise various grounds in particular matters.
6. Ai Group is concerned about the current level of anti-discrimination regulation on employers as a result of the overlapping jurisdictions of federal and state discrimination laws, the *Work Health and Safety Act 2011* (NSW) (**WHS Act**) and the *Fair Work Act 2009* (Cth) (**Fair Work Act**). Any consideration of the *Anti-Discrimination Act 1977* (NSW) (**AD Act**) must take into account these existing complex and overlapping obligations.
7. A simpler and easier to understand framework is needed.
8. Ai Group's responses, based on particular themes and issues canvassed through questions in the Consultation Paper, are set out below.

# Part A – General comments

9. As set out in our preliminary submissions, any changes made to the AD Act must:

- Work harmoniously with changes made to Commonwealth anti-discrimination and workplace laws, including in relation to workplace sexual harassment;
- Include a contemporary and nationally consistent regulatory approach to ‘special measures’ to support and encourage employers to implement measures to promote diverse and inclusive workplaces and address historical disadvantage faced by certain groups.
- Maintain the well-understood and long-standing concepts of direct and indirect discrimination.
- Maintain current approaches to discrimination, harassment and vilification (rather than adopting positive duties on employers).
- To not further complicate the already complex regulatory interaction between the positive duty to eliminate sexual harassment in the Sex Discrimination Act, the potential vicarious liability of employers for unlawful discrimination and harassment if they fail to take ‘reasonable steps’ as provided for under anti-discrimination legislation and the Fair Work Act, and recent WHS regulatory developments requiring employers (and persons conducting a business or undertaking (**PCBUs**)) to eliminate or control risks relating to psychosocial hazards such as discrimination, harassment and vilification.
- Not add another regulator into the compliance and enforcement mix, noting the already high levels of often overlapping compliance and enforcement activities being separately undertaken by the Australian Human Rights Commission (**AHRC**), the Fair Work Ombudsman (**FWO**) and work health and safety regulators.

10. Ai Group supports an anti-discrimination law framework that:

- Is practical and workable for employers to engage with, understand and comply with;
- Is sensitive to the regulatory burden on employers and principals where they are required to comply with the complexity of up to 13 separate specific anti-discrimination statutes nationally (alongside additional equality and anti-discrimination provisions in the Fair Work Act), and the limited resources of businesses;
- Supports employers in managing for diverse, equal and inclusive workplaces and in pursuing positive organisational cultures, values, initiatives, policies and priorities;
- Is effective, navigable and accessible so that employers and principals can understand and comply with the law and deal with disputes and problems as they arise.

# Part B - Specific questions and responses

## 3. Tests for discrimination

### 3.1 Direct discrimination

Could the test for direct discrimination be improved or simplified? If so, how?

### 3.2 The comparative disproportionate impact test

Should the comparative disproportionate impact test for indirect discrimination be replaced? If so, what should replace it?

### 3.3 Indirect discrimination and inability to comply

What are your views on the “not able to comply” part of the indirect discrimination test? Should this part of the test be removed? Why or why not?

### 3.4 Indirect discrimination and the reasonableness standard

- (1) Should the reasonableness standard be part of the test for indirect discrimination? If not, what should replace it?
- (2) Should the ADA set out the factors to be considered in determining reasonableness? Why or why not? If so, what should they be?

### 3.5 Indirect discrimination based on a characteristic

Should the prohibition on indirect discrimination extend to characteristics that people with protected attributes either generally have or are assumed to have?

### 3.6 Proving indirect discrimination

- (1) Should the ADA require respondents to prove any aspects of the direct discrimination test? If so, which aspects?
- (2) Should the ADA require respondents to prove any aspects of the indirect discrimination test? If so, which aspects?

11. Ai Group does not see the need to make any of the changes canvassed in questions 3.1 to 3.6.
12. We reiterate the need for a consistent approach noting our comments set out above in paragraphs 9 and 10.
13. If changes were recommended by the Commission, it would be appropriate for an exposure draft to be issued and further intermediate consultation to take place, so we can provide comments on specific changes.

### 3.7 Direct and indirect discrimination

- (1) How should the relationship between different types of discrimination be recognised?
- (2) Should the ADA retain the distinction between direct and indirect discrimination? Why or why not?

#### **(1) How should the relationship between different types of discrimination be recognised?**

14. Ai Group does not see the need to recognise the relationship between indirect and direct discrimination.
15. If there is a desire to clarify that direct and indirect discrimination are not mutually exclusive, we suggest this can more readily be achieved by way of non-binding guidance material rather than by way legislative amendments that will further add to the compliance burden referred to in paragraphs 9 and 10.
16. If changes were recommended by the Commission, it would be appropriate for an exposure draft to be issued and further intermediate consultation to take place, so we can provide comments on specific changes. We also reiterate the need for a consistent approach noting our comments set out above in paragraphs 9 and 10.

#### **(2) Should the ADA retain the distinction between direct and indirect discrimination? Why or why not?**

17. Yes.
18. In our experience in providing anti-discrimination law training to employers, we have found that educating on the basis of two limbs of different and distinct forms of unlawful discrimination is extremely helpful and leads to better understanding amongst all concerned.

19. The educative benefits of the long standing, well developed and widely relied upon distinction are for several reasons as set out below:
- The concepts are distinct and have their own legal thresholds and definitions.
  - It provides a simple framework that supports employers and others in their understanding.
  - Employers' policies and procedures have embedded this concept.
  - It is consistent with anti-discrimination legislation in other jurisdictions.
  - There is a significant legacy of cases across jurisdictions that have clarified the relationship and distinction on the basis of the current provisions, and it would create significant uncertainty for employers, principals and other aggrieved persons if that could not be relied on going forward.

### 3.8: Intersectional discrimination

- (1) Should the ADA protect against intersectional discrimination? Why or why not?
- (2) If so, how should this be achieved?

20. In respect of protections for combined (or intersectional) attributes, we acknowledge that some members of the community experience discrimination based on multiple attributes.
21. However, given the highly variable nature of experiences with the intersectionality of different attributes, Ai Group does not support altering the discrimination definitions in the AD Act as this would import an additional layer of unnecessary complexity and significantly increase the compliance burden.
22. These issues would be best discussed and raised during the complaints and conciliation process, and without any legislative amendment.
23. If changes were recommended by the Commission, it would be appropriate for an exposure draft to be issued and further intermediate consultation to take place, so we can provide comments on specific changes. We also reiterate the need for a consistent approach noting our comments set out above in paragraphs 9 and 10.

### 3.9 Intended future discrimination

Should the tests for discrimination capture intended future discrimination? Why or why not? If so, how could this be achieved?

24. Ai Group does not see the need for this change.
25. If changes were recommended by the Commission, it would be appropriate for an exposure draft to be issued and further intermediate consultation to take place, so we can provide comments on specific changes.

26. It is important that any change provides for consistency across all jurisdictions, including the Commonwealth jurisdiction.

## 4. Discrimination: protected attributes

### 4.1 Age discrimination

- (1) What changes, if any, should be made to the way the ADA expresses and defines the protected attribute of “age”?
- (2) What changes, if any, should be made to the age-related exceptions?

### 4.2 Discrimination based on carer’s responsibilities

- (1) What changes, if any, should be made to the way the ADA expresses and defines the protected attribute of “responsibilities as a carer”?
- (2) Should the ADA separately protect against discrimination based on someone’s status of being, or not being, a parent?

### 4.3 Disability discrimination

- (1) What changes, if any, should be made to the way the ADA expresses and defines the protected attribute of “disability”?
- (2) Should a new attribute be created to protect against genetic information discrimination? Or should this be added to the existing definition of disability?
- (3) What changes, if any, should be made to the public health exception?

27. As a general proposition, we do not support any of the changes canvassed in questions 4.1 to 4.3.
28. If changes were recommended by the Commission, it would be appropriate for an exposure draft to be issued and further intermediate consultation to take place, so we can provide comments on specific changes.
29. If changes were to be made, our preference would be to ensure alignment to the greatest extent possible with the approach taken in other jurisdictions including for the reasons set out in paragraphs 9 and 10.
30. It is also relevant that the Commonwealth Government is currently consulting on a review of the *Disability Discrimination Act 1992* (Cth). We would encourage the Commission recommend delaying any proposed changes pending the outcome of this review to support jurisdictional alignment.

## 4.4 Discrimination based on homosexuality

What changes, if any, should be made to the way the ADA expresses and defines the protected attribute of “homosexuality”?

31. As a general proposition, we do not support changes to the way the AD Act deals with homosexuality discrimination.
32. However, we acknowledge that ‘homosexuality’ may be viewed as an outdated term that is not used by legislation in other jurisdictions and does not extend to people who have other sexual orientations.
33. If a change was to be considered it must provide for consistency across the other jurisdictions (particularly the Commonwealth) and we note the Sex Discrimination Act uses ‘sexual orientation’ as a definition. This may be an appropriate alternative term for the AD Act. It would also be appropriate for an exposure draft to be issued and further intermediate consultation to take place, so we can provide comments on specific changes.

## 4.5 Discrimination based on marital or domestic status

What changes, if any, should be made to the way the ADA expresses and defines the protected attribute of “marital or domestic status”?

## 4.6 Racial discrimination

- (1) What changes, if any, should be made to the way the ADA expresses and defines the protected attribute of “race”?
- (2) Are any new attributes required to address potential gaps in the ADA’s protections against racial discrimination?

## 4.7 Sex discrimination

- (1) What changes, if any, should be made to the way the ADA expresses and defines the protected attribute of “sex”?
- (2) Should the ADA prohibit discrimination based on pregnancy and breastfeeding separately from sex discrimination?

## 4.8 Discrimination on transgender grounds

What changes, if any, should be made to the way the ADA expresses and defines the protected attribute of “transgender grounds”?

## 4.9 Extending existing protections

- (1) Should the ADA protect people against discrimination based on any protected attribute they have had in the past or may have in the future?
- (2) Should the ADA include an attribute which protects against discrimination based on being a relative or associate of someone with any other protected attribute?

34. As a general proposition, we do not support the changes canvassed in questions 4.5 to 4.9.
35. If changes were recommended by the Commission, it would be appropriate for an exposure draft to be issued and further intermediate consultation to take place, so we can provide comments on specific changes.
36. If changes were to be made, our preference would be to ensure alignment to the greatest extent possible with the approach taken in other jurisdictions, including for the reasons set out in paragraphs 9 and 10.

## 5. Discrimination: potential new attributes

### 5.1 Guiding principles

What principles should guide decisions about what, if any, new attributes should be added to the ADA?

### 5.2: Potential new attributes

- (1) Should any protected attributes be added to the prohibition on discrimination in the ADA? If so, which what should be added and why?
- (2) How should each of the new attributes that you have identified above be defined and expressed?
- (3) If any of new attributes were to be added to the ADA, would any new attribute-specific exceptions be required?

### 5.3: An open-ended list

Should the list of attributes in the ADA be open-ended to allow other attributes to be protected? Why or why not?

37. Ai Group does not see the need to add any more protected attributes to the AD Act or to include an open-ended list, as canvassed in questions 5.1 to 5.3.
38. As to guiding principles, while Ai Group understands the desire to protect certain attributes not currently protected from discrimination in the AD Act, we are concerned at the very long and growing list of attributes that employers need to be aware of so as to reasonably comply with the AD Act and other anti-discrimination or workplace legislation that is relevant to their circumstances.
39. This large number of attributes already makes it very challenging for employers developing anti-discrimination and harassment policies, as a significant portion of those policies will be dedicated to identifying the numerous attributes covered by anti-discrimination protection. Also, the list of protected attributes is now so extensive that employers struggle to ensure all attributes are understood by its employees, management and others in the business for the purpose of prevention. Expanding the list of protected attributes would exacerbate these problems.

## 9. Harassment

### 9.1: The definition of sexual harassment

- (1) Should the reasonable person test be expanded to include the “possibility” of offence, intimidation or humiliation? Why or why not?
- (2) Should the ADA expressly require consideration of an individual’s attributes, or the relationship between the parties, in determining whether a person would be offended, humiliated or intimidated by the conduct? Why or why not?
- (3) Does the ADA need to define “conduct of a sexual nature”? Why or why not?

### 9.2: Other sex-based conduct

- (1) Should harassment on the ground of sex be expressly prohibited by the ADA? Why or why not?
- (2) Should the ADA prohibit workplace environments that are hostile on the ground of sex? Why or why not?
- (3) Are there any other options or models to prohibit conduct which may fall in the gap between sex discrimination and sexual harassment? What could be the benefits of these options?

### 9.3: Sexual harassment in the workplace

Should the ADA adopt the Sex Discrimination Act's approach of prohibiting sexual harassment in connection with someone's status as a worker or person conducting a business or undertaking? Why or why not?

### 9.4: Workplace-related laws regulating sexual harassment

- (1) Are workplace-related sexual harassment laws and the ADA currently working well together, in terms of the definitions of sexual harassment?
- (2) Should the ADA and workplace-related sexual harassment laws be more aligned?

### 9.5: Expanding the areas of life where sexual harassment is prohibited

- (1) Should the ADA continue to limit the areas of life where sexual harassment is unlawful? Why or why not?
- (2) Should sexual harassment be unlawful in other areas of life? For example:
  - (a) areas of life that are protected from discrimination
  - (b) all areas of public life, or
  - (c) any area of life, public or private?

### 9.6: The private accommodation exception

Should sexual harassment be prohibited in private accommodation? Why or why not? If an exception for private accommodation is required, how wide should it be?

### 9.7: Attribute-based harassment

If the ADA was to prohibit attribute-based harassment, which attributes and areas should it cover?

40. As a general proposition, we do not support the amendments canvassed in questions 9.1 to 9.7.
41. The proposed changes as they relate to the workplace would further complicate the already complex interaction between the Sex Discrimination Act, the Fair Work Act, WHS Act, the relevant codes and regulations and the compliance and enforcement activities of the various regulators, including the

AHRC, SafeWork NSW and the FWO. We do not support the creation of a further regulator to enforce compliance in relation to unlawful discrimination and harassment.

## 10. Other unlawful acts and liability

### 10.1: Victimisation

- (1) Should the prohibition of victimisation in the ADA expressly extend to situations where a person threatens to victimise someone? Why or why not?
- (2) Should the ADA provide that victimisation is unlawful even if it was done for two or more reasons? If so, how best could this be achieved?

### 10.2: Advertisements

Should it be a defence to publishing an unlawful advertisement that the person reasonably believed publication was not unlawful? Why or why not?

### 10.3: The forms of liability

What, if any, concerns or issues are raised by the ADA's approach to the various forms of liability?

42. Ai Group does not see the need for any of the changes canvassed in questions 10.1 to 10.3.

### 10.4: The exceptions for liability

Should the ADA continue to provide two exceptions to vicarious liability (that is, the "reasonable steps" and "unauthorised acts" exceptions)? Or is a single "reasonable steps" exception sufficient?

43. Ai Group supports retaining the two exceptions to vicarious liability.
44. The two exceptions collectively ensure that an employer or principal is not held liable for actions undertaken by agents or employees that fall outside the scope of employment or agency in circumstances where the employer or principal has implemented adequate preventative (reasonable) measures. This framework is appropriate as it incentivises employers and principals to adopt proactive strategies to prevent workplace discrimination and harassment, while also promoting effective oversight of employee or agent conduct when they are working. Furthermore, this demarcation appropriately acknowledges that employers or principals should not be held accountable for *all* actions

of employees or agents, such as what they do in their personal time. This would otherwise be an unreasonable, unjust, and disproportionate burden.

45. If changes were recommended by the Commission, it would be appropriate for an exposure draft to be issued and further intermediate consultation to take place, so we can provide comments on specific changes.
46. If changes were to be made, our preference would be to ensure alignment to the greatest extent possible with the approach taken in other jurisdictions, including for the reasons set out in paragraphs 9 and 10.

## Question 10.5: Liability and artificial intelligence

Does the use of AI challenge the ADA's approach to liability? If so, how could the ADA be amended to address this?

47. It is Ai Group's view that artificial intelligence does not challenge the AD Act's approach to liability.
48. In particular, artificial intelligence does not change the obligations of duty holders or the rights of persons under the AD Act.
49. It is important to acknowledge that artificial intelligence has significant potential to assist duty holders in complying with their obligations. For example, it can be used to examine recruitment materials (e.g., job advertisements or descriptions) and workplace policies to identify and remediate potentially discriminatory language or effects.

## 11. Promoting substantive equality

### 11.1: Adjustments

- (1) Should the ADA impose a duty to provide adjustments? If so, what attributes should this apply to?
- (2) Should this be a separate duty, form part of the tests for discrimination, or is there another preferred approach?
- (3) Should a person with a protected attribute first have to request an adjustment, before the obligation to provide one arises?

50. Ai Group does not see the need for this change.
51. If changes were recommended by the Commission, it would be appropriate for an exposure draft to be issued and further intermediate consultation to take place, so we can provide comments on specific changes. We also reiterate the need for a consistent approach noting our comments set out above in paragraphs 9 and 10.

## 11.2: Special measures

- (1) Should the ADA generally allow for special measures? Why or why not?
- (2) If so, what criteria for a special measure should the ADA apply?
- (3) If a general special measures section is added to the ADA, should it replace the existing exemption and certification processes? Why or why not?

### (1) Should the ADA generally allow for special measures? Why or why not?

52. As outlined in our preliminary submissions, Ai Group strongly supports the proposal that the AD Act should allow for special measures.
53. Increasingly, businesses are focused on building diverse and inclusive workplaces either as a regulatory requirement or as good business practice, including in their efforts to support a safe, equal and respectful workplace.
54. This change would provide greater certainty for businesses that wish to (or are required to) pursue targeted or positive discrimination in their organisations, including by adopting positive measures or targets without engaging in unlawful discrimination. It will also enable multi-jurisdictional businesses to implement diversity initiatives in a timely, responsive and consistent manner across all jurisdictions.
55. We reiterate the following key concerns with the status quo:
  - The AD Act, unlike other anti-discriminations laws around Australia, is the only jurisdiction that does not recognise or support efforts by organisations to achieve substantive equality for disadvantaged groups through the adoption of a ‘special measure’.
  - The current exemption requirement to make a formal application under section 126 of the AD Act for a formal exemption from the Anti-Discrimination Board (**ADB**) is an obstacle for members who wish to implement positive measures to increase and elevate the participation of certain groups in their workplaces.
  - Section 126 of the AD Act is a high barrier and disincentive for many businesses who wish to engage in special measures to address historical disadvantage of certain groups by, for example, engaging in targeted recruitment or offering particular benefits to certain employed groups. For example, women in male-dominated workplaces, people with particular disabilities or sexual orientation or Australians who are First Nations people.
  - In our experience, businesses are less likely to adopt diversity measures if there are extensive timeframes or there is a perception of delay in issuing decisions. This has been a significant issue for several of our members in relation to their applications made under the current section 126 exemption for special needs programs and activities. We note there are only a very small number of exemptions currently held relative to the number of businesses operating in NSW.
  - The section 126 exemption is also inconsistent with the approaches to special measures taken by most other Commonwealth and state and territory anti-discrimination laws. This creates unnecessary and unhelpful complexity for businesses that operate across multiple jurisdictions

and who wish to implement an organisation wide diversity initiative but cannot do so in NSW without having to go through a formal, resource intensive and time-consuming process.

56. For all the reasons listed above, the AD Act should allow for special measures.

**(2) If so, what criteria for a special measure should the ADA apply?**

57. It is Ai Group's view that the AD Act should adopt an approach that is consistent with that taken in other jurisdictions and criteria should be express, simple and clear.

58. This could be achieved by adopting criteria similar to that under section 12 of the Victorian *Equal Opportunity Act 2010*. These criteria are appropriately adapted and summarised as follows:

- That one of the purposes of the measure must be to promote or realise substantive equality for members of a group with a particular attribute.
- The measure is undertaken by the employer in good faith for achieving the purpose.
- The measure is in the employer's view reasonably likely to achieve the purpose.
- The measure is in the employer's view a proportionate means to achieving the purpose.
- The measure is justified because the members have a particular need for assistance or advancement.
- The measure in the employer's view may impose reasonable restrictions on eligibility.

59. It is important that no formal application or approval process applies, and an employer is able itself to determine whether or not its particular measure is a 'special measure'. This will incentivise employers to make these positive changes and support them in meeting other related duties as discussed in paragraphs 9 and 10.

60. The special measure should operate on an open-ended basis such that the employer will determine the measure is no longer required to achieve the purpose.

61. The effect of the 'special measure' must be to make it clear that the person taking the special measure is not unlawful discriminating against any other person by taking that action.

62. We recommend that the legislation also include statutory notes with examples, similar to the approach taken under section 12 of the *Equal Opportunity Act 2010*.

63. It is also very important that the ADB supports the implementation of special measures with plain language and comprehensive non-binding guidance to support employers' understanding of the criteria and what they might need to demonstrate if they are required to prove that the measure is a special measure. The non-binding guidance should be supported with case studies that demonstrate how the special measures operate in practice.

**(3) If a general special measures section is added to the ADA, should it replace the existing exemption and certification processes? Why or why not?**

64. In our view, section 126 should be retained with amendment.

65. It provides a *voluntary* option that enables a business to obtain a formal confirmation that its proposed measure is exempt from the AD Act.
66. If it is retained, section 126 must however be limited such that it does not apply to special measures. This ensures there is a stronger alignment with other jurisdictions.
67. This approach should also explicitly recognise that special measures are exceptions to discrimination without the need to obtain a formal exemption from the ADB.

### 11.3: A positive duty to prevent or eliminate unlawful conduct

- (1) Should the ADA include a duty to take reasonable and proportionate measures to prevent or eliminate unlawful conduct? Why or why not?
- (2) If so:
  - (a) What should duty holders be required to do to comply with the duty?
  - (b) What types of unlawful conduct should the duty cover?
  - (c) Who should the duty holders be?
  - (d) What attributes and areas should the duty apply to?

68. We do not support the creation of a duty to take reasonable and proportionate measures to prevent or eliminate unlawful conduct.
69. Employers and PCBUs already have duties under the WHS Act to eliminate or control risks relating to psychosocial hazards such as bullying, harassment, discrimination and vilification. To create another overlapping and separate duty creates unnecessary complexity and difficulties for employers who already need to take multiple actions under separate anti-discrimination and work health and safety regulatory frameworks to deal with the same set of behaviours.
70. Employers and PCBUs are also presently dealing with differing standards of prevention and risk assessment under WHS statutory duties, the positive duty under the Sex Discrimination Act, and the taking of reasonable steps to avoid liability for individual grievances regarding contraventions of the prohibition of sexual harassment in the workplace under the Fair Work Act and unlawful behaviours under anti-discrimination legislation.
71. In the context of sexual harassment, it is relevant that the Sex Discrimination Act's positive duty does not conform to the considerations under WHS laws, many of which are specifically regulated. Specific WHS considerations include the hierarchy of controls approach in conducting risk assessments, worker consultation and training. This is proving extremely difficult for employers, who are now required to implement two rounds of changes in their workplace to comply with each duty under the Sex Discrimination Act and WHS regulation. Significantly, both the AHRC and SafeWork NSW are actively undertaking concurrent compliance and enforcement activities in relation these separate and overlapping duties.

72. Added to this, the Fair Work Act introduced a prohibition of sexual harassment in the workplace in 2023. A person or company may also be 'vicariously liable' for their employee's or agent's contravention if they are unable to prove they took all reasonable steps to prevent the sexual harassment. We understand the FWO is also actively undertaking compliance and enforcement activities regarding this prohibition if it receives intelligence indicating that workplace sexual harassment may have occurred and the employer may not have taken 'reasonable steps' to prevent that behaviour.
73. Creating further duties in the AD Act, will only create further complexity for PCBUs when similar duties exist in WHS laws, the Sex Discrimination Act and, to some extent, under the Fair Work Act.

# About Australian Industry Group

Ai Group and partner organisations represent the interests of more than 60,000 businesses employing more than 1 million staff. Our membership includes businesses of all sizes, from large international companies operating in Australia and iconic Australian brands to family-run SMEs. Our members operate across a wide cross-section of the Australian economy and are linked to the broader economy through national and international supply chains.

Our purpose is to create a better Australia by empowering industry success. We offer our membership strong advocacy and an effective voice at all levels of government underpinned by our respected position of policy leadership and political non-partisanship.

With more than 250 staff and networks of relationships that extend beyond borders (domestic and international), we have the resources and expertise to meet the changing needs of our membership. We provide the practical information, advice and assistance you need to run your business. Our deep experience of industrial relations and workplace law positions Ai Group as Australia's leading industrial advocate.

We listen and we support our members by remaining at the cutting edge of policy debate and legislative change. We provide solution-driven advice to address business opportunities and risks.

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