

# AUSTRALIAN HUMAN RIGHTS COMMISSION

## STATEMENT OF EXPECTATIONS – 2024

Ministerial Statements of Expectations provide greater clarity about government policies and objectives relevant to the regulator in line with its statutory objectives, and the priorities the Minister expects it to observe in conducting its operations.

As the responsible Commonwealth Minister for the Australian Human Rights Commission (the Commission), established by the *Australian Human Rights Commission Act 1986* (AHRC Act), this statement sets out my expectations of the Commission.

### Overview

The Commission is Australia's independent National Human Rights Institution. As of 12 December 2023, the Commission is responsible for monitoring and assessing compliance with the positive duty in section 47C of the *Sex Discrimination Act 1984*. The positive duty refers to the obligations of employers and persons conducting a business or undertaking to eliminate, as far as possible, the following unlawful behaviour (relevant unlawful conduct) from occurring:

- discrimination on the grounds of sex in a work context
- sexual harassment in connection with work
- sex-based harassment in connection with work
- conduct creating a workplace environment that is hostile on the grounds of sex
- related acts of victimisation

Under the AHRC Act, the Commission's regulatory functions are to inquire into and enforce compliance with the positive duty, and assist employers and persons conducting a business or undertaking to achieve compliance. This is enabled through powers to:

- inquire into compliance,
- make findings of non-compliance,
- issue compliance notices that can be enforced by courts, and
- enter into enforceable undertakings with employers and persons conducting a business or undertaking.

The Government recognises and respects the independence of the President of the Commission and their responsibility to enforce compliance with the positive duty. I expect the Commission to exercise its functions and powers in good faith and to the best of its ability.

### The Government's policy priorities and objectives

In addition to the core functions noted above, the Government expects the Commission to observe and contribute to the following Government priorities and objectives.

#### Regulatory reform agenda

The Government's regulatory reform agenda is a key component of the Government's plan to support economic recovery by working with States and Territories to effect regulatory reform to reduce duplication and boost productivity, and to account for impacts of regulation on

individuals (not just businesses). Ensuring our regulatory settings are the best they can be helps boost productivity and competitiveness and supports well-functioning markets, business investment, job creation and growth.

Under the regulatory reform agenda, the Government is focusing on improving regulatory performance, capability and culture through regulatory stewardship.

I expect the Commission to contribute to the regulatory reform process by:

- seeking opportunities to remove duplication and streamline processes in order to improve efficiency and lift productivity, including by working with other regulators (including work health and safety, for example) to ensure a streamlined approach
- acting in accordance with regulator best practice in its decision-making, policies, processes and communication practices, in order to maximise transparency and minimise compliance costs,
- applying the *Regulator Performance Resource Management Guide* (December 2022) to its regulatory functions to assess its performance and engagement with stakeholders, and
- incorporating regulator performance reporting into the entity's reporting processes, as required by the *Regulatory Performance Management Resource Guide* under the *Public Governance, Performance and Accountability Act 2013* and *Public Governance, Performance and Accountability Rule 2014*, in order to support greater transparency and accountability of regulator performance.

### Safe, healthy and respectful workplaces

Everyone has the right to feel safe at work, and the Commission plays a key role in this by helping employers and persons conducting a business or undertaking take positive steps to prevent relevant unlawful conduct in their workplace, and stepping in to assess and enforce compliance where there is insufficient action.

The Commission's regulatory responsibilities originated from Recommendation 18 of the *Respect@Work: Sexual Harassment National Inquiry Report (2020)* (Respect@Work Report), which recommended the Commission be given the function of assessing compliance with and enforcement of the positive duty. Accordingly, I expect the Commission to contribute to ongoing efforts to prevent sexual harassment in Australian workplaces by supporting businesses and organisations to meet their obligations with the positive duty, including by publishing guidelines and resources for achieving compliance. I also expect the Commission to be mindful of the need to ease the burden on individuals in discharging this regulatory role by proactively initiating action to address relevant unlawful conduct, rather than relying on individuals to bring complaints (though this will remain an important function of the Commission in providing individual redress for complainants and to inform when the Commission considers engaging its regulatory functions). This will improve the safety of Australian workplaces and ensure all workers have an equal right to safe, healthy and respectful workplaces.

### **Principles of regulator best practice**

Under the *Regulator Performance Resource Management Guide*, the principles of regulator best practice are:

1. **Continuous improvement and building trust:** regulators adopt a whole-of-system perspective, continuously improving their performance, capability and culture, to build trust and confidence in Australia's regulatory settings.
2. **Risk-based and data-driven:** regulators manage risks proportionately and maintain essential safeguards while minimising regulatory burden, and leveraging data and digital technology to support those they regulate to comply and grow.
3. **Collaboration and engagement:** regulators are transparent and responsive communicators, implementing regulations in a modern and collaborative way.

Consequently, I expect the Commission to:

- seek opportunities to engage and consult genuinely with stakeholders
- be receptive to feedback and diverse stakeholder views
- seek to increase transparency in inquiry and decision-making processes
- provide up-to-date, clear and accessible guidelines and resources in multiple languages to assist employers and persons conducting a business or undertaking with positive duty compliance
- engage with the public on the AHRC's work to increase community awareness of the Commission's regulatory role and work

I expect the Commission to embed and act in accordance with the Government's principles of regulator best practice when conducting its operations, as well as strive for continuous improvement against these principles.

In exercising its functions and powers in accordance with these principles, I expect the Commission to:

- promote a regulatory approach that facilitates proactive and voluntary compliance with positive duty obligations, including by engaging with employers and persons conducting a business or undertaking to provide guidance, promote best practice compliance, and identify and seek to address non-compliance risks as they arise
- ensure transparency and accountability around the Commission's use of its regulatory powers including by publishing relevant data and guidelines about the regulatory actions it takes
- develop people, processes and systems that will allow the Commission to conduct and finalise regulatory action as promptly as possible
- exercise regulatory powers according to principles of procedural fairness and natural justice to promote public trust and confidence in the Commission, noting the Commission's statutory requirement to act fairly in the performance of its functions
- weigh the efficiency and cost-effectiveness of the Commission's regulatory actions, seeking to impose the least burden on those that are regulated while maintaining essential safeguards
- use resources strategically to provide the greatest benefit for the community, and balance regulatory activities with other functions, and
- openly, transparently and consistently engage with stakeholders including industry, government and the broader community which is crucial to maintaining competent and innovative regulatory practices.

## **Innovation and regulatory change**

I expect the Commission to continually monitor the environment it operates in to ensure that regulatory approaches keep pace with changes in technology, industry practices and community expectations. I also expect the Commission to regularly review and, where necessary, adjust policies, protocols and operating procedures, to ensure it can respond to the changing social, technological and commercial context in which it operates.

## **Relationship with Minister and portfolio**

The Commission plays an essential role in ensuring that the Government and I, as the Minister responsible for human rights and anti-discrimination laws, are well placed to respond promptly to human rights and anti-discrimination matters. The Attorney-General's Department (the department) also supports and advises me by providing advice on policy development and the performance of the portfolio's regulatory systems. The department takes into account the knowledge and expertise of the Commission when considering changes to policy and legislation that impact on human rights and anti-discrimination laws.

Accordingly, I expect the Commission to work collaboratively with the department to provide accurate and timely policy advice on significant issues relating to strengthening human rights and anti-discrimination protections.

As the responsible Minister, I will provide an enabling environment for the Commission to consistently implement best practice by ensuring it is well informed of the Government's policy direction, as specific initiatives and strategies are being considered.