

WIN In-House Counsel Week 2024

Respect@Work – What you need know to respond to these landmark reforms

Presenters: Nicholas Turner and Clancy King



WIN what in-house
lawyers need



Overview

The framework:

- Respect@Work
- Psychosocial hazards
- The right to disconnect

Implementation:

- AHRC 'Guidelines' for compliance
- SafeWork Model Code of Practice
- Embedding processes

The framework

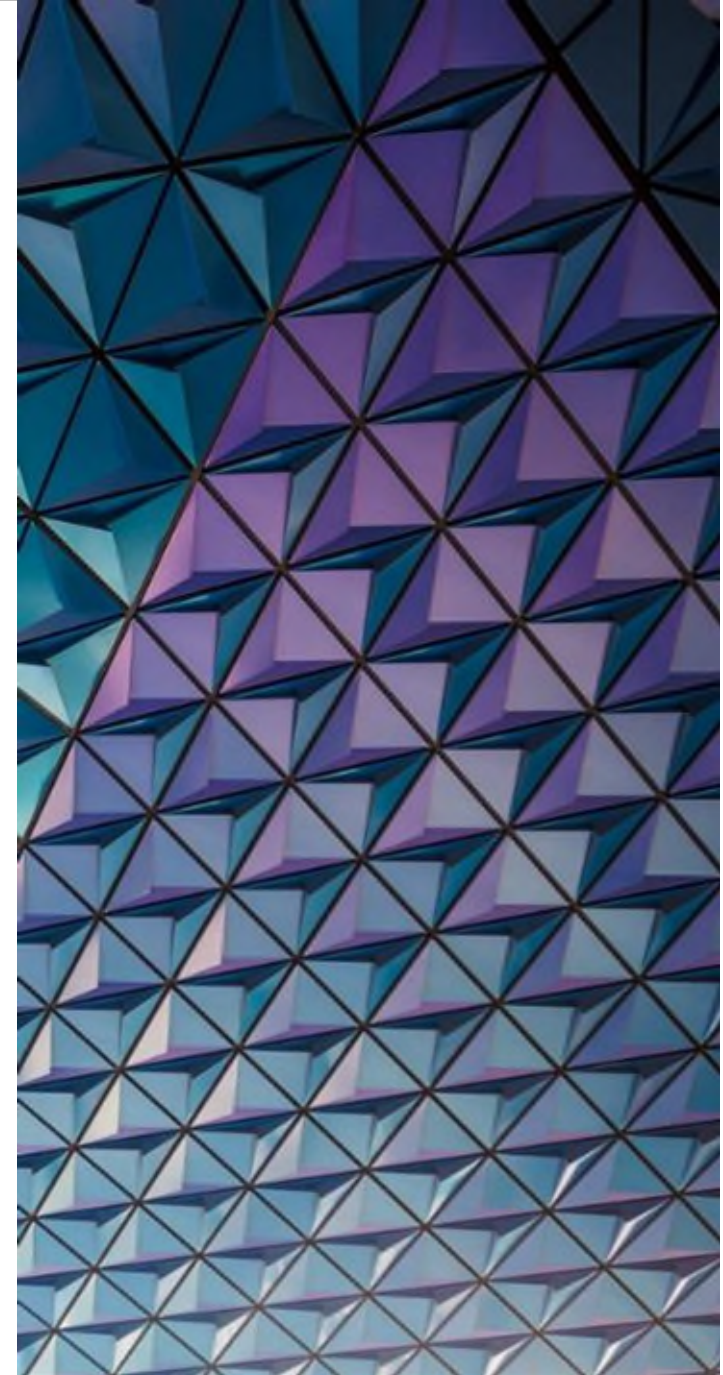


Framework: Respect@Work

The positive duty

Employers have a positive duty to take reasonable and proportionate measures to eliminate, as far as possible:

- discrimination on the ground of sex;
- sexual harassment;
- sex-based harassment;
- a hostile working environment on the ground of sex; and
- related acts of victimisation.



Framework: Psychosocial hazards

The positive duty (in NSW)

Employers must implement control measures:

- to eliminate psychosocial risks so far as is reasonably practicable; and
- if it is not reasonably practicable to eliminate psychosocial risks – to minimise the risks so far as it is reasonably practicable.

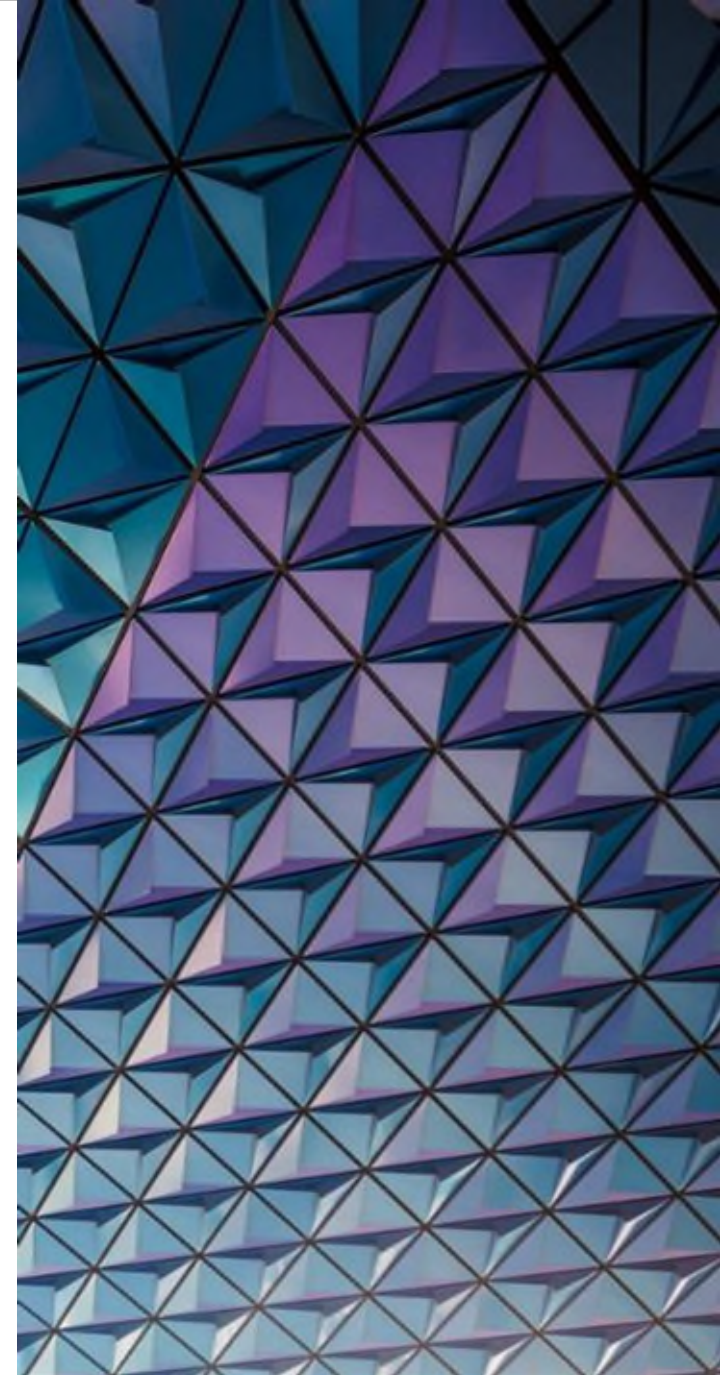
Psychosocial risk

A risk to the health and safety of a worker or other person arising from a psychosocial hazard

Psychosocial hazard

A hazard that:

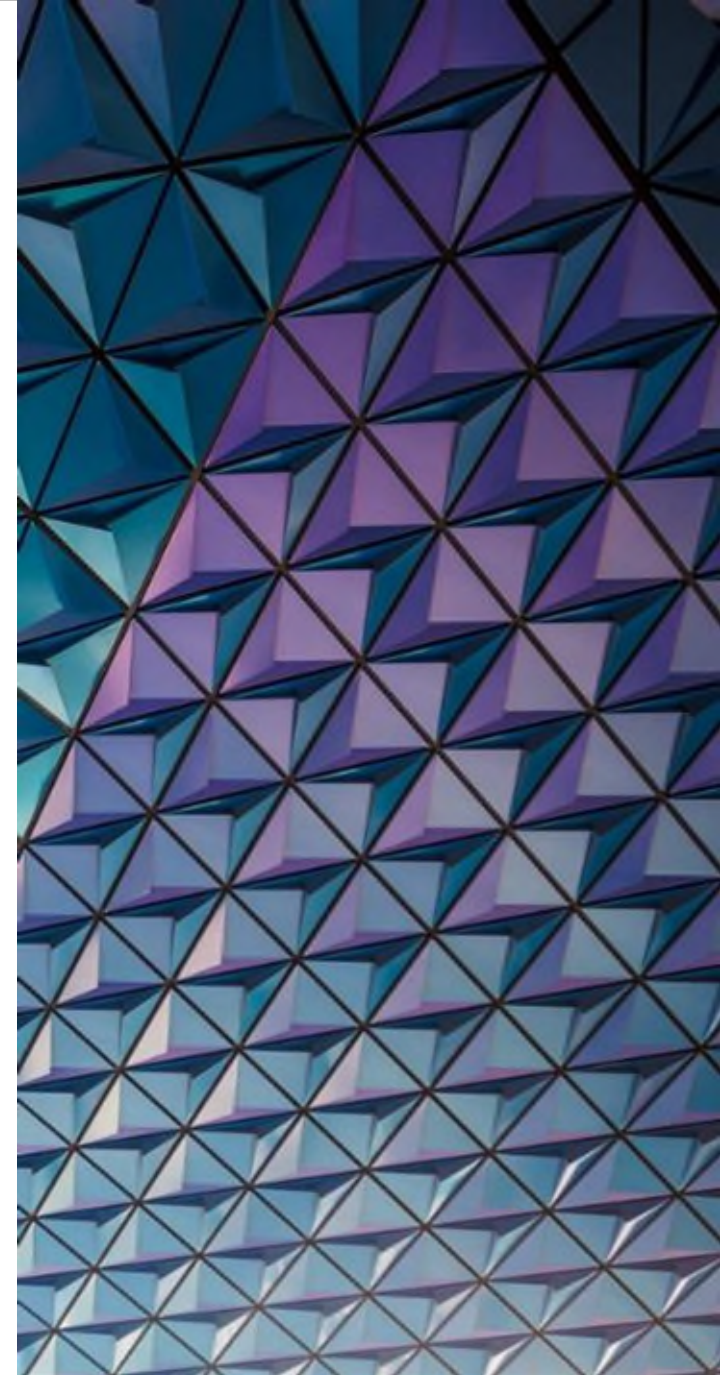
- arises from, or relates to:
 - the design or management of work; or
 - a work environment; or
 - plant at a workplace; or
 - workplace interactions or behaviours; and
- may cause psychological harm, whether or not it may also cause physical harm.



Framework: Right to disconnect

Closing the loopholes – Part 2

- An employee may refuse to monitor, read or respond to contact, or attempted contact, from an employer (or third party if related to work) outside of the employee's working hours unless the refusal is reasonable.
- The following factors must be considered in determining whether a refusal is unreasonable:
 - the reason for the contact;
 - how the contact is made and level of disruption the contact causes the employee;
 - the extent to which the employee is compensated:
 - to remain available during the period in which the contract was made; or
 - for working additional hours outside of the employee's ordinary hours of work;
 - the employee's role and level of responsibility; and
 - the employee's personal circumstances.



Implementation



AHRC 'Guidelines' for compliance: guiding principles

Consultation



Employers must develop strategies based on consultation with their workforce.

Gender equality



All action to implement the positive duty should contribute to achieving gender equality.

Intersectionality



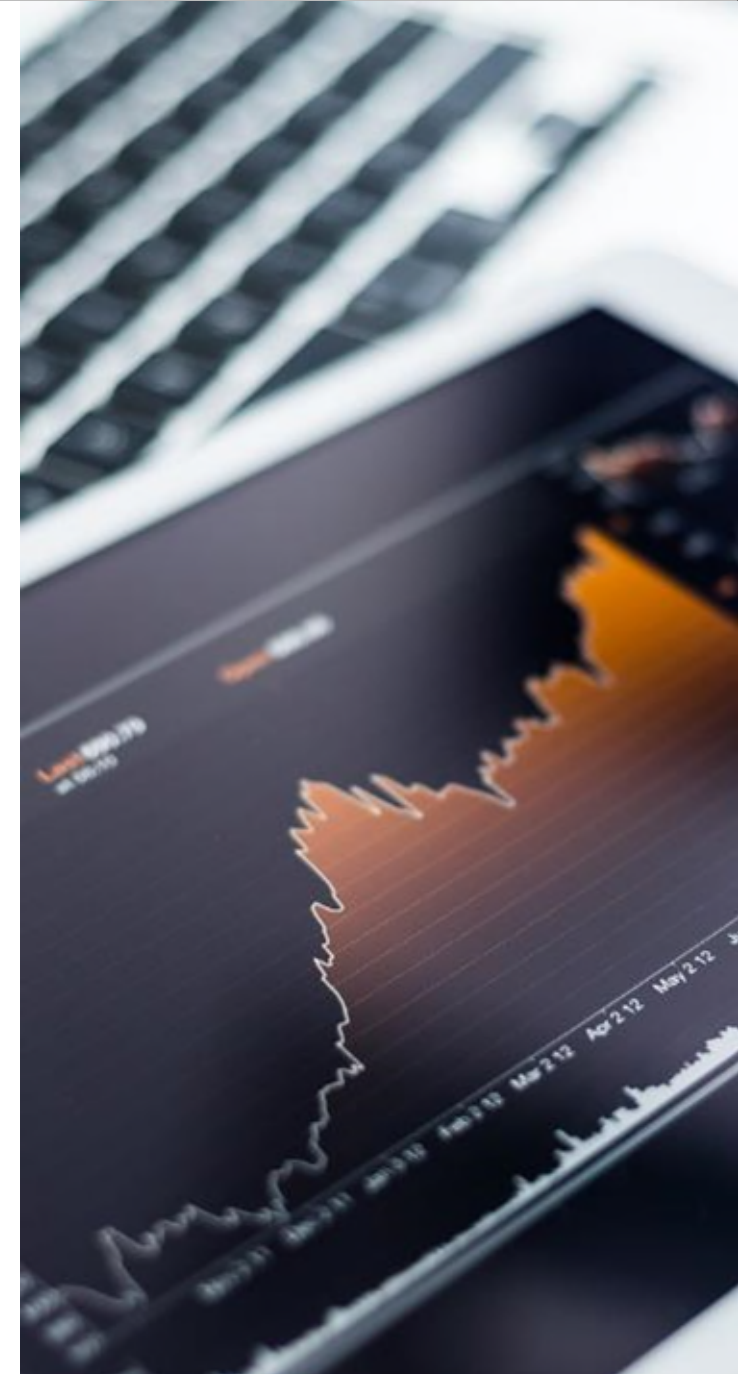
Recognition that conduct in breach of Respect@Work obligations may have a heightened impact on different people.

Person-centred & trauma informed



People-centred: Ensuring systems and processes meet the needs, values and preferences of those involved.

Trauma informed: Avoiding harm and prioritising safety, choice and empowerment.



AHRC 'Guidelines' for compliance: standards



“ The Commission expects all organisations and businesses to have measures in place to address each of the seven standards ”

-- Australian Human Rights Commission, Guidelines for Complying with the Positive Duty under the Sex Discrimination Act 1984 (Cth), August 2023

SafeWork: Model code of practice

Identify psychosocial hazards



- Job demands
- Low job control
- Poor support
- Lack of role clarity
- Poor organisational change management
- Inadequate reward and recognition

Assess the risks



- Duration
- Frequency
- Severity

Control the risks

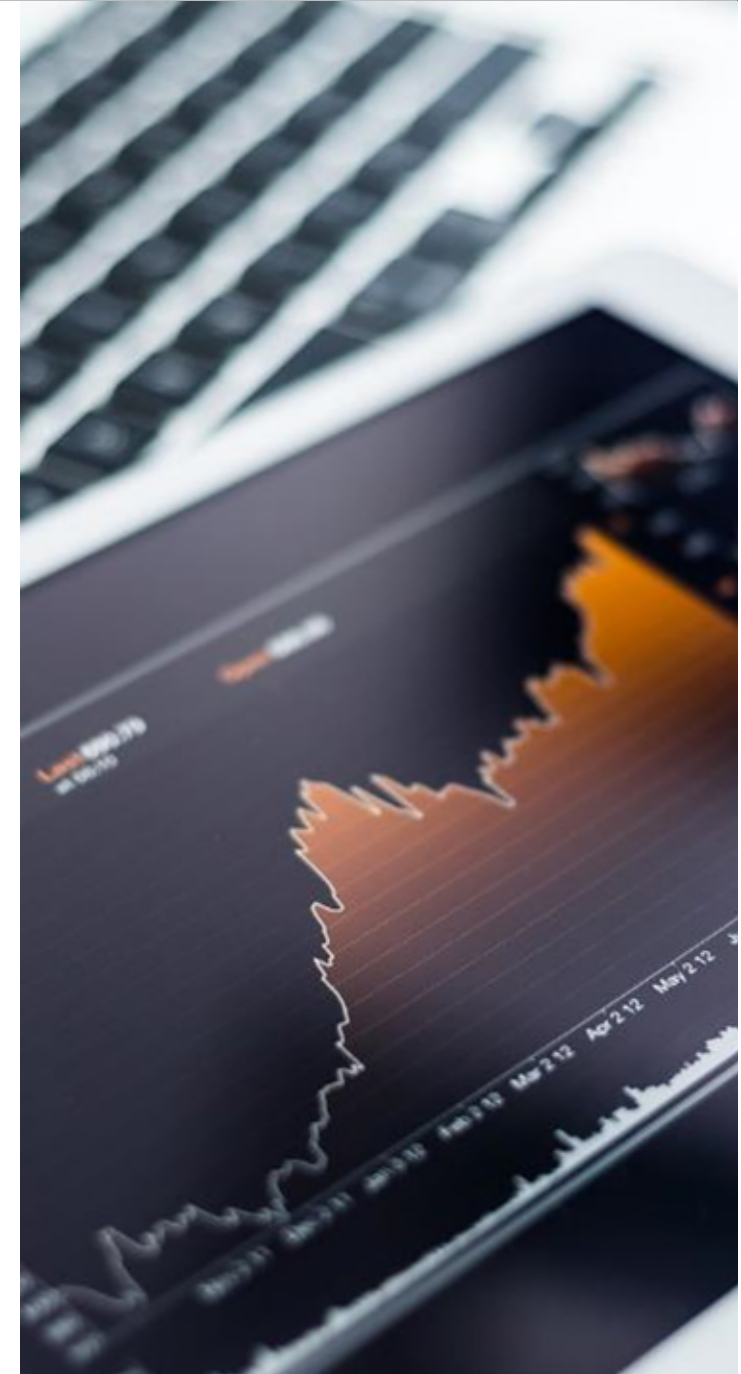


- Identify control measures
- Consider which control measures are most effective
- Consider which controls are reasonably practicable

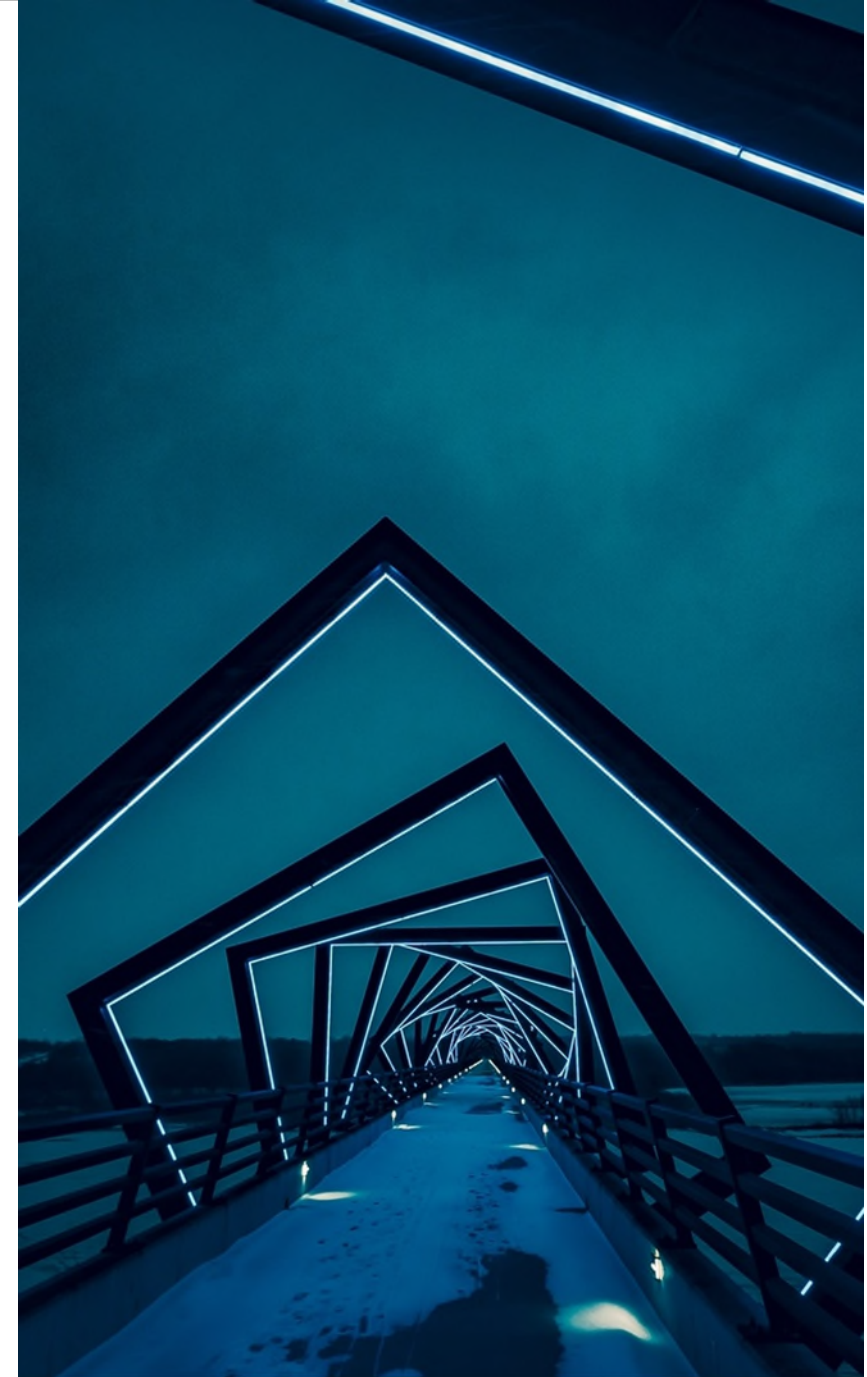
Review the controls



- When the control measure is not effective
- Before a change in the workplace
- If a new risk is identified
- Following consultation
- If raised by a worker/health and safety representative



Embedding processes



WIN In-House Counsel Week

Thank you for joining our webinar:
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