

Enforcement of compliance with the Gender Equality Act

The *Gender Equality Act 2020* (the Act) is a landmark piece of legislation which will drive gender equality in the public sector workforce and the broader Victorian community. In order to ensure that the objectives of the legislation are achieved, the Act puts in place compliance mechanisms that allow the Commissioner for Public Sector Gender Equality (Commissioner) to ensure that defined entities meet their obligations under the Act.

How will the Commissioner approach enforcement of the Gender Equality Act?

In the first instance, the Commissioner will support defined entities to meet their obligations under the Act through education and collaboration. This approach acknowledges that in the first years of the Act's operation, there will be a transition period for defined entities to move towards fully understanding and adequately meeting their obligations.

In the event that a defined entity is found to be non-compliant with the Act, the Commissioner will aim to resolve any issues informally in the first instance, considering the context of each defined entity, and the long-term objectives of the Act.

The Commissioner has a range of enforcement options available under the Act, including working directly with an organisation to achieve an informal resolution (section 22(3)), issuing a compliance notice (section 22(1)), recommending that the Minister takes action against the organisation (section 26(b)), naming the organisation and their failure to comply on the Commission's website (section 26(c)) – and, as a last resort, making an application to the Victorian Civil and Administrative Tribunal (VCAT) for an order directing the organisation to comply (section 26(d)).

How can a defined entity fail to comply with the Act?

Under section 22 of the Act, a defined entity will fail to comply with the Act by:

- not preparing or submitting a [Gender Equality Action Plan](#) (GEAP)
- not preparing or submitting a [progress report](#)
- not making reasonable and material progress in relation to the [workplace gender equality indicators](#)
- not making reasonable and material progress towards meeting relevant gender equality targets or quotas (note that there are currently no targets or quotas in place)



Are there any informal resolution mechanisms available?

If your defined entity fails to comply with the Act, the Commissioner will take steps to resolve the matter informally with your organisation, prior to taking formal enforcement action (section 22(3)). This may include meeting with you to understand the organisational context for non-compliance, providing practical recommendations to address the matter, or negotiating a mutually agreed informal resolution. If the matter cannot be resolved informally, the Commissioner may issue a compliance notice under section 22 of the Act.

What is a compliance notice?

Under section 22 of the Act, if the matter cannot be resolved informally, the Commissioner may issue a compliance notice to a defined entity, for the following reasons —

- (a) not preparing a Gender Equality Action Plan
- (b) not submitting a Gender Equality Action Plan within the time required
- (c) not preparing a progress report
- (d) not submitting a progress report within the time required
- (e) not making reasonable and material progress in relation to the workplace gender equality indicators
- (f) not making reasonable and material progress towards meeting gender equality targets
- (g) not making reasonable and material progress towards meeting gender equality quotas.

A compliance notice may require the defined entity—

- (a) to prepare and submit a Gender Equality Action Plan; or
- (b) to prepare and submit a progress report; or
- (c) to take any other action that is reasonably required to comply with this Act.

Under section 23 of the Act, a compliance notice must include:

- the requirement of the Act with which the defined entity has failed to comply
- the basis for the Commissioner's belief that the defined entity has failed to comply
- the action that the defined entity must take to comply with the requirement
- the date by which the defined entity must take action
 - If the action required is to submit a Gender Equality Action Plan or a progress report, this date must be no less than **60 days** after the notice is issued.
 - For all other actions required, the date must be no less than **14 days** after the notice is issued

- The Commissioner may extend the time period specified in the compliance notice for up to 24 months.
- The further action that the Commissioner may take if the defined entity does not comply with the notice
- That the defined entity may disagree with the compliance notice within 14 days after receiving the notice.

Can a defined entity dispute a compliance notice?

Under section 24 of the Act, a defined entity may disagree with the compliance notice through a written response to the Commissioner within 14 days after receiving the notice.

After considering a response to a compliance notice, the Commissioner may withdraw, amend or confirm the compliance notice.

If the Commissioner confirms the compliance notice, this means that the requirements of the compliance notice still apply.

Under section 25 of the Act, the defined entity may apply to VCAT to review the Commissioner's decision to confirm a compliance notice, within 28 days after the defined entity receives notice of the Commissioner's decision.

What happens if a defined entity does not take the action required in a compliance notice?

Under section 26 of the Act, if the defined entity does not comply with the compliance notice, the Commissioner may:


- accept a written undertaking from the defined entity
- recommend the Minister take action to ensure compliance
- publish on this website the name of the defined entity
- apply to VCAT for an order enforcing the compliance notice

What is an enforceable undertaking?

As set out in section 27 of the Act, if a defined entity does not comply with a compliance notice within the time period specified, they may submit a written undertaking to the Commissioner.

A written undertaking could respond to the compliance notice received from the Commissioner, set out the action that the defined entity will take to comply with the requirement(s), and set out the date by which these actions will be completed.

The Commissioner may choose to accept the written undertaking. While the undertaking is in force, the Commissioner must not take any further action under section 26 or issue any further compliance notice with respect to the matter that is the subject of the undertaking.



If the Commissioner considers that the defined entity has failed to comply with any terms of the undertaking, the Commissioner may apply to VCAT for an order enforcing the undertaking.

When will VCAT be involved?

Under section 2 of the Act, the Commissioner may apply to VCAT to direct a defined entity to comply with a compliance notice (section 26(d)) or enforceable undertaking (section 27(5)).

A defined entity may apply to VCAT to review the Commissioner's decision to confirm a compliance notice under section 24(2)(c), within 28 days of receiving the decision.

Examples

Informal resolution – Defined Entity A

Defined Entity A was not able to submit their Gender Equality Action Plan to the Commission by the due date of 31 October 2021. They had completed their workplace gender audit, but due to an organisational restructure, they were not able to complete their consultation processes and finalise their GEAP by the due date. They advise the Commissioner, who arranges a set of meetings to understand the organisational context which has led to the non-compliance. The Commissioner recommends that Defined Entity A takes 45 days to consult with their employees, employee representative groups and governing body, and then complete their Gender Equality Action Plan. Defined Entity A agrees, and submits their Gender Equality Action Plan by the agreed date. The matter is resolved informally.

Enforceable Undertaking – Defined Entity B

Defined Entity B was not able to prepare or submit a progress report to the Commission by the due date of 31 October 2023 because they allocated insufficient resourcing to meeting their obligations. They advise the Commissioner, who arranges a set of meetings to understand the organisational context which has led to the non-compliance. The Commissioner recommends that Defined Entity B allocates dedicated resources to develop the progress report, and submit it within 60 days. Following discussions, the Commissioner is not confident that the entity will allocate resources to submit their progress report, and issues a compliance notice to submit the progress report within 60 days. Defined Entity B is not able to submit their progress report to the Commission within 60 days, but writes a written undertaking to the Commissioner to prepare their progress report and submit it within 90 days of the date of the compliance notice. The Commissioner accepts the written undertaking.



Informal Resolution – Defined Entity C

Defined Entity C submitted their GEAP and workplace gender audit results in October 2021. The workplace gender audit results had an incomplete dataset relating to workplace sexual harassment. Defined Entity C noted the data gaps in their GEAP, proposing to improve their data collection mechanisms in the next two years. In 2023, when the first progress report is due, Defined Entity C has not been able to improve their data collection mechanism. Defined Entity C notifies the Commission that they have not been able to make reasonable and material progress in this area. The Commission meets with Defined Entity C to understand the organisational circumstances and nature of the barriers to implementing a sexual harassment reporting system, and together with the leadership team, agrees on a new implementation timeline within the following 3 months. The matter is resolved informally.