




Equal Opportunity

at work

A handbook for employers
in South Australia



Government of South Australia
Office of the Commissioner for
Equal Opportunity



“Putting Equal Opportunity into practice will help you find and keep happy employees and customers and make you an employer of choice.”

Contents

| | |
|--|----------|
| Introduction | 2 |
| The business case for Equal Opportunity | 3 |
| Understanding Equal Opportunity | 4 |
| Discrimination | 4 |
| Sexual harassment | 5 |
| Victimisation | 5 |
| Who is responsible for Equal Opportunity at work? | 6 |
| Seven steps for employers | 7 |

| | |
|---|-----------|
| Step 1 Have a policy which rules out discrimination and sexual harassment | 8 |
| How to write an Equal Opportunity policy | |
| Step 2 Tell your customers and employees about it regularly | 9 |
| How to promote an Equal Opportunity policy | |
| Step 3 Have a procedure to deal with complaints | 10 |
| How to develop a complaint procedure | |
| Step 4 Handle complaints quickly, fairly and confidentially | 12 |
| How to handle complaints | |
| Step 5 Treat customers and employees fairly in your dealings with them | 14 |
| How to treat employees fairly | |
| Step 6 Consider appointing an employee as an Equal Opportunity contact person | 18 |
| How to appoint an Equal Opportunity contact person | |
| Step 7 Monitor and maintain a culture of Equal Opportunity | 19 |
| How to maintain Equal Opportunity | |

| | |
|---|-----------|
| Small business quick steps | 20 |
| Templates | 21 |
| 1. Equal Opportunity policy | 21 |
| 2. Complaint procedure | 24 |
| 3. Code of conduct | 27 |
| Notes | 28 |

Introduction

This handbook is an easy-to-use guide to have Equal Opportunity work for you.

It is a companion for everyone involved in employment and service – business owners, chief executives, managers, supervisors, human resource departments, recruitment agencies and your Equal Opportunity contact staff.

It gives you practical ways to make Equal Opportunity work for and not against you.

It provides action checklists and templates which will help you make your workplace fairer.

Equal Opportunity laws cover all areas of public life but we find that **employment** and **customer service** are where there are the most complaints of unfair treatment.

All employers, big or small, have to work within the law but it also makes good business sense.

Equal Opportunity helps you manage and get the best out of people.

For more information contact us at The South Australian Equal Opportunity Commission on **(08) 7322 7070** or visit **www.eoc.sa.gov.au**

Putting Equal Opportunity into practice will help you find and keep happy employees and customers, and make you an employer of choice.

Please enjoy using **Equal Opportunity at work** and seeing it work.

Commissioner for Equal Opportunity

The business case for Equal Opportunity

Equal Opportunity can deliver financial and human advantages to your business and workplace.

- **More customers and diverse markets**
- **Better reputation and public image**
- **Less conflict and fewer complaints**
- **Lower costs**
- **Less absenteeism**
- **Less stressed supervisors and managers**

- **More people to select from for jobs**
- **The best applicant gets the job**
- **Everyone can develop to their full potential**
- **Greater productivity and creativity**
- **Higher staff morale and retention**

Equal Opportunity works and for these reasons you can't afford not to be an Equal Opportunity employer.



“Equal Opportunity can deliver financial and human advantages to your business and workplace.”

Understanding Equal Opportunity

Equal Opportunity means delivering fair outcomes to your staff and customers. It also means you have to prevent **discrimination, harassment, bullying** and **victimisation**.

Such behaviour can vary in seriousness but even one-off incidents can constitute discrimination or sexual harassment. If allowed to continue it can undermine entire work performance and lead to unmanageable situations.

Be aware that having no complaints does not necessarily indicate there is no discrimination or sexual harassment. People do not always complain because they may feel afraid or embarrassed.

Discrimination

Unlawful discrimination is unfairly treating people because of their particular personal characteristics or because they belong to a certain group.

Discrimination can be direct or indirect.

Indirect discrimination is treatment which appears to be equal but is unfair on certain people. To be *unlawful* it must also be *unreasonable*.

You need to check carefully for *indirect discrimination*. Even if it is unintentional, it can still be against the law.

Under South Australian laws it is unlawful to unfairly treat people because of:

- **Age**
- **Sex**
- **Gender identity**
- **Intersex status**
- **Race**
- **Disability**
- **Sexual orientation**
- **Marital or domestic partnership status**
- **Pregnancy**

- **Association with a child**
- **Caring responsibilities**
- **Identity of spouse**
- **Religious appearance or dress**

Federal laws also make it unlawful to treat people unfairly at work because of:

- **Religion**
- **Social origin**
- **Trade union activity**
- **Political opinion**
- **Irrelevant criminal record**

It is unlawful to unfairly treat people in:

- **Employment**
- **Education**
- **Providing goods and services**
- **Accommodation**
- **Clubs and associations**
- **Granting qualifications**
- **Advertising**
- **Selling land**

Discrimination because of **religious dress** or appearance is only unlawful in the areas of employment and education.

Sometimes discriminating behaviours are referred to as bullying. Bullying is behaviour which makes people feel offended, afraid or humiliated and in the circumstances it is reasonable to feel that way.

Bullying behaviour relating to **age, sex, gender identity, intersex status, race, disability, sexual orientation, marital or domestic partnership status, pregnancy, association with a child, caring responsibilities, identity of spouse** or **religious appearance or dress** is unlawful.

Legitimate comment on performance or work related behaviour is **not** unfair treatment. Managers can give full and frank feedback in a constructive and sensitive way.

Sexual harassment

Sexual harassment is sexual behaviour which makes people feel offended, afraid or humiliated and in the circumstances, it is reasonable to feel that way.

Both men and women can sexually harass or be harassed.

Sexual harassment is determined from the point of view of the person feeling harassed. It is how the behaviour is *received* not how it is *intended* that counts.

Sexual harassment can be:

- unwelcome touching or kissing
- comments or jokes, leering or staring
- sexual pictures, objects, emails, text messages

or literature

- direct or implied propositions, or requests for dates
- questions about sexual activity.

Mutual attraction or friendship with consent is **not** sexual harassment.

Victimisation

Unlawful victimisation is unfairly treating people for complaining or helping others to complain about discrimination or sexual harassment either within your organisation or to the Equal Opportunity Commission.

It is against the law because victimisation punishes people for speaking out or stops them from complaining.

Table 1: South Australia Equal Opportunity Law

When is it discrimination?*

Discrimination is against the law when there is:

1. Unfair treatment based on personal characteristics
2. occurring in an area of public life
3. that causes loss or humiliation
4. and it happened within the last twelve months

| 1. PERSONAL ISSUE ¹ | 2. PUBLIC AREA | 3. DETRIMENT | 4. TIME |
|--|--|--|---|
| <ul style="list-style-type: none"> Race Age Disability Sexual orientation Sex Gender identity Intersex status Pregnancy Marital or domestic partnership status Sexual harassment Victimisation Caring responsibilities Association with a child² Identity of spouse Religious appearance or dress³ | <ul style="list-style-type: none"> <input type="checkbox"/> Employment <ul style="list-style-type: none"> > Recruitment > Dismissal > Promotion > Terms & Conditions > Resignation > Treatment on the job <input type="checkbox"/> Goods & services <input type="checkbox"/> Accommodation <input type="checkbox"/> Education <input type="checkbox"/> Clubs & associations <input type="checkbox"/> Sale of land <input type="checkbox"/> Granting of qualifications | <ul style="list-style-type: none"> <input type="checkbox"/> Injury to feeling <ul style="list-style-type: none"> > Humiliation > Denigration > Ridicule > Embarrassment > Segregation <input type="checkbox"/> Denied access <input type="checkbox"/> Lost opportunity <input type="checkbox"/> Lost income <input type="checkbox"/> Refused services | <ul style="list-style-type: none"> <input type="checkbox"/> 12 Months [SA] <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>¹ Federal laws also cover discrimination in the grounds of religion, political opinion, social origin, irrelevant criminal record and trade union activity.</p> <p>² In accommodation and customer service.</p> <p>³ Religious appearance or dress is only covered in the areas of employment and education.</p> </div> |

*This booklet is a guide to **South Australian** laws. There are also Federal laws that apply and that employers need to be aware of. Contact the Equal Opportunity Commission for more information.

Who is responsible for Equal Opportunity at work?

We are all legally obliged to prevent **discrimination, sexual harassment** and **victimisation** in business and at work.

The law applies to the provision of all goods and services and to all types of work – full time, part time, casual, contract or volunteer.

It covers all stages of employment, from job advertisements, applications, offers, terms, conditions and benefits to promotions, training, transfers, retrenchment and dismissal.

It includes how your staff treat each other and your customers.

You are responsible for your employees and their actions. This is called *vicarious liability* and it applies to all situations relating to work including functions, conferences, office parties and customer service.

You may be vicariously liable for the conduct of:

- individual or groups of employees
- directors, supervisors or managers
- people working on your premises
- agents or people acting on your behalf
- contractors.

Harassment by customers:

Employers can also be held responsible for sexual harassment by a third party, such as a customer or client, if they have been notified and have not done enough to stop it happening again.

Employers have a responsibility to:

- take all reasonable steps to prevent discrimination, sexual harassment and victimisation
- respond quickly, seriously and effectively to any complaints
- support those who have been discriminated against or harassed.

CASE STUDY

Prompt solution

Susan, who worked at a bank, suffered from a physical disability which made standing for lengthy periods of time difficult. She discussed this with her manager, Ian, who organised for a workplace assessment to be conducted. As a result there was a recommendation that a counter stool be supplied for Susan. Ian made sure a suitable ergonomic stool was provided for Susan to use. She then found that the problems she experienced from standing had been greatly reduced by being allowed to sit.

Employees have a responsibility to:

- **not discriminate against, sexually harass, or victimise customers or colleagues**
- **read and become familiar with Equal Opportunity policies and complaint procedures.**

CASE STUDY

Taking responsibility

John, an office worker, overheard Jason on several occasions talking to Kathy about her breasts. Kathy looked uncomfortable and always tried to change the conversation.

John decided to tell the manager, David, what he had heard. David was concerned so he spoke to all his employees at a staff meeting about what is appropriate and inappropriate behaviour in the workplace. He also decided to provide Equal Opportunity training for his staff.

Whether you are big or small, the law says you should take *reasonable steps*.

What is *reasonable* for a large corporation may not be *reasonable* for a small business.

If a complaint is made against you or your business you may need to demonstrate the steps you have taken.

Learning from law

Michael, a manager of a pizza bar, advertised for kitchen hands and only employed females to do the job. At the time there were several male kitchen hands one of whom, Tilley, heard Michael say that he wanted to reduce the hours for the male kitchen hands. After this, all the male kitchen hands were no longer rostered on.

Tilley decided to put in a complaint of sex discrimination against the company. The owners of the company said that they had not given Michael instructions to only employ female kitchen hands so they weren't responsible for the discrimination.

This argument was rejected as even though the company was small, it would not have caused great hardship to the company to establish policies and provide a proper training program for Michael and the other managers to ensure employees and prospective employees were not discriminated against.

(Tilley v MK & AC Bowtell [Prospect] Pty Ltd)

To decide what steps are reasonable for you, consider your:

- size and structure
- resources
- industry nature
- working hours
- level of supervision
- workplace culture
- history of workplace discrimination or harassment
- other relevant factors such as location, close working or live-in arrangements.

Seven steps for employers

To start with you can understand your responsibilities and respond with a stated policy and a complaint procedure. **You need to:**

- 1 **Have a policy which rules out discrimination and sexual harassment.**
- 2 **Tell your customers and employees about it regularly.**
- 3 **Have a procedure to deal with complaints.**
- 4 **Handle complaints quickly, fairly and confidentially.**
- 5 **Treat fairly customers and employees in your dealings with them.**
- 6 **Consider making an employee an Equal Opportunity contact person.**
- 7 **Monitor and maintain a culture of Equal Opportunity.**

STEP 1

Have a policy which rules out discrimination & sexual harassment

1 2 3 4 5 6 7

How to write an Equal Opportunity policy

Whether you run a small business or you are the chief executive of a large company, your employees need information to do their jobs well.

You need a clear, written policy for a discrimination and harassment free workplace.

Keep it short and simple, but ensure that it covers the items in this checklist.

"This organisation is an Equal Opportunity employer" does not constitute a policy.

It is a good idea to consult with staff and customers and you can talk to employer groups, other similar companies, unions and the South Australian Equal Opportunity Commission to get your policy right.

Checklist

Your policy can:

- state why you support Equal Opportunity listing the benefits to service and productivity**
- state who the policy covers**
- define direct and indirect discrimination, sexual harassment and victimisation and state that it is against the law**
- commit to not tolerating such behaviour in your workplace**
- state employees' and employers' responsibilities and rights**
- explain what to do if discrimination or harassment happens**
- explain that people who breach the policy or the law will be disciplined**
- explain the complaint procedure**
- provide protection from victimisation**
- be supported and signed by the chief executive officer.**

You can find a policy template on page 21 of this handbook and you can download it from our website at www.eoc.sa.gov.au

You can also contact the Equal Opportunity Commission for advice on your policy.

STEP 2

Tell your customers and employees about it regularly



How to promote an Equal Opportunity policy

It is important that all staff, including contractors and volunteers, know about and understand your policy and where to find it.

You may need to translate it for some people or provide it in ways which make it easy for everyone to access.

Ensure your managers and supervisors are equipped to promote it.

If you provide goods or services, it is also helpful to make customers and trade contacts aware of your policy.

Checklist

We recommend that your policy is officially endorsed and launched by your chief executive officer at an all staff meeting. It needs to be emphasised that everyone is required to comply.

You can:

- promote your policy internally and externally**
- publish it on your website or intranet**
- produce a brochure for all staff and customers**
- periodically attach a copy to pay slips or email it to staff**
- display it on notice boards**
- include it in company manuals, business plans and performance appraisals**
- discuss it at staff meetings**
- give it to new staff and get them to acknowledge it by signing it**
- make someone responsible for updating and circulating your policy regularly.**

STEP 3

Have a procedure to deal with complaints



How to develop a complaint procedure

Discrimination or harassment problems are best resolved internally.

The best way for you to ensure consistent and fair handling of all inappropriate behaviours is to have a good complaint procedure.

Discrimination and sexual harassment complaints can be complex, sensitive and volatile and people dealing with them need training and expertise.

A complaint procedure needs to be user-friendly and engender confidence in the process to be effective.

Complaints vary in severity and complexity and whether allegations are admitted or denied.

We recommend offering a step approach for resolving them.

Checklist

A thorough complaint procedure will:

- be clearly documented, easily understood and accessible to all employees**
- offer options for resolving complaints**
- guarantee a fast, fair and confidential process**
- be administered by trained people**
- step through the process**
- outline records to be kept**
- guarantee protection from being victimised for complaining**
- be reviewed regularly for effectiveness.**

You can find a complaint procedure template on page 24 of this handbook and you can download it from our website at www.eoc.sa.gov.au

You should respect the right of a worker to seek other help, apart from your complaint procedure, for example; from a union, an advocacy service or the Equal Opportunity Commission.

You can contact the Equal Opportunity Commission for advice.

CASE STUDY

Listening to and fairly treating both sides

Jenny, a nurse working in a specialist unit of a large hospital, was dismissed because the management of the hospital believed a series of threatening telephone calls to one of her colleagues—including one which was recorded on an answering machine—were made by her.

The management came to this conclusion because there had been tension between the two and there was general unrest in the specialist unit in which they worked. The management, however, was found not to have undertaken a fair investigation.

When the issue was taken to the Industrial Relations Commission it was found that the management had not given Jenny a copy of the tape or the times and dates of the calls prior to a disciplinary meeting nor did they tell her what the meeting was about. This meant they had not given her any opportunity to prepare for the meeting. In addition, they did not seek expert advice as to whether the recorded voice was in fact Jenny's.

As a result, the Industrial Relations Commission found that the dismissal was unreasonable and ordered that the hospital pay Jenny \$4,700.

(Twohig v Ashford Community Hospital Inc SAIR [1998] [No. 1243 of 1997])

Informal complaint handling

Colin owns a small city café. One day a new casual, Bianca, came to him very upset. She said that Franco, another employee, had patted her bottom and put his hands on her hips as they passed each other behind the counter. He had done this three or four times, even though she'd asked Franco to stop.

Colin spoke to Franco about Bianca's allegations, and although Franco insisted his touching was accidental due to the limited counter space, he offered her a heartfelt apology. Bianca felt assured that Colin had taken her concerns seriously. Things returned to normal at Colin's café.

Colin also printed off one-page statements about appropriate behaviour at work from the Equal Opportunity Commission's website, laminated them and pinned them up for staff to see.

and want to confidentially seek more information, for example from the Human Resource Manager or Equal Opportunity Commission.

Talking to the supervisor or manager

This is when:

- the person complaining asks you to deal with it and you confidentially convey the concerns to the person being complained about without making any judgements and re-state your policy, or
- you bring the two parties together to conciliate and the issue is resolved without investigation.

This option is usually appropriate when:

- the allegations are less serious
- there is a chance of quickly stopping the problem before it develops
- the people involved are likely to have an ongoing working relationship.

An employee is not required to exhaust these options before moving to having the complaint investigated or asking for help elsewhere.

Employees should be aware that they have the right to make a written complaint or approach the Equal Opportunity Commission at any point.

Having the complaint investigated

This option focuses on whether a complaint can be substantiated or at least whether the people involved can be brought together to try to reach an outcome satisfactory to all.

Procedures for dealing with complaints in this way can involve:

- investigating the allegations
- hearing both sides before forming a view
- finding out whether the allegations happened or were likely
- making a report and recommending an action
- following through with an outcome.

This approach is usually appropriate when:

- earlier attempts have failed
- the allegations are serious
- discipline is a possible outcome if the allegations are substantiated
- the allegations are denied and the person complaining wants to try to substantiate them
- the person complaining is being victimised
- the complaint is against a senior person and this procedure helps ensure the people involved are not disadvantaged.

STEP 4

Handle complaints quickly, fairly and confidentially



How to handle complaints

Early intervention

If an employee complains to you of discrimination or sexual harassment you have a responsibility to act. Using this guide may be helpful.

Talking to the complainant

- be aware they may be feeling anger, fear, distress, discomfort, frustration, powerlessness
- reassure them they have done the right thing in seeking help
- listen, take them seriously, be sensitive
- make no judgements
- state your policy and procedures
- let them know they have a right to complain and they won't be victimised
- discuss options and outcomes and ask them how they want the situation handled
- advise them of the need for confidentiality.

Talking to the respondent

Approaching a person who is the subject of a complaint also requires care and attention.

Fair treatment for all is paramount and everyone's rights are respected. You should:

- give an accurate report of the complaint
- listen to their version of events
- be aware they may also be feeling anger, fear, distress, discomfort, powerlessness
- make no judgements
- state your policies and procedures
- inform them that any breach is against the law
- advise them of any potential disciplinary action if such behaviour occurred
- advise that even without intention, offence has been taken and it needs resolving
- discuss any action to resolve the complaint
- advise them of the need for confidentiality
- advise them that people cannot be victimised for complaining.

Then you can take these practical options for a resolution.

Checklist

- assist the complainant to approach the person who is offending them**
- immediately remove anything offensive – graffiti, posters, screen savers**
- convey the concerns to the respondent without making judgements and re-state your policy**
- discuss support options**
- ask them to consider coming together with the other party to conciliate**
- monitor their behaviour to ensure offensive behaviour is not happening**
- monitor the situation to ensure neither of the parties is victimised**
- make brief diary notes of your actions**
- keep both parties informed of any action you have taken**
- discuss any continuing problems with senior management, human resource personnel or seek advice from the Equal Opportunity Commission.**

Complaints requiring investigation

In this situation employers need to document every step to ensure consistency and fairness.

The steps are usually:

Checklist

- interview the person complaining and document the allegations**
- inform the person being complained about and ask them to respond**
- if the facts are disputed, seek more information including evidence from any witnesses**
- find whether the complaint has substance**
- report the process, the evidence, the finding and recommend an outcome**
- implement the outcome or decide on other action.**

The parties involved must be permitted to have support people with them at any interviews or meetings.

Evidence

Given the nature of discrimination and sexual harassment, there are often no witnesses. In dealing with a complaint formally, consider any surrounding evidence such as:

- supporting evidence from co-workers
- reports of changes in behaviour or performance
- requests for transfers, shift changes or increased sick leave
- complaints from other employees
- records kept by the person complaining
- consistency of the evidence presented by the people involved
- no evidence where logically it would exist.

Outcomes

Outcomes can include:

- conciliating
- counselling
- • apologising
- re-crediting leave
- training
- warnings
- disciplinary action against the person being complained about – demotion, transfer, suspension, probation or dismissal
- disciplinary action against the person complaining, only if it was malicious or vexatious.

Outcomes will depend on the:

- severity and frequency of the discrimination or harassment
- weight of evidence
- wishes of the person complaining
- likelihood of the person being complained about knowing their behaviour was in breach of the policy or the law
- existence of any prior incidents.

If there is not enough proof to decide whether or not discrimination or sexual harassment has happened, employers can still:

- monitor the situation
- remind the people involved of the expected conduct standards
- consider general awareness training for all employees.

STEP 5

Treat customers and employees fairly in your dealings with them



CASE STUDY

Irrelevant medical history

Heath applied for a job in a specialist field. There is only one large employer of this kind in South Australia.

On his application form, Heath disclosed all information about his medical history, including the fact he has epilepsy. He had not had an episode for several years.

The organisation refused his application on medical grounds but he did not believe his condition would inhibit his ability to perform the job. He asked to be given the opportunity to consult with a specialist before a final decision was made about his application.

However, he received a letter informing him that his application was unsuccessful.

Heath contacted the Equal Opportunity Commission and spoke to an advisor then made a formal complaint.

The employer agreed that they should have given Heath the chance to submit further medical information and offered him the opportunity to do so. Heath went to a specialist who reported that he would be able to perform the requirements of the position without risk to his health.

The employer allowed Heath to complete the application process and as a result he got the job.

How to treat employees fairly

A good way to maintain Equal Opportunity is to have employment procedures and a work environment which are fair.

Recruitment and selection

Hiring the best person for the job requires a number of steps and can be done by trained people.

These guidelines will help you with the best practices for describing job requirements, advertising, asking for applications, short listing, testing, interviewing, checking references, making decisions and conducting medical examinations.

Checklist

- define the job requirements**
- advertise externally for the widest possible pool**
- only ask for information which is relevant to the job**
- select applicants against the job requirements**
- match practical testing to the job requirements**
- look for consistency from referees**
- rank applicants on their performance against the job requirements**
- ensure any medical examinations are job relevant.**

Job requirements

- update and describe the job accurately
- define experience in terms of proven ability, not number of years
- assess whether formal qualifications or licences are essential to the job
- determine how the job requirements will be assessed – written application, work record, practical testing, interview, referees

Advertising

- consider advertising all positions externally for the widest possible pool of applicants
- try different ways of reaching the most people – ethnic media, informal networks, community groups, trade journals, recruitment agencies
- match the advertisement to the job requirements
- do not use discriminatory language
- ensure recruitment consultants understand your requirements including Equal Opportunity policies
- name a contact person who can explain the job

Applications

- only ask for information which is relevant to the job
- ensure strict confidentiality.

Short Listing

- select applicants against the job requirements
- seek more information if necessary
- be consistent
- record decisions and reasons

Practical testing

- match tests to the job requirements
- check for any bias or indirect discrimination in tests
- apply the same tests to all applicants short listed for testing

Interviewing

- be prepared and keep all questions relevant to the job requirements
- ask all applicants the same questions
- allow applicants to demonstrate their best, allow time and clarify questions if needed
- record the questions and answers

References

- ask for several referees
- ask referees only for information that is relevant to the job requirements
- look for consistency between referees

Deciding

- focus on the job requirements
- assess all the information, applications, tests, interviews, referee reports
- rank applicants according to their performance against the job requirements
- record decisions and reasons
- be prepared to give feedback to unsuccessful applicants on their performance against the job requirements

Medical examinations

You can ask employees to be medically examined if there are health considerations for the job. Follow these tips to ensure a fair selection process.

- ensure the medical examiner has the job requirements
- ensure information sought is only relevant to the job
- ensure strict confidentiality
- advise applicants of the results
- if a disability is identified, consider how the job could be adjusted so that the person can do it.

STEP 5

Treat customers and employees fairly in your dealings with them



You can build the morale and productivity of your employees by minimising complaints and disruptions so everyone can get on with their work.

This will increase your profits and enhance your reputation.

Workplace environment

These guidelines will help you with the best practices for staff induction, appraisal, promotion, development and training, and a positive work environment.

Checklist

- provide induction for new employees**
- have a performance appraisal system that works**
- offer opportunities for promotion to all staff**
- offer different types of staff development and training**
- have a considerate and flexible work environment**

Induction

You need to give all new employees information that will help them do their jobs well.

Your induction process will:

- give them information that is directly related to the job
- provide a mentor for more information and follow up
- ensure information is accessible
- introduce new employees to their colleagues and explain their roles
- encourage questions
- ensure new employees know how to get help
- give new employees your policies and procedures
- make reasonable adjustments for people with disabilities.

Appraisal

Good performance appraisal systems help both the employer and employees.

Your appraisals need to:

- be easily understood by your employees
- be specific in assessing performance against job requirements
- include positive feedback
- be conducted by trained supervisors
- be freely accessible to employees.

CASE STUDY

Flexible approach to employment

Stephen, the owner of a small shop, had one of his employees, Emma, approach him to tell him she was pregnant. Stephen advised her that she would need to leave her employment with him as it wouldn't look good for his business if customers were served by a pregnant woman.

Emma had expected to be working for another 6 months and couldn't afford to lose her job. She also thought it unfair to expect her to leave because of her pregnancy. She made a complaint to the Equal Opportunity Commission. As a result Stephen agreed to continue her employment and to attend Equal Opportunity training.

As it turned out, a few months after Emma's baby was born Stephen was having trouble finding someone as good as Emma to replace her. He ended up negotiating her return to work and offered her the flexible hours she was looking for.

Promotion

You can advertise vacancies widely throughout the workforce and give all employees the opportunity to consider applying. Your way of promoting people needs to be:

- fair and consistent with your employment procedures
- based on reviewing each job when it becomes vacant and selecting on job requirements rather than the person who last filled it
- giving feedback to unsuccessful applicants.

Staff development and training

To ensure all staff access training you can examine whether you are providing equal access to training, as well as the type of training – internal, external, skill specific, general. Your training plans can:

- increase the whole workforce's skills
- be resourced
- train first line supervisors to deal with problems before they **develop**.

Positive work environment

Your employees will all at times have special circumstances which affect their work. To help them you can consider:

- flexible working hours
- job sharing
- carer's leave for sick, disabled or aged family
- child care provisions.

Such considerations will improve productivity and loyalty.

STEP 6

Consider making an employee an Equal Opportunity contact person



How to appoint an Equal Opportunity contact person

A properly trained contact person in the workplace can help support people with discrimination or harassment complaints. This is particularly important for large organisations.

A contact person can quickly help employees with any discrimination or harassment questions or problems before they develop.

Your contact people can confidentially support and advise people rather than represent or advocate and can provide an independent perspective.

Checklist

- define the contact person role**
- limit it to information and support, not complaint handling or investigation**
- decide whether to advertise for contact people or hand pick them**
- ensure contact people represent the workforce and are trained**
- keep in regular contact with your contact people.**

You can contact the Equal Opportunity Commission for contact person training.

CASE STUDY

Contact person role

Mary tells her colleagues she is going to apply for a promotion that has just been advertised. Frank, who is likely to be on the panel for the job, tells her she should be concentrating on starting a family not a career.

Mary goes to Elsie, the organisation's Contact Person, to talk about this. She says she feels she may not get a fair hearing and is doubtful as to whether she should apply for the job.

Elsie is concerned by Mary's story and discusses her options with her. That is, she could do nothing, she could apply for the job and see what happens or she could approach Frank or her manager about the comments made to her. Elsie tells Mary that she will support her with whatever option she chooses.

STEP 7

Monitor and maintain a culture of Equal Opportunity



How to Maintain Equal Opportunity

Maintaining Equal Opportunity is a work in progress. You will need to review, check and update your policy and procedures regularly and ensure your employees and customers are familiar with them.

To ensure Equal Opportunity is maintained, put a high status employee in charge of it and make it their responsibility to keep up to date with the law.

You will need your employees to be aware of Equal Opportunity and have ways to collect information on your Equal Opportunity progress and status.

Awareness

You may need to consider training employees from the top down. Executive managers set the culture and by being trained first, then lead the rest of the workforce.

Checklist

- communicate Equal Opportunity from the top and work through the hierarchy**
- identify any skills gaps in your management and consider training**
- make Equal Opportunity part of a new employee's induction**
- train contact people and establish a network for occasional updates.**

Record keeping

You can collect employee and customer information on complaints and on your Equal Opportunity progress.

Checklist

- record the numbers and types of any discrimination and harassment complaints**
- observe leave patterns**
- interview employees when they leave your organisation**
- record who is employed at what level**
- track who applies for what jobs or promotions at what level**
- record who gets staff development and training opportunities**
- analyse your customer base**
- conduct climate surveys.**

Small business quick steps

Small and family businesses may find it more difficult to have satisfactory policies and procedures in place.

However these businesses often have more potential for complaints and in particular sexual harassment problems because of the close and sometimes complicated relationships between employers and employees.

Equal Opportunity law does not distinguish between large and small employers.

We recommend that even very small businesses have a code of conduct outlining appropriate behaviours and a procedure to deal with any complaints.

Businesses in a particular sector may consider getting together to write a joint policy with their industry association's help.

Small business owners can nominate themselves or a senior employee as a discrimination and harassment complaints contact.

They can be trained in the general principles of informal and formal complaint procedures and seek assistance if needed to deal with complaints, from the Equal Opportunity Commission.

They can distribute and promote Equal Opportunity materials available from the Commission.

In a very small business where the owner has direct contact with all employees, a written policy may not be necessary and a code of conduct may suffice.

Checklist

- tell all staff that discrimination and harassment will not be tolerated**
- tell them disciplinary action will be taken**
- tell them it applies to behaviour by or towards co-workers and customers**
- tell new staff it is a condition of employment**
- keep a note of when all staff are told**
- provide them with Equal Opportunity information brochures**
- advise them to complain to the owner if discrimination or harassment occurs**
- follow your complaint procedure**
- advise them of their right to complain to the Equal Opportunity Commission.**

By taking this action you have evidence to show that you are taking reasonable steps to prevent discrimination and harassment if a complaint is made.

Small business owners are encouraged to obtain resources and attend any training offered by their employer or industry associations.

You can find a Code of Conduct template on page 27 of this handbook and you can download it from our website.

Templates

Template 1: Equal Opportunity policy

You can download this template from our website at www.eoc.sa.gov.au

The following is a suggested insert for addressing Equal Opportunity within a workplace policy. You can alter it to suit your circumstances. Workplace policies addressing inappropriate behaviours go by many different names, for example, Fair Treatment Policy.

You can also contact the South Australian Equal Opportunity Commission for advice.

Equal Opportunity policy insert

[Name of your organisation] believes Equal Opportunity can deliver advantages to our business and workplace.

Treating people fairly has a positive impact on staff and customers and enhances our reputation as an employer of choice.

Equal Opportunity principles are in line with our aim to get the best from our people and give them the greatest opportunity to do their work well.

All staff – full or part time / contract / casual / agents / voluntary / people working on our premises, and our clients / customers [strike out what does not apply] are covered by Equal Opportunity law and by this policy.

NOTE - Only bullying behaviours relating to the Equal Opportunity Act are included in this policy insert.

1. Equal Opportunity

Equal Opportunity means fairly treating staff and customers.

Fair treatment is:

- treating people as individuals without making judgments based on irrelevant personal characteristics
- creating a work environment free from discrimination, harassment, bullying and victimisation

- allowing all employees to work to their full potential
- making decisions based on merit.

2. Direct and indirect discrimination

Unlawful discrimination is unfairly treating people because of their particular personal characteristics or because they belong to a certain group.

Discrimination can be direct or indirect. Indirect discrimination is treatment which appears to be equal but is unfair on certain people. To be *unlawful* it must also be *unreasonable*.

It is unlawful to unfairly treat people because of their **age, sex, gender identity, intersex status, race, disability, sexual orientation, marital or domestic partnership status, pregnancy, association with a child, caring responsibilities, identity of spouse, religious appearance or dress, political opinion, religion, social origin, irrelevant criminal record or trade union activity**.

It is unlawful to unfairly treat people in employment, education, providing goods and services, accommodation, clubs and associations, granting qualifications, advertising or selling land.

Sometimes discriminating behaviours are referred to as bullying. Bullying is behaviour which makes people feel offended, afraid or humiliated and in the circumstances it is reasonable to feel that way.

Bullying behaviour relating to **age, sex, gender identity, intersex status, race, disability, sexual orientation, marital or domestic partnership status, pregnancy, caring responsibilities, identity of spouse, religious appearance or dress, political opinion, religion, social origin, irrelevant criminal record or trade union activity** is unlawful.

Legitimate comment on performance or work related behaviour is not unfair treatment. Managers can give full and frank feedback in a constructive and sensitive way.

Templates [CONTINUED]

3. Sexual harassment

Sexual harassment is sexual behaviour which makes people feel offended, afraid or humiliated and in the circumstances, it is reasonable to feel that way.

Both men and women can sexually harass or be harassed.

Sexual harassment is determined from the point of view of the person feeling harassed.

It is how the behaviour is *received* not how it is *intended* that counts.

Sexual harassment can be:

- unwelcome touching or kissing
- comments or jokes, leering or staring
- sexual pictures, objects, emails, text messages or literature
- direct or implied propositions, or requests for dates
- questions about sexual activity.

Mutual attraction or friendship with consent is **not** sexual harassment.

4. Victimisation

Victimisation is unfairly treating people for complaining or helping others to complain, either within our organisation or to the Equal Opportunity Commission.

Unlawful victimisation is unfair treatment for complaints about **discrimination** or **sexual harassment**.

5. Statement of commitment

[name of organisation] commits to fair treatment in our policies, procedures or practices in:

- employment – recruiting, selecting, terms and conditions, training, promotion and transfer, termination
- providing goods and services
- offering or providing education
- offering or providing accommodation
- offering membership to our club / association and providing benefits
- giving approval to qualifications
- selling land.

[strike out what does not apply]

Discrimination, sexual harassment and victimisation will not be tolerated.

6. Rights and responsibilities

Equal Opportunity law gives rights and responsibilities to staff, current and potential, and to employers.

Staff have:

- the right for employment decisions to be made on merit
- the right not to be discriminated against, sexually harassed or victimised at work
- the right to be protected by their employers from these behaviours
- the right to complain
- the right to work in an environment free of discrimination and sexual harassment
- the responsibility not to discriminate against, sexually harass or victimise other staff or customers or clients
- the responsibility to be familiar with Equal Opportunity policies and complaint procedures
- the right to report to management if they are being harassed by anyone in the course of their work.

Customers or clients have:

- the right not to be discriminated against, sexually harassed or victimised by the providers of goods and services
- a responsibility not to harass the providers of goods and services.

Employers have:

- the right to control, direct and monitor work performance
- the right to give legitimate comment on performance or work related behaviour
- the responsibility to ensure that the workplace and goods and services offered are free from discrimination, sexual harassment and victimisation
- the responsibility to take all reasonable steps to prevent these behaviours.
- the responsibility to respond quickly, seriously and effectively to any complaints.

7. Our practice

[Name of the Organisation] has an Equal Opportunity Policy which applies to all.

[Name of a senior position] has the responsibility for implementing this policy.

Managers and supervisors have the responsibility to communicate the policy to employees and ensure it is followed.

Employees have the responsibility to be familiar with this policy and follow it.

Copies of this policy can be obtained from the intranet / human resource department / management. *[strike out what does not apply]*

8. Complaints

As Chief Executive Officer / General Manager / Director General / owner *[strike out what does not apply]* of *[name of organisation]* I have the ultimate responsibility for implementing this policy.

Any complaints about policy breaches will be dealt with quickly, seriously and confidentially.

In the first instance contact *[name(s) of contact person(s)]*.

They are able to:

- hear your complaint
- give you information on policies and procedures
- discuss options to resolve the problem
- refer you for more help if needed.

In most cases, any further action will be guided by the person making the complaint.

If there is a risk to any employee's health or safety at work, action will be taken by management.

For further confidential help contact the human resources manager / me *[strike out what does not apply]* on *[contact telephone number]*.

At any time you have the right to contact an external agency for advice or help.

South Australian Equal Opportunity Commission

Telephone 7322 7070

Website www.eoc.sa.gov.au

Anyone making a complaint or helping someone else to complain about unlawful discrimination or harassment is protected from being victimised for complaining.

Anyone found to have breached this policy or the law, or to have made a false or malicious complaint, will be disciplined. Discipline may include demotion, suspension or dismissal.

I support and endorse this Equal Opportunity Policy.

[Signature]

[Position]

[Date]

Template 2: Complaint procedure

You can download this template from our website at www.eoc.sa.gov.au

This complaint procedure is a guide and can be altered to suit your circumstances and can cover all inappropriate behaviour.

You can also contact the South Australian Equal Opportunity Commission for advice. Our staff can check your drafts for compliance with the law.

Complaint procedure

[Name of organisation] believes any discrimination, sexual harassment or victimisation problems are best resolved internally with this complaint procedure.

Copies of this procedure can be obtained from the intranet / human resource department / management. *[strike out what does not apply]*

[Name of a senior position] is responsible for implementing and reviewing this procedure.

For information or advice, or to lodge a complaint you have the right to contact:

- South Australian Equal Opportunity Commission
- Australian Humans Rights Commission
- Fair Work Ombudsman; or
- An advocacy or advisory service

If we observe inappropriate behaviour we will act to stop it to prevent a complaint.

We commit to handling any complaints quickly, seriously and confidentially.

1. Confidentiality

- information about a complaint will only be given to people directly involved
- everyone involved will be advised of the need for confidentiality
- information will be kept securely and only on an employee's file if they are disciplined.

2. Fairness and impartiality

- fair treatment for all is paramount
- the complaint will be handled fairly and in good faith by a trained person
- any person complained about has the right to know the details of any allegations against them
- both parties will have the opportunity to give their version of events
- no judgments will be made or action taken until all relevant information has been assessed
- both sides are allowed support or representation
- all allegations will be investigated before a decision is made
- complaints must be substantiated before any disciplinary action is taken.

3. Complainant protection

- people involved in a complaint will be protected from being victimised
- victimisation will be disciplined
- anyone found making malicious or false complaints will be disciplined.

4. What to do

We encourage you to go through these options to resolve your complaint. At any time you can make a written complaint to us or the South Australian Equal Opportunity Commission.

Option 1- Self help:

Try to resolve the problem yourself by talking to the person or people involved. You may find that their behaviour was unintentional and will stop if you ask.

Option 2 - Seeking information:

Talk to a contact person if you:

- are not sure how to handle the problem yourself
- want to confidentially seek more information about what to do.

Option 3- Asking management to act:

Talk to your supervisor or manager if you:

- think there is a chance of quickly stopping the problem before it develops
- are likely to have an ongoing working relationship with the person you are complaining about
- want them to talk confidentially to the person you are complaining about and convey your concerns
- want them to bring you together with the other party to conciliate
- want to discuss options and outcomes
- need to **protect others in the workplace.**

Option 4- Making a written complaint:

Make a written complaint to management if:

- you have tried to resolve the problem and failed
- your allegations are very serious
- your allegations have been denied and you want to substantiate them
- you want the complaint investigated
- you have been victimised for complaining
- you are complaining against a senior person and an investigation will help to ensure you are not disadvantaged.

You will need to provide exact details and any evidence of your allegations which will lead to an investigation. You are allowed to have support people with you at any interviews or meetings.

Option 5- Asking for help elsewhere:

If the complaint has not been resolved internally with a satisfactory outcome for all, you can approach the:

- South Australian Equal Opportunity Commission
- Australian Humans Rights Commission
- Fair Work Ombudsman; or
- An advocacy or advisory service

5. What a contact person will do

Our contact people are employees who have been trained to provide confidential information and support to anyone who has a problem or thinks they may have a complaint.

A contact person can advise you on ways to resolve a problem and where to go for more help. They will not investigate or resolve your complaint.

6. What your manager will do

Wherever practical a manager can:

- get an accurate report of your complaint
- make no judgments
- explain the complaint procedure
- find out how you would like it handled
- decide who is the appropriate person to handle the complaint or appoint someone to investigate
- reassure you of your protection from victimisation
- give you options on support or representation
- immediately remove any offensive material
- convey your concerns to the person you are complaining about and ask for their version of events
- try to conciliate the parties to reach a satisfactory agreement for all
- seek further information and interview any witnesses
- find whether the complaint has substance
- recommend an outcome including disciplinary action
- consider staff education or training
- monitor the situation.

Templates [CONTINUED]

7. How complaints are resolved

Agreement

Complaints can be settled by agreement between the people involved.

Not substantiated

If there is not enough evidence to decide if the allegations happened or were likely, no disciplinary action will be taken. We may:

- monitor the situation
- consider staff education or training.

Disciplinary action

If there is found to be breach of our policy or the law we may discipline those responsible.

If a complaint is found to have been false or malicious we may discipline the person making the complaint. Untrue allegations could lead to legal action for defamation.

The level of discipline will depend on:

- the severity and frequency of the discrimination or harassment
- the weight of evidence
- whether the behaviour was intentional or malicious
- existence of any prior incidents or official warnings
- whether there are any mitigating circumstances.

Discipline could involve:

- counselling
- apologising
- warning
- loss of promotion or wage increases for a period
- demotion, transfer, suspension, probation
- dismissal.

Anyone who is disciplined will have a record of the complaint and the outcome placed on their employee file.

Documentation

Records, notes or reports will:

- be kept confidential
- not be kept on employee files unless there is disciplinary action
- be filed in a confidential system with limited access.

Other help

Confidential support and information is available to all parties from contact people at any time during the complaint handling process, although a contact person can not be involved in the complaint handling for either party.

At any time anyone involved in a complaint can seek union or legal advice and bring representatives to any interviews or meetings.

At any time you have the right to contact an external agency for advice or help.

South Australian Equal Opportunity Commission

Telephone 7322 7070

Website www.eoc.sa.gov.au

The South Australian Equal Opportunity Commission can refer to other agencies who may also be able to help.

[list the relevant state Equal Opportunity agencies if your organization operates interstate].

Contact people

[Names and contact details]

Template 3: Code of conduct

You can download this template from our website at www.eoc.sa.gov.au

This code of conduct is a guide and can be altered to suit your circumstances.

Code of conduct

In our business, we will treat each other and our customers with respect and courtesy by:

- speaking to people politely and with respect
- respecting rules and guidelines
- ensuring a discrimination and sexual harassment free workplace.

In our business, management will:

- make decisions that are fair, consistent, impartial and based on merit
- deal with issues and problems promptly and effectively.

In our business, we will work together positively by:

- being a reliable team member
- doing our fair share of the work
- listening to others and using appropriate language
- respecting the differences individuals can bring to a team.

The following behaviours do not have a place in our business:

- teasing, putting people down
- shouting or yelling at people
- unwelcome comments about a person's personal life
- suggestive behaviours such as leering or wolf-whistling
- offensive jokes based on sexual reference, or a person's race, disability, pregnancy, age, religion, marital status, sexual orientation, gender identity, intersex status or physical appearance
- physical contact, such as touching or fondling

- indecent physical and verbal assault.

If you experience or witness any of these behaviours taking place in our business, please speak to your manager.

If you believe you have been treated unfairly in our business, please consider the following options:

Option 1: Self help

- Talk to the person yourself about the problem, if you feel comfortable and able to do so.

Option 2: Seeking information

- For confidential information and advice on what to do, call the South Australian Equal Opportunity Commission.
- Option 3: Asking management to act
- To get the complaint resolved, talk to our Business Manager. Tell him/her what you want to happen to resolve this complaint.
- If you are not happy with the way your complaint is being treated go to option 4.

Option 4: Asking for help elsewhere

If you are not satisfied with the way your complaint is being treated, you can get advice from any of the following places:

South Australian Equal Opportunity Commission

Telephone 7322 7070

Website www.eoc.sa.gov.au

(Insert appropriate contacts for your industry)



“ Equal Opportunity makes good business sense.”

Contact us

Equal Opportunity Commission

Telephone (08) 7322 7070

Facsimilie (08) 8207 2090

Country callers 1800 188 163

Email eoc@agd.sa.gov.au

Write to

The South Australian Equal Opportunity Commission
GPO Box 464 Adelaide 5001

Or visit us at

GPO Exchange, Level 15, 10 Franklin Street Adelaide 5000

www.eoc.sa.gov.au



Government of South Australia

Office of the Commissioner for
Equal Opportunity