

Human Resources

Equal Opportunity, Discrimination and Harassment



EQUAL OPPORTUNITY, DISCRIMINATION AND HARASSMENT

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OVERVIEW

The Department of Education and Early Childhood (the Department) is committed to a diverse workforce and ensuring that all Department workplaces are free from discrimination and harassment. As such the Department is an equal opportunity employer.

Equal employment opportunity at the Department is about:

- freedom from discrimination and harassment
- merit selection and focussing on essential job requirements
- respect and diversity
- good people management

These core elements of the Department's equal opportunity policy recognise and value the diversity of our community, enable the attraction of the best skills from a wide talent pool and ensure that employees can realise their potential in employment with the Department.

Equal employment opportunity encourages a diverse organisation and workforce reflecting the broad diversity of the Victorian community the Department serves. The objective of equal employment opportunity policy at the Department is to ensure that people are treated as individuals, respected for their unique attributes and not excluded, harassed or bullied through unconscious bias, stereotypes or unlawful actions that may form the basis of discrimination, harassment, vilification or victimisation.

Everyone in the workplace has rights and responsibilities under equal opportunity and anti discrimination legislation.

Employees have a responsibility to comply with legislation and the Department's policy. This responsibility ensures the working environment is safe, inclusive and promotes respect for others. Managers and principals have a responsibility to comply with legislation, monitor the work environment and encourage respect and diversity. It is also the responsibility of managers and principals to act promptly where concerns arise or complaints are made.

The Department is committed to ensuring all of its workplaces including corporate and school locations are free of discrimination and harassment.

EQUAL OPPORTUNITY LEGISLATION

Equal opportunity is a requirement under both Victorian and Commonwealth legislation. In Victoria, the main piece of legislation which makes it unlawful to discriminate is the *Equal Opportunity Act 2010* (Vic) (EO Act 2010).

Related laws in Victoria are the *Charter of Human Rights and Responsibilities Act 2006* (Vic) and the *Racial and Religious Tolerance Act 2001* (Vic).

At the Commonwealth level, there is a range of equal opportunity legislation which includes the *Racial Discrimination Act 1975 (Cth)*, the *Sex Discrimination Act 1984 (Cth)*, the *Disability Discrimination Act 1992 (Cth)* and the *Age Discrimination Act 2004 (Cth)*.

Both Commonwealth and Victorian equal opportunity legislation apply to the Department as an employer and to Department employees, and it is possible for complaints to be lodged against the Department under either State (Victorian) or under Commonwealth legislation.

Equal Opportunity Act 2010 (Vic)

The EO Act 2010 protects people from discrimination on the basis of their individual attributes in certain areas of public life (such as in employment and education) and provides redress for people who have been discriminated against. It also aims to eliminate, as far as possible, discrimination, sexual harassment and victimisation.

What is discrimination?

Discrimination is *unfavourable treatment* of a person in an area of *public life* due to one of their personal attributes for example their sex, age, race or disability.

The EO Act 2010 covers areas of both *direct* and *indirect discrimination*.

Direct discrimination is when a person treats, or proposes to treat, a person with a protected attribute unfavourably, because of that attribute. In determining whether a person directly discriminates, it is irrelevant whether or not that person is aware of the discrimination or considers the treatment to be unfavourable. It is also irrelevant whether or not the attribute is the only, or dominant reason for the unfavourable treatment, provided that it is a substantial reason.

Indirect discrimination occurs if a person imposes or proposes to impose, an unreasonable requirement, condition or practice that has, or is likely to have the effect of disadvantaging persons with a protected attribute. Whether a requirement, condition or practice (or proposed requirement, condition or practice) is reasonable depends on all relevant circumstances including:

- the nature and extent of the disadvantage resulting from the imposition, of the requirement, condition or practice;
- whether the disadvantage is proportionate to the result sought by the person who imposes, the requirement, condition or practice;
- the cost of any alternative requirement, condition or practice;
- the financial circumstances of the person imposing the requirement, condition or practice;
- whether a reasonable adjustment or reasonable accommodation could be made to the requirement, condition or practice, to reduce the disadvantage caused to a person, including the availability of an alternative requirement, condition or practice that would achieve the result sought by the person imposing the requirement, condition or practice, but would result in less disadvantage.

In determining whether a person indirectly discriminates, it is irrelevant whether or not that person is aware of the discrimination. Further, in determining whether or not a person discriminates, the person's motive is irrelevant.

The EO Act 2010 also provides the Victorian Equal Opportunity Commission with powers to conduct an investigation into systemic discrimination. Systemic discrimination refers to entrenched, structural and sometimes institutional patterns of behaviour that affect a group of people. The Commission may decide to conduct an investigation where it decides there is a serious issue that indicates a possible contravention of the Act that affects a group of people, and in the circumstances, an investigation would help identify and eliminate a systemic cause of discrimination.

How do I know discrimination has occurred?

Unlawful discrimination may have occurred where the following three elements are present:

1. where there is unfavourable treatment or (potential) disadvantage of a person or group, or detriment suffered by a person or group as a result of the particular conduct or treatment;
2. in an area of public life. The EO Act 2010 identifies eight areas of public life in which discrimination is unlawful, including employment, provision of goods and services whether paid or free, and education including kindergarten, primary, secondary, post secondary, technical and further education;
3. because that person or group has (or is assumed to have) a particular personal characteristic or “attribute” that is protected by the EO Act 2010.

Under the EO Act 2010 it is against the law to discriminate against a person on the basis of the following protected attributes:

- age
- employment activity
- marital status
- pregnancy
- breastfeeding
- gender identity
- parental status
- race
- carer status
- industrial activity
- physical features
- religious belief/activity
- disability/impairment
- lawful sexual activity
- political belief or activity
- sexual orientation

The above includes personal association with someone who has, or is assumed to have, any of these personal characteristics. It is also against the law to sexually harass someone. Definitions of protected attributes can be found on the VEOHRC website:

www.humanrightscommission.vic.gov.au

It may still be unlawful or in breach of the Department’s policies to treat someone badly even where there is no attribute, for instance where there is repeated, unreasonable behaviour that creates a risk to health and safety it may be unlawful bullying under the *Occupational Health and Safety Act 2004*.

Positive duty

The EO Act 2010 includes a positive duty on employers and persons who have obligations under the Act to eliminate discrimination, sexual harassment and victimisation. This positive duty to eliminate discrimination obliges the Department and consequently all schools and Department workplaces to take reasonable and proportionate measures to eliminate discrimination, sexual harassment and victimisation.

The EO Act 2010 provisions impose a positive obligation on employers to take action to eliminate prohibited conduct before it occurs or prior to a complaint being made as far as possible. The new provisions require employers to think proactively about compliance with the anti-discrimination laws. This means for example, ensuring staff are undertaking training, regularly assessing workplace compliance and taking measures to ensure compliance and achieve improvement.

Although this positive duty is new to the EO Act 2010, the duty on employers to take action to eliminate discrimination is also present in a different form in Commonwealth legislation such as the Disability Discrimination Act 1992, which also applies to Victorian workplaces and schools.

Disability and reasonable adjustments

The EO Act 2010 defines disability (also known as impairment) as:

- Partial or total loss of a bodily function or part of the body
- The presence in the body of a disease- causing organism
- Malfunction of a part of the body, including a mental or psychological disease or disorder, or learning disability
- Malformation or disfigurement of a part of the body, including an impairment that may exist in the future (including because of a genetic predisposition to that impairment) and behaviour that is a symptom or manifestation of an impairment.

The EO Act 2010 includes a specific duty to address discrimination experienced by people with disabilities by creating a positive duty to provide reasonable adjustments for people with disabilities in employment, education and provision of goods and services in order to help the person with a disability to perform the job or access education and goods and services.

The EO Act 2010 provides a list of factors that help determine when it might be reasonable for adjustments to be made in a workplace.

The EO Act 2010 includes a limited exception to the duty to make reasonable adjustments, which allows duty holders to discriminate where adjustments are not reasonable or where the person with the disability could not participate in the employment, education or service provision even if the adjustments were made.

At the Commonwealth level, the *Disability Discrimination Act 1992* (Cth) also creates obligations on employers to address discrimination experienced by people with disabilities by requiring employers to make reasonable adjustments for people with disabilities in various areas of public life, including in employment, education and in the provision of goods and services. The *Disability Discrimination Act 1992* also applies to Victorian workplaces and schools.

The Disability Standards for Education 2005 are a set of standards formulated under the *Disability Discrimination Act 1992*, which aim to clarify the obligations of education and training service providers and the rights of students with disabilities. Further guidance on making reasonable adjustments to accommodate students with disabilities can be located on the Department's Student Wellbeing web page at:

www.education.vic.gov.au/healthwellbeing/wellbeing/default.htm

Further information about the Disability Standards for Education 2005 can be located at: www.ag.gov.au/www/agd/agd.nsf/Page/Humanrightsandanti-discrimination_DisabilityStandardsforEducation

DEPARTMENT EQUAL OPPORTUNITY POLICIES

The Department, through its equal opportunity policies, practices and procedures seeks to ensure the prevention of discrimination and equal access for all to opportunities within the organisation.

The Department also seeks to ensure that no sexual, racial or other harassment occurs in the workplace. The making of employment decisions in the Department is based on the individual merit of employees.

Equal opportunity means that every person can participate freely and equally in areas of public life such as in the workplace, in education, or in accessing goods and services and provides redress for people whose rights have been breached.

Employees, students, parents, school council members, contractors, volunteers and unpaid workers are required to act in accordance with equal opportunity, anti discrimination, sexual harassment and vilification legislation and comply with this policy.

We all have a responsibility to ensure Department workplaces including schools are respectful, safe and inclusive and free of discrimination, harassment, vilification and otherwise unlawful and unacceptable behaviours.

Equal opportunity policy in the Department is not only about compliance with legal procedure, but also about good management. The core values of the Department uphold the principles of respect and diversity. This translates to an attractive organisation and safe workplaces for all.

Managers and principals are required to ensure that equal opportunity and anti harassment policy, legislation and supporting principles and practices are integrated into appropriate strategic plans and that a proactive approach is taken to compliance and improvements.

Tools enabling a proactive approach to compliance and assisting managers and principals to discharge positive duty obligations under the EO Act 2010 are provided on HRWeb.

Further advice can be obtained by contacting Diversity and Equity via the HR Contact line.

The EO Act 2010 can be downloaded from: www.legislation.vic.gov.au

OTHER RELEVANT LEGISLATION (COMMONWEALTH)

The Fair Work Act 2009

Section 351 of the Fair Work Act 2009 prohibits an employer taking adverse action against their employee (or prospective employee) because of that person's race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin. 'Adverse action' has a broad range of meanings in the Act including dismissal, altering the position of an employee to their prejudice and injuring an employee in their employment (s.342).

The following Commonwealth legislation also provides protection to individuals across Australia, including in Victorian workplaces and schools, from direct and indirect discrimination in many parts of public life, including employment, education and access to premises:

- Disability Discrimination Act 1992 (Cth)
- Age Discrimination Act 2004 (Cth)
- Sex Discrimination Act 1984 (Cth)
- Racial Discrimination Act 1975 (Cth)

Further information and copies of the legislation can be downloaded from the Australian Human Rights website: www.hreoc.gov.au

OTHER RELEVANT LEGISLATION (VICTORIA)

The Public Administration Act 2004 (Vic)

The Public Administration Act 2004 (Vic) outlines the values, employment principles and standards that apply to public officials and all public sector employers. Under the Act, the Public Sector Standards Commissioner must promote the public sector values and principles and issue standards concerning the application of the principles.

The Public Sector Standards Commissioner has issued binding standards and non-binding guidelines on:

- Equal Employment Opportunity
- Fair and Reasonable Treatment
- Merit in Employment
- Reasonable Avenues of Redress

Values – The Act outlines the public sector values including responsiveness, integrity, impartiality, accountability, respect and leadership. The values underpin the public sector and reflect the behaviours essential to the relationship between the public sector and the Government, the public sector and the community, and between those who work in the public sector.

Employment principles – The employment principles outlined in section 8 of the Act reinforce the public sector values. The principles are essential to highly effective and harmonious public sector workplaces.

Standards – Standards set out the essential requirements for public sector employers to apply the employment principles in their organisation. The standards are binding on public sector bodies (including schools) and their employees. The standards require that:

- Employment decisions are based on merit
- Public sector employees are treated fairly and reasonably
- Equal employment opportunity is provided
- Public sector employees have a reasonable avenue of redress against unfair or unreasonable treatment

In the case of the Public Service Bodies, the development of a career public service is fostered.

Further information can be found at the State Services Authority website.

The principle of equal employment opportunity is a binding standard and should be read alongside Equal Employment Opportunity Guidelines issued by the Public Sector Standards Commissioner www.ssa.vic.gov.au/component/publications/view-products/standards

Charter of Human Rights and Responsibilities (2006)

The Victorian Charter of Human Rights and Responsibilities is an Act of Parliament which came into effect on 1 January 2007. The Charter contains 20 rights that reflect four basic principles: Freedom, Respect, Equality and Dignity.

The Charter aims to improve service delivery and ensure transparent decision making by promoting a human rights culture across government in Victoria.

From 1 January 2008 all Victorian government departments and public authorities must act compatibly with the Charter and take human rights into account when making decisions, providing advice or services, or taking action in their day-to-day work. Government schools, school councils, Department corporate staff, statutory authorities and private sector organisations carrying out public functions on behalf of government, are all public authorities under the Charter.

SCHOOL EQUAL OPPORTUNITY COMPLIANCE

Principals and school councils need to consider their responsibilities seriously as they can be held vicariously liable for the actions of students and employees, unless it can be shown that all reasonable precautions have been taken to prevent discrimination and sexual harassment. In addition principals and school councils have responsibility for ensuring that a safe and discrimination free workplace is maintained so the processes of learning and teaching can proceed uninterrupted.

The following outlines steps and some of the issues a school will need to consider when developing and implementing an effective equal opportunity policy. These steps and issues should be considered as a broad outline only.

A good school equal opportunity policy will provide a vital framework for establishing:

- why we should act responsibly;

- what is acceptable and not acceptable behaviour;
- what will happen if there is a problem.

In developing a policy, the following steps should be taken:

- review current school policies and practices for consistency with the legislation mentioned above;
- ensure the inclusion of sexual harassment in the policy (refer to the Department's Sexual Harassment Policy) and for students with disabilities a reference to the Disability Standards for Education;
- develop a policy statement that makes it clear to all school employees, the school council and students:
 - the aspects of their lives protected by equal opportunity laws (ie employment, education, goods and services);
 - what unlawful discrimination, victimisation and sexual harassment is;
 - that any unlawful discrimination, victimisation or sexual harassment will not be tolerated;
 - action that will be taken where this occurs.

The policy statement should refer to:

- State and Commonwealth equal opportunity and anti-discrimination laws;
- procedures for employees and students to make complaints and have issues resolved relating to unlawful discrimination or sexual harassment (see HRWeb for Complaints Resolution Procedures);
- where complaints can be lodged with external bodies (i.e. with the Principal, the Regional Director, the Merit Protection Boards, the Victorian Equal Opportunity and Human Rights Commission or the Australian Human Rights Commission);
- a clear commitment to investigate all complaints promptly with confidentiality and impartiality;
- assurance that complainants and witnesses will not be victimised in any way.

The policy statement should:

- raise awareness of the policy and ensure that students, employees and school councillors understand their rights and responsibilities;
- identify an appropriate contact person to provide information and support to complainants or respondents;
- ensure that the policy is implemented, monitored and reviewed on a continuous basis (minimum of every three years) as part of the school review process.

Resources have been developed to support Victorian Government Schools meet their equal opportunity compliance requirements and are available at HRWeb:

www.education.vic.gov.au/hrweb/divequity/eoo/default.htm. These resources include:

- Equal Opportunity Guidelines
- Equal Opportunity Policy Template
- Equal Opportunity Policy Checklist

Schools should customise their equal opportunity policy to address the issues relevant to their workforce, their students and their community. Particular emphasis can be given for example, to the relationship between bullying, staff morale, and school performance or similarly issues of gender, cultural and age diversity and equality of opportunity or matters of parental or carer responsibilities and equal opportunity.

Good practice and discharging a positive duty in equal opportunity requires schools to not only have an equal opportunity policy but also proactively demonstrate leadership and governance for equal opportunity, engage staff with ongoing training and regularly review, update and promote their policy within the school and wider community.

The more practical and refreshed the policy and the more staff and school council members engage with their schools equal opportunity policy the more successful it will be in assisting the school to deal with issues of unlawful discrimination and harassment.

TRAINING

The online Workplace Discrimination, Harassment and Bullying Course (the Course) aims to increase awareness and understanding of the obligations, rights and responsibilities held by every employee of the Department under Commonwealth and State anti discrimination and equal opportunity laws.

All Department and school council employees are expected to successfully complete the Course. The Course addresses Department policies on workplace conduct and educates staff about their rights and responsibilities under equal opportunity, discrimination and workplace bullying laws. It is one of a range of initiatives to ensure safe, inclusive and productive workplaces. The training course may be accessed by employees at any time and any stage.

The Course comprises three components. A list of the three components and the expected completion timeframes are:

Course component	To be completed
1. Discrimination and Harassment	Within 3 months of employment or as soon as possible.
2. Bullying: a. for employees b. for managers	Within 3 months of employment or as soon as possible. (select either 2a or 2b as appropriate)
3. Discrimination, Harassment and Bullying - Refresher	Three years after the Discrimination and Harassment and Bullying components have been commenced (whether or not components have been completed) and again every three years after that.

Note: When a Course component is completed, it becomes available as a general resource that may be accessed at any time thereafter.

Course access

The Course may be accessed at:

www.techniworks.com.au/Host/Colleges/DEECDVIC/front_frameset.asp

Monitoring staff progress

Principals and executive officers can monitor staff progression and completion rates of the online course by registering as a Direct Manager at:

www.techniworks.com.au/Host/colleges/deecdvic/prinvic_front_frameset.asp

For further information about monitoring usage can be obtained from the Learning and Development unit email: staffdevelopment@edumail.vic.gov.a

For further information about supplementary equal opportunity and anti harassment training available to schools email: hrweb@edumail.vic.gov.au

WORKPLACE CONTACT OFFICERS

Workplace Contact Officers are available to confidentially assist with any concerns or information with regard to discrimination, sexual harassment or other forms of harassment, bullying, workplace vilification or victimisation.

A Workplace Contact Officer can assist employees who have general enquiries or concerns about workplace conduct in relation to discrimination, harassment, sexual harassment or bullying by:

- providing confidential and impartial information and support;
- referring employees to key support services available internally and externally to the Department;
- discussing Departmental policies, processes and principles relating to discrimination, harassment, sexual harassment or bullying.

For more information see the Department's Workplace Contact Officer Network page on HRWeb: www.education.vic.gov.au/hrweb/divequity/eo/WCONet.htm