

Human Resources

Same-Sex Attracted Employees



SAME-SEX ATTRACTED EMPLOYEES

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OVERVIEW

The Department is committed to diversity and inclusion in providing the highest level of service to the Victorian community and in reflecting the diversity of the community across its workforce.

Providing workplaces which are safe, supportive and inclusive of same-sex attracted (gay, lesbian and bisexual) employees helps to build a culture of respect and dignity for all.

Same-sex attracted employees are entitled to fully participate in their workplace without fear of offensive, harassing, bullying or discriminatory behaviour.

LEGISLATION AND RESPONSIBILITIES

A comprehensive legal and policy framework mandates lawful and respectful treatment of same-sex attracted employees.

The Victorian Charter of Human Rights and Responsibilities provides for formal protection of civil and political human rights. The Charter contains 20 rights that reflect four basic principles: Freedom, Respect, Equality and Dignity. Every person has the right to equality and non-discrimination and to enjoy their human rights to the maximum extent subject to reasonable limits imposed in a democratic society. This applies regardless of a person's sexual orientation. The fair and respectful treatment of same-sex attracted employees is promoted by the Charter. More information about the Charter can be found on HRWeb at: [Charter of Human Rights and Responsibilities](#).

The Equal Opportunity Act (2010) (Vic) makes it unlawful to discriminate against a person on the basis of their sexual orientation. Sexual orientation discrimination occurs when a person is treated less favourably or unfairly because of their actual or assumed sexual orientation. The Act identifies sexual orientation as an attribute protected from unlawful discrimination and defines sexual orientation as homosexuality (including lesbianism), bisexuality or heterosexuality. A breach of the *Equal Opportunity Act 2010* may lead to a complaint and potential liability for both individuals and the Department. More information about discrimination and harassment can be found on HRWeb at: [Discrimination and Harassment](#).

The Public Administration Act 2004 (Vic) requires that all public officials (including school-based employees) abide by public sector standards. The standards include:

- 1) respect for colleagues and
- 2) respect and promotion of human rights as set out in the Charter of Human Rights and Responsibilities.

More information about the public service standards can be found at: [State Service Authority: Public Administration Act 2004](#).

Ministerial Orders

It is a requirement under Ministerial Orders that employees receive fair and equitable treatment in their employment without regard to sexual orientation (among a range of other attributes). A breach of the Ministerial orders may lead to disciplinary action. More information regarding Ministerial Orders can be found on HRWeb at: [Ministerial Orders](#).

The Fair Work Act 2009 (Cwth)

Section 351 of the *Fair Work Act 2009* prohibits adverse action being taken because of an employee's (or prospective employee) or employer's sexual preference (among other attributes). '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).

Six fictitious scenarios have been developed to demonstrate the legal framework and supporting resources available to principals and managers when protecting the human rights of same-sex attracted employees. While they cannot reflect the complex and difficult situations which occur day-to-day, they aim to provide managers and principals with confidence that they are on a firm legal and policy footing when protecting the human rights of their employees.

Scenario 1 - A teacher informs some students of her sexuality during a school yard conversation.

Scenario 2 - A teacher is concerned her primary class (and their families) will find out about her sexuality.

Scenario 3 - A principal is confronted by parents with preconceptions about same-sex attracted employees.

Scenario 4 - A teacher is harassed by students who suspect he is gay.

Scenario 5 - Employees react to a relationship developing between two colleagues.

Scenario 6 - An employee asks to be moved away from a gay colleague

The scenarios can be found at the end of this document.

SEXUAL DIVERSITY IN THE WORKPLACE

Self confidence is important in any work environment. A working environment which is respectful of diversity and which assures equality empowers people to be themselves.

Discrimination on the ground of sexual orientation can be overt or very subtle. It can take many forms including -

- harassment of same-sex attracted staff through name-calling, jokes about their sexuality, bullying or teasing
- treating same-sex partners differently to opposite-sex partners
- showing disrespect towards the lives and relationships of same-sex attracted employees
- making colleagues feel they cannot be open about their sexuality.

It is important that workplaces make the development and endorsement of equal opportunity policies a collaborative exercise which enables the participation of all employees and the school community. It must be clear that discrimination on the ground of sexual orientation is not acceptable.

The following steps can assist in creating a welcoming and inclusive workplace for same-sex attracted employees:

1. Do not assume that everyone is heterosexual
2. Make it clear that people are free to bring their same-sex partner to work related events where partners are invited
3. Ensure that school equal opportunity policies include sexual orientation. The equal opportunity policy template provided by the department includes sexual orientation. See the school compliance checklist resources on HRWeb at: [Equal Opportunity, Discrimination and Harassment](#).
4. Ensure all employees know about the policy and its contents
5. Be familiar with anti-discrimination legislation which prohibits sexuality discrimination and vilification
6. Ensure employees complete the Department's online [Workplace Discrimination, Harassment and Bullying Course](#) and know their rights and responsibilities under the Charter of Human Rights and Responsibilities
7. Promote the idea that addressing discrimination and protecting human rights in the workplace is everyone's responsibility
8. If you hear discriminatory comments or jokes, make it known that this is not acceptable at work
9. Deal with any instances of discrimination or harassment promptly
10. Some employees are harassed by third parties such as parents or students. Managers and principals should take steps to deal with actual or potential situations of this kind.

The following resources can help to create an inclusive workplace for same-sex attracted employees. While some of the materials specifically aim to create a supportive environment for same-sex attracted students, many of the actions will also benefit same-sex attracted employees.

- [Building Respectful and Safe Schools: A resource for school communities](#)
- [Supporting sexual diversity in schools](#)
- [SSAFE – Same-Sex Attracted Friendly Environments in Schools](#)
- [Equal Opportunity, Discrimination and Harassment](#)

TRAINING

Training and 'train the trainer resources' are available to help support work environments which respect sexual diversity and protect human rights.

- The Department's [Workplace Discrimination, Harassment and Bullying Course](#)
- '[Celebrating Diversity in Schools](#)' Training tips and resources by Gay and Lesbian Health Victoria

SUPPORTS FOR SAME-SEX ATTRACTED EMPLOYEES

Same-sex attracted employees who feel that they have not been treated fairly or that their human rights have not been respected should speak to their manager or principal in the first instance. Managers and principals have a responsibility to ensure that DEECD workplaces are safe and respectful.

There are a range of further options. These are outlined in the Department's complaints and grievances processes:

- [Complaints, unsatisfactory performance and misconduct](#)
- [Grievances](#)

The Department has also introduced a network of trained [Workplace Contact Officers](#) (WCO). The WCO Network complements existing policies and procedures to ensure that employees have access to a person who can assist with queries or concerns, relating to issues of discrimination and harassment in the work environment.

WCOs provide employees with information on options available to resolve workplace problems or issues. These options may include informal methods, such as ways to address issues, formal methods, such as those indicated in the Department complaint procedures or referring employees to other grievance advisory and support options. A WCO does not manage or investigate complaints but directs affected employees to existing policies and procedures and provides appropriate support.

Employees can also access the [Employee Assistance Program](#) (EAP) which provides a free and confidential counselling service for any personal or work related issues.

EMPLOYEES IN SAME-SEX RELATIONSHIPS

All Victorian couples, regardless of gender or marital status, have equal rights under Victorian law. The *Statute Law Amendment (Relationships) Act 2001 (Vic)* and the *Statute Law Further Amendment (Relationships) Act 2001 (Vic)* replaced the term 'de facto spouse' with the term 'domestic partner', which covers all couples, regardless of their gender. These changes ensure that same-sex couples have the same rights as other couples under the law.

The Public Sector Standards Commissioner [Equal Employment Opportunity Guidelines](#) recommends that an organisation's definition of family should be broad enough to encompass the diverse family and cultural needs of employees. The Commissioner advises that the organisation's definition of spouse or partner should not discriminate against de facto or same-sex couples.

Employees in same-sex relationships have equal access to the Department's leave policies; such as carer's leave, parental leave and flexible work options. For more information see [HRWeb](#)

FURTHER ASSISTANCE

Additional information is available at:

- [Brochure on same-sex relationships - Victorian Equal Opportunity and Human Rights Commission](http://www.humanrightscommission.vic.gov.au/#top) (http://www.humanrightscommission.vic.gov.au/#top)
- [Australian Human Rights Commission](http://www.humanrights.gov.au/human_rights/lgbti/index.html) (http://www.humanrights.gov.au/human_rights/lgbti/index.html)

CONTACT HUMAN RESOURCES

Principals, managers and school based employees seeking advice or assistance contact Schools HR Services on 1800 641 943.

Managers and employees in non-school locations can obtain advice, assistance or further information by contacting their [Corporate HR Services Consultant. \(Word - 285Kb\)](#).

SCENARIOS

SCENARIO 1

*A teacher informs some students about her sexuality during a school yard conversation. The principal refers to the **School Policy and Advisory Guide**, and **Ministerial Order 199** for guidance.*

Kelly is a language teacher at a secondary college in outer Melbourne and is in a lesbian relationship. Nobody at the school knows about the relationship, although she has not deliberately tried to hide it so much as just being cautious about what she says.

Chatting with some of the boys while on yard duty, Kelly lets slip that her partner drives an old BMW. The boys find this interesting, and the conversation progresses to the point where she refers to her partner as “she”. One of the boys then asks if she is a lesbian and, seeing no reason to deny it, she says that she is.

Some days later Kelly’s principal, Jan, is approached by a parent who reports the lunch-time conversation and suggests that Kelly “had an inappropriate conversation with some of the students”. Jan says that she will look into the complaint.

After confirming the nature of the conversation, Jan examines whether or not Kelly has breached any of the guidelines which set out how a teacher should interact with students. In this case, the issue is whether Kelly violated or compromised her position of trust with the students.

The [School Policy and Advisory Guide](#) provides that all school staff must:

- be conscious of issues related to the disclosure of personal information
- not promote their own personal preferences.

Jan knows that students frequently ask teachers questions about themselves, including whether they have husbands, wives or partners.

What is the relevance of Kelly’s partner being of the same sex? Ministerial Order 199 Part 10 – Merit, Equity and Employment Principles provides that:

10.1.1 In the administration of this Order the following principles must be observed:
(3) All employees will receive fair and equitable treatment in all aspects of personnel management without regard to age, breastfeeding, gender identity, impairment, industrial activity, lawful sexual activity, marital status, parental status or status as a carer, physical features, political belief or activity, pregnancy, race, religious belief or activity, sex, sexual orientation or personal association (whether as a relative or otherwise) with a person who is identified by reference to any of the above attributes.

If Kelly had informed the boys that her *husband* had a BMW, and that she was married – there would probably not have been a complaint at all. To treat Kelly differently in these circumstances would infringe Kelly’s right to non-discrimination.

Jan informs the parent that Kelly is a valued employee who has in no way acted inappropriately and that the school will not be taking any further action.

SCENARIO 2

*A primary teacher is concerned her class (and their families) will find out about her sexuality. The principal finds that the **Charter of Human Rights and Responsibilities** and the school’s **Equal Opportunity Policy** provide assistance.*

Maggie is a primary teacher in a semi rural area and has a grade 3. She is a very popular and well-regarded teacher, so when she becomes pregnant the class is excited and many of the families send presents for the baby.

There is much talk about the surprise for the students and parents who had thought she was not married. In response, Maggie tells the class that she is not married. Some of the parents are unhappy that the children have this information and express concern that the children now know “too much about her private life”.

All of her colleagues are aware that Maggie is in a gay relationship. She is worried that this information may reach the parents and that the reaction will be negative. Maggie decides to approach John the principal, for advice.

John assures Maggie that she has not acted inappropriately by telling the class she is unmarried. He also agrees that with so many being aware of Maggie’s same-sex relationship, it is possible some parents will find out.

John tells Maggie that government schools are public authorities under the Charter of Human Rights and Responsibilities and that they are required to act in accordance with the rights and obligations it contains.

Every person is equal before the law and is entitled to the equal protection of the law without discrimination and has the right to equal and effective protection against discrimination. (Section 8(3) *Charter of Human Rights and Responsibilities Act 2006*)

The school’s Equal Opportunity Policy also articulates Maggie’s right not to be discriminated against or harassed because of her sexual orientation or lawful sexual activity (Section 6, *Equal Opportunity Act 2010*). The school’s policy states:

This policy covers the whole school community, including employees, students, parents, school council members, contractors and volunteers.

Under this policy, every member of the [name of school] has the right to learn and work in a safe and inclusive environment free of discrimination, harassment, bullying,

vilification and victimisation. Along with this right comes the responsibility to respect and promote human rights and responsibilities by behaving according to this policy.

John makes it clear that the school's leadership takes these matters very seriously and that Maggie will be supported should any member of the school's community engage in any discriminatory or harassing behaviour.

Maggie leaves John's office feeling reassured that her human rights are being protected by the school and that she can be herself at work.

SCENARIO 3

*A principal is confronted by parents with discriminatory attitudes about a gay employee. **The DEECD online Workplace Discrimination, Harassment and Bullying Course** and the **DEECD Sexuality Education website** provide the principal with the knowledge required to respond to the parent's concerns and to provide suggestions for further information.*

Paul is the physical education teacher at a suburban primary school and lives an open life as a single gay man. One night a parent at the school goes to a gay trivia night with her brother and sees Paul. Paul is not particularly worried when information about his sexuality spreads through the school community. Some weeks later he is arranging a soccer camp for the year 6 boys.

A group of the year 6 boy's parents approach the Principal Jan, and make it clear that they would prefer another teacher to take the boys on the camp as they feel unsure about whether their sons will be safe with Paul.

Jan has recently completed the Department's online [Workplace Discrimination, Harassment and Bullying Course](#).

The online course makes it clear that all schools must provide a workplace free from discrimination and harassment, including discrimination on the grounds of sexual orientation - a protected attribute under section 6 of the *Equal Opportunity Act 2010*.

Jan informs the parents that Paul is an outstanding teacher and that the school will not be replacing him on the camp.

Recognising that many misconceptions are caused by insufficient or inaccurate information, Jan assures the parents that their fears about gay teachers are unfounded and she refers them to the Parent's page of the Department's sexuality education website discussing sex and sexuality at [Health and Physical Education – Sexuality Education](#)

She explains that this site contains a variety of resources with links to useful guidance on matters of sexuality such as [Family Planning Victoria](#) and [Gay and Lesbian Health Victoria](#).

Jan acknowledges that the parents may not be satisfied with this decision and advises that they are able to contact the regional office if they want to take the matter further.

SCENARIO 4

*A teacher is harassed when students suspect he is gay. The principal turns to the **Department's health and sexuality resources** and the **school's employees who teach the sexual health curriculum** for guidance in changing the school's culture towards same-sex attracted employees and students.*

Rob is a 38 year old maths teacher in a suburban high school. While he knows that he is gay, he has never told anyone, had a partner, or been to a gay venue. Nevertheless, there is something about his presentation that gives a group of year 10 boys the idea that he is gay and they begin a campaign of abuse and harassment that makes Rob feel embarrassed, harassed and frightened. Most of it is behind his back but he hears it and feels belittled by it.

Rob decides to discuss these experiences with his Principal, John. John informs him that the school's policies on bullying and harassment are clear, and that he has a right not to be discriminated against. This behaviour by any member of the school community towards any other person is unacceptable. John commences an investigation into the incidents.

While discussing the matter with his peers in the region's network, John is encouraged to take more comprehensive steps to address the attitudes that lie behind the harassment of Rob. They reinforce to John that an intolerant school culture can seriously impede the development of a healthy learning environment and that students are also likely to be victims of homophobic bullying and harassment.

John decides to investigate the resources available to help schools affirm sexual diversity. He discovers that:

the DEECD [Sexuality Education Website](#) has an array of resources such as the "Supporting Sexual Diversity in Schools" and "SSAFE – Same-Sex Attracted Friendly Environments in Schools".

John also discusses the school's culture with the teachers delivering the school's sexuality education program. They suggest a review of the school's sexual health program to ensure it promotes respect for sexual diversity. They also stress to John the importance of 'powerful learning' in which the school's actions demonstrate the values taught in the classroom.

The school has a journey ahead of it, but John feels confident that using a 'whole-school' approach can assist the school's community to become more respectful of sexual diversity and to respect the right to non-discrimination and equality.

Rob feels reassured that his right to non-discrimination is being respected and that the school is determined to tackle the attitudes which foster discrimination and harassment.

SCENARIO 5

*Employees react negatively to a relationship developing between two colleagues. Referring to the DEECD **Workplace Hazards Fact Sheet (bullying)**, the principal acts promptly to prevent the bullying behaviour from continuing.*

Caroline and Judy work in the office at a large P-12 campus in a rural town and have both been at the school for many years. The school's employees become aware that a relationship has developed between the two women.

Caroline and Judy are very discreet but take every opportunity to laugh and talk quietly together in the staff room. Some of the employees are offended, believing that the relationship is "wrong" and being flaunted by the two women.

One employee in particular takes exception to Caroline and Judy's developing relationship and states that it would be better if the women left town. He repeats this in the staff room on several occasions and both Judy and Caroline feel increasingly threatened and uncomfortable at work. Judy begins to feel anxious before coming to work and Caroline no longer feels comfortable using the staff room. Both women feel that their right to not be discriminated against is not being respected.

Judy and Caroline make a formal complaint to the Principal Jan, who immediately recognises that this behaviour may be discriminatory, and may constitute workplace bullying.

Jan knows that bullying is a serious issue and refers to the DEECD 'Workplace Bullying' information which states that:

Workplace bullying is defined as repeated, unreasonable behaviour directed toward an employee, or group of employees, that creates a risk to health and safety (Referencing WorkSafe Victoria).

The site lists a range of serious health and safety issues which can result from workplace bullying like "Psychological injuries such as anxiety, depression, social phobia, insomnia, stress conditions and even suicide".

Jan knows that the school has a duty to provide its employees with a non-discriminatory and safe workplace, and that failing to act upon this information could expose it to claims under occupational health and safety (among other) legislation.

Jan speaks to the employees involved in the complaint and reminds them of their legal obligations.

If Jan cannot reach an informal outcome to the complaint, she may need to refer to the Department's [Guidelines for Managing Complaints, Misconduct and Unsatisfactory Performance](#) to progress the matter further.

Jan assures Judy and Caroline that the school is serious about addressing the culture which gave rise to the unacceptable behaviour and thanks them for bringing this serious issue to her attention. She tells Judy and Caroline that they can feel confident that the school will protect their right to non-discrimination and equality.

SCENARIO 6

A manager is asked by an employee (who has strong views regarding same-sex relationships) to move her desk location away from that of a gay colleague.

Matt is a policy officer in a regional office of the Department. He is openly gay and most of his colleagues know this.

Matt has a framed photograph on his desk of two women, each of whom is holding a young child. Matt proudly tells anyone who asks that these are his son and daughter whom he fathered with the lesbian couple in the photograph.

Desks in the office are in 'pods', and Matt has been given the desk next to Carol. Carol complains to the manager, John, and asks that she be moved to another desk. She says that the sight of the photo makes her sick, let alone the story behind it.

John asks Carol to join her in his office to discuss her complaint in private.

John makes it clear to Carol that the Department considers a culture which respects employee diversity and human rights to be very important, and that this environment has enabled Matt to feel he can be honest about his life and family. He points out that this culture of respect for human rights has contributed to great employee morale, and that he will protect this work environment as best he can for the sake of employee wellbeing.

John tells Carol that while she has a right to her own views they may be hurtful to Matt and other employees, and that the law and the Department's policies indicate that they are potentially discriminatory. Further they may engage the right to non-discrimination in the Charter of Human Rights. He explains to her that if she were to share her views at work, it could be considered harassment, and may result in Carol being personally liable under equal opportunity legislation.

John also informs Carol that if she were to make her views known to Matt, she could be breaching her obligations under the public sector standards and the *Public Administration Act 2004*:

- (e) **respect** - public officials should demonstrate respect for colleagues, other public officials and members of the Victorian community by -
 - (i) treating them fairly and objectively; and

- (ii) ensuring freedom from discrimination, harassment and bullying; and
- (iii) using their views to improve outcomes on an ongoing basis;
- and
- (g) **human rights** - public officials should respect and promote the human rights set out in the Charter of Human Rights and Responsibilities by -
 - (i) making decisions and providing advice consistent with human rights; and
 - (ii) actively implementing, promoting and supporting human rights.

The obligations in the Act are reflected in the Department’s Core Values which provide a framework to guide the way employees work with each other and with those to whom they provide advice and services. The Core Values apply to all corporate employees and include the element:

- Respect and Diversity – *We respect others and value diversity***
- Key Behaviours
- Seeks to understand the diverse views and objectives of our people, colleagues and our community/stakeholders
 - Is inclusive and acknowledges the contribution of others
 - Seeks to understand others’ background, experience and concerns
 - Effectively utilises the range of backgrounds, skills, knowledge and capabilities of our people
 - Reflects and considers impact of response on others before acting.

Carol remains adamant that she is entitled to her views, even though they might not be ‘politically correct’, but agrees that it would be best if she did not voice them aloud while at work. She acknowledges that sometimes her right to expression may be limited where a good reason for doing so exists.