



Government of **Western Australia**
Department of **Health**

Equal Opportunity, Discrimination and Harassment Guidelines

Purpose

The aim of the Equal Opportunity, Discrimination and Harassment Guidelines (Guidelines) is to support the Health Service Providers to comply with the legislative requirements of the *Equal Opportunity Act 1984 (Act)*. The Guidelines are also intended to assist Health Service Providers to apply the Policy Framework for Substantive Equality and the Public Sector Commissioner's Circular 2013-04 – Equal Employment Opportunity Management Plans and Workforce Planning in the Public Sector (Commissioner's Circular).

The Guidelines also aim to ensure employees understand the expectations and legal obligations placed upon them in relation to workplace discrimination and harassment. All employees are responsible for ensuring the workplace is free of unlawful discrimination, harassment and sexual harassment. This includes the prevention of discrimination and harassment.

Guidelines

1. Equal Opportunity

The Equal Opportunity objectives and objective for employment as set out in Part I (s3) and Part IX (s140) of the Act are:

- to eliminate and ensure the absence of discrimination in employment on the ground of sex, marital status, pregnancy, family responsibility or family status, sexual orientation, race, religious or political conviction, impairment or age
- to eliminate, so far as is possible, sexual harassment and racial harassment in the workplace and in educational institutions and sexual harassment and racial harassment related to accommodation
- to promote recognition and acceptance within the community of the equality of men and women
- to promote recognition and acceptance within the community of the equality of persons of all races and of all persons regardless of their sexual orientation, religious or political convictions or their impairments or ages
- to eliminate and ensure the absence of discrimination in employment against gender reassigned persons on gender history grounds
- to promote equal employment opportunity for all persons.

In accordance with the Act and Commissioner's Circular, Health Service Providers must:

- prepare and implement an Equal Employment Opportunity (EEO) Management Plan; as required under Part IX, Division 3 (s145)
- implement the Substantive Equality Framework.

1.1 Equal Employment Opportunity Management Plans

In accordance with Part IX, Division 3 (s145) of the Act and the Commissioner's Circular, Health Service Providers are required to prepare and implement an EEO Management Plan.

The Health Service Provider EEO Management Plan must include the following provisions:

- a process for the development of EEO policies and programs
- strategies to communicate the EEO policies and programs to employees
- methods for the collection and recording of workforce diversity data

- processes for the review of personnel practices to identify possible discriminatory practices (including recruitment techniques, selection criteria, training and staff development programmes, promotion and transfer policies and patterns, and conditions of service) with a view to the identification of any discriminatory practices
- the inclusion of goals and targets to determine the success of the EEO management plan;
- strategies to evaluate the EEO policies and programs
- a process to review and amend the EEO Management Plan
- clear delegation for implementation, monitoring and review of responsibilities within the Health Service Provider.

To remain compliant with Part IX, Division 3 (s145) of the Act, Health Service Providers must submit their EEO Management Plan annually to the Director of Equal Opportunity in Public Employment and to the System Manager at Department of Health upon request, inclusive of any subsequent reports regarding management of equal opportunity and discrimination.

2. Substantive Equality

The State government introduced the Equal Opportunity Commission Policy Framework for Substantive Equality in 2005 which was broadened in 2013.

The Policy Framework for Substantive Equality outlines substantive equality to achieve equitable outcomes as well as equal opportunity. It recognises that rights, entitlements, opportunities and access are not equally distributed throughout society and takes into account the effects of past discrimination. Substantive equality recognises that equal or the same application of rules to unequal groups can have unequal results.

As outlined by the Public Sector Commissioner's Circular: 2015-01 Implementation of the Policy Framework for Substantive Equality, the scope of the Policy Framework for Substantive Equality is to address all forms of systemic discrimination in service delivery, as per the grounds of the Act. The objective of the Policy Framework for Substantive Equality is to:

- eliminate systemic forms of discrimination in the provision of public sector services
- promote awareness of the different needs of client groups

In order to achieve Substantive Equality, Chief Executives are responsible for:

- assessing how policies, programs and practices impact on different client groups
- monitoring the implementation of policies and programs and making sure they meet the diverse needs of the people of Western Australia
- ensuring that Employees are equipped with the knowledge and skills to address issues of systemic discrimination
- recognising and appraising organisational progress towards achieving Substantive Equality

In addition, section 7D of the *Sex Discrimination Act 1984* allows for special measures to achieve Substantive Equality on the grounds of gender identity, intersex status and relationship status.

3. Discrimination

Any breach of the Act is considered unlawful discrimination and can result in disciplinary action under the Code of Conduct. Discrimination may be direct or indirect. The Act protects Employees against victimisation when reporting discriminatory behaviour.

As per Part IX, Division 3 (s145) of the Act EEO Management Plans are the principal instrument of accountability for public authorities to ensure an absence of discrimination and positive employment outcomes for diversity groups.

Parts II to IV of the Act prescribe the relevant circumstances under which discrimination in work is prohibited:

- the sex, gender reassignment, marital status, family responsibility or family status, religious or political conviction, a spent conviction, impairment, age, pregnancy, breastfeeding of the aggrieved person
- a characteristic that appertains generally, or is generally imputed, to persons of the sex, marital status, family responsibility or family status, religious or political conviction, impairment, age, a spent conviction or gender reassignment of the aggrieved person or to persons who are pregnant

Exceptions under the Act

Under each part of the Act there are provisions for a number of general and specific exceptions that relate to each ground of unlawful discrimination and, where used, must be justified. For example when there is a genuine occupational requirement for a person to have specific attributes.

In order to ensure that the exception is applicable, please refer to the relevant section of the Act.

4. Sexual harassment

Part II, Division 4 (s24) of the Act states it is unlawful for a person to sexually harass an employee, potential employee, commission agent or contract worker. Sexual harassment under the Act occurs where:

- a person makes an unwelcome sexual advance, an unwelcome request for sexual favours or engages in unwelcome conduct of a sexual nature
- the harassed person has reasonable grounds to believe that if they reject the advance, refuse the request or object to the conduct, they will be disadvantaged or are in fact disadvantaged in their employment

5. Racial harassment

Part III, Division 2 of the Act states that it is unlawful to racially harass an employee, a potential employee, commission agent or contract worker. Racial harassment under the Act occurs where:

- a person threatens, abuses, insults or taunts a person on the ground of race, or a characteristic that appertains to or is generally imputed to persons of a race
- the harassed person has reasonable grounds to believe that objecting to the relevant threats, abuse, insults or taunts would disadvantage or in fact has disadvantaged that person in their employment

6. Complaints management

If an individual believes they or others are being or have been harassed, under any Part within the Act, they can make a complaint which can be lodged in writing to the Equal Opportunity Commissioner as per Part IV, Division 2 (s83) of the Act.

7. Definitions

The following definitions are relevant to these Guidelines.

| Term | Definition |
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| Commission Agent | A person who does work for another person as the agent of that person and who is remunerated, whether in whole or in part, by commission. |
| Contract Worker | A person who does work for another person pursuant to a contract between the employer of the first-mentioned person and that other person. |
| Client | The term client refers to customers, consumers, patients and carers. |
| Direct discrimination | Direct discrimination occurs when a person is treated less favourably than another person, in the same or similar circumstances, on one or more of the grounds and in one of the areas of public life covered by the Act. |
| Discrimination | The unjust or prejudicial treatment of different categories of people, on the grounds outlined by the Equal Opportunity Act. |
| Diversity | Workforce comprising of individuals with varying characteristics including, but not limited to, religious and political beliefs, gender, ethnicity, education, socioeconomic background, sexual orientation and geographic location. |
| Employee | As stated in the <i>Health Services Act 2016</i> (WA), means a person employed in a health service provider and includes: (a) the chief executive of the health service provider; (b) a health executive employed in the health service provider; (c) a person employed in the health service provider under section 140; (d) a person seconded to the health service provider under section 136 or 142. |
| Indirect discrimination | Indirect discrimination occurs when a rule that applies to everyone has a worse effect on a group of people with a particular characteristic compared to people without that characteristic, and the rule is unreasonable in the circumstances. |
| Harassment | Perceived or actual demonstrated patterns of behaviour that are offensive, humiliating, intimidating or threatening and cause a person disadvantage or anxiety over a period of time. |
| Potential Employee | An applicant for an above mentioned position of employee. |
| Sexual harassment | Unwanted or unwelcome sexual behaviour, which makes a person feel offended, humiliated or intimidated. ¹ |
| Substantive Equality | Aims to achieve equitable outcomes for all Western Australians, as far as possible. |

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| Racial harassment | Racial harassment occurs if a person is threatened, abused, insulted or taunted based upon a person's race or a characteristic belonging to, or generally believed to belong to, a particular race including colour, ethnic background or origin. |
| Victimisation | Victimisation includes threatening, harassing or punishing a person in any way because they have objected about the discriminatory manner in which they have been treated. It also applies to anyone who has made a complaint, intends making a complaint, or to anyone giving evidence about a complaint. |

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