



Department of
Education

EQUAL OPPORTUNITY, DISCRIMINATION AND HARASSMENT POLICY

**EQUAL OPPORTUNITY, DISCRIMINATION AND HARASSMENT
PROCEDURES**

This PDF contains the following documents:

Document 1:

Equal Opportunity, Discrimination and Harassment Policy v2.2

Effective: 1 April 2014

Last update date: 9 March 2017

Document 2:

Equal Opportunity, Discrimination and Harassment Procedures v2.4

Effective: 1 April 2014

Last update date: 9 March 2017



Department of
Education

EQUAL OPPORTUNITY, DISCRIMINATION AND HARASSMENT POLICY

EFFECTIVE: 1 APRIL 2014

VERSION: 2.2 FINAL

Last update date: 9 March 2017

1 POLICY STATEMENT

The Department of Education provides inclusive and equitable work and learning environments, services and management practices free of unlawful discrimination and harassment. This includes the prevention and effective management of discrimination and harassment.

2 POLICY RULES

Principals and line managers must:

- maintain work and learning environments free of unlawful discrimination and harassment, and address issues and incidents involving students, staff and visitors;
- provide equal opportunity; and
- provide access to facilities, services or opportunities to meet special needs, where reasonable and practicable.

Employees must demonstrate professional and ethical behaviour, and not engage in any form of discrimination or harassment.

Guidance

The Equal Opportunity Act 1984 requires:

- *equal opportunity is provided for the grounds of sex, marital status, pregnancy, breastfeeding; sexual orientation, race, impairment, and age; and*
- *special needs to be met in relation to employment, education, training or welfare, for the grounds of sex, marital status, pregnancy, breastfeeding, sexual orientation, race, age, impairment and family responsibilities or status.*

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.

Reasonable adjustments and special needs is addressed in section 3.2.1 and Appendix C of the Equal Opportunity, Discrimination and Harassment Procedures.

3 RESPONSIBILITY FOR IMPLEMENTATION AND COMPLIANCE

Principals and line managers are responsible for implementation of the policy.

Executive Directors and Directors are responsible for compliance monitoring.

4 SCOPE

This policy applies to all employees.

Guidance

This policy applies to all worksites and includes off site and after hours work related activities such as training courses, conferences, telephone calls, emails, social media and social functions.

5 SUPPORTING PROCEDURES

Equal Opportunity, Discrimination and Harassment Procedures

6 DEFINITIONS

DISCRIMINATION

Any practice that makes a distinction on the basis of attributes between individuals or groups that disadvantages some and advantages others.

Discrimination can occur in ways that are either direct or indirect:

- **Direct discrimination** occurs when an individual or group is treated less favourably than another, in the same or similar circumstances.
- **Indirect discrimination** occurs when an apparently neutral rule, policy or practice has a negative effect on a substantially higher proportion of people with a particular attribute/characteristic compared to people without the attribute/characteristic, and the rule is unreasonable in the circumstances.

Indirect discrimination does not necessarily involve the intention to discriminate or even awareness, and may result from the continuation of past practices or policies that apply to all staff.

Refer to Appendix A of the Equal Opportunity, Discrimination and Harassment Procedures for the grounds of discrimination and harassment.

DIVERSITY

A term used to acknowledge differences between people in the community and where work practices are adapted to create an inclusive environment in which those differences are valued.

EQUAL EMPLOYMENT OPPORTUNITY

The process by which all existing and potential employees are treated fairly and equitably, and based only on their particular skills and attributes in regard to their capacity to perform a job, regardless of their differences.

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.

7 RELATED DOCUMENTS

RELEVANT LEGISLATION OR AUTHORITY

Age Discrimination Act 2004

Australian Human Rights Commission Act 1986

Criminal Code Act Compilation Act 1913 (WA)

Disability Discrimination Act 1992

Equal Opportunity Act 1984 (WA)

Occupational Safety and Health Act 1984 (WA)

Public Interest Disclosure Act 1986 (WA)
Public Sector Management Act 1994 (WA)
Racial Discrimination Act 1975
Sex Discrimination Act 1984
Spent Convictions Act 1988 (WA)

RELATED DEPARTMENT POLICIES

Child Protection
Staff Conduct and Discipline
Staff Induction
Student Behaviour Policy
Workplace Bullying Policy and Procedures

OTHER DOCUMENTS

Code of Conduct
Commissioner's Instruction No. 7 - Code of Ethics
Disability Access and Inclusion Plan
Equal Opportunity and Diversity Policy Fact sheets
Equity and Diversity Management Plan 2015-2019
Grievance Framework
How to Comply with Our Code of Conduct
Part Time Work Guidelines
Policy Framework for Substantive Equality (WA)
Public Sector Commission: Aboriginal Employment Strategy 2011-2015
Public Sector Commissioner's Circular 2013-04 EEO Management Plans and Workforce Planning in the Public Sector
Public Sector Standards in Human Resource Management
Reconciliation
Sexual Harassment Brochure for Students
Strategic Plan for WA Public Schools 2016-2019
Substantive Equality Guidelines

8 CONTACT INFORMATION

Policy manager: Director
Workforce Policy and Coordination

Policy contact officer: Principal Consultant, Equity and Diversity,
Workforce Policy and Coordination
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9 REVIEW DATE

1 April 2017

10 HISTORY OF CHANGES

Effective date	Last update date	Policy version no	Ref no	Notes
1 April 2014		2.0	D14/0144140	This new policy replaces the Equal Employment Opportunity/Diversity, Anti-Racism, Workplace Sexual Harassment and Employment of People with Disabilities policies. Corp Ex endorsement 13.2.2014.
1 April 2014	22 January 2016	2.1	D16/0030364	Minor changes to guidance under policy rules and updated links. D16/0025669
1 April 2014	9 March 2017	2.2	D17/0104694	Minor changes to replace references to Substantive Equality Policy with Substantive Equality Guidelines and updated links D17/0104478



Department of
Education

EQUAL OPPORTUNITY, DISCRIMINATION AND HARASSMENT PROCEDURES

EFFECTIVE: 1 APRIL 2014

VERSION: 2.4 FINAL

Last update date: 9 March 2017

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1 POLICY SUPPORTED

Equal Opportunity, Discrimination and Harassment Policy

2 SCOPE

These procedures apply to all employees.

Guidance

These procedures apply to all worksites and includes off site and after hours work related activities such as training courses, conferences, telephone calls, emails, social media and social functions.

3 PROCEDURES

3.1 RESPONSIBILITIES OF EXECUTIVE DIRECTORS, REGIONAL EXECUTIVE DIRECTORS AND DIRECTORS

Executive Directors, Regional Executive Directors and Directors will:

- demonstrate professional and ethical behaviour;
- provide strategic leadership and system level implementation of measures to facilitate and promote equal employment opportunity; and the provision of goods/services/facilities, work and learning environments that are free of discrimination and harassment;
- inform line managers/principals of their responsibilities under the Equal Opportunity Act 1984 (EO Act), related legislation and policies and the Department's Equity and Diversity Management Plan;
- verify that line managers/principals implement appropriate strategies and practices to provide equal opportunity, and prevent and address discrimination and harassment in work and learning environments; and
- respond to complaints regarding equal opportunity, discrimination and harassment if:
 - complaints have not been resolved at the workplace/school level;
 - the line manager/principal is the subject of the complaint; and/or
 - the line manager/principal has a conflict of interest.

Guidance

For further information refer to:

- *Appendix A Grounds of Unlawful Discrimination and Harassment;*
- *Appendix B Identifying Unlawful Behaviours; and*
- *Appendix C Line Managers/Principals: Legislation and Policy Information.*

The perception of employees' inclusive behaviour and respect for people from diversity groups is monitored by the annual Public Sector Commission's Employee Perception Survey, by the number of complaints lodged with the Equal Opportunity Commission and the Australian Human Rights Commission, and by matters raised through the Department's Standards and Integrity Directorate.

3.2 RESPONSIBILITIES OF LINE MANAGERS/PRINCIPALS

Line managers/principals will:

- demonstrate professional and ethical behaviour;
- report incidents of discrimination, harassment and victimisation that may constitute employee misconduct to the Standards and Integrity Directorate; and
- address equal opportunity, discrimination and harassment in work and learning environments by:
 - informing employees of relevant legislation, policies and support services in an induction process, and as required during their employment;
 - monitoring the workplace for inappropriate conduct and address any occurrences;
 - implementing strategies and review, where necessary, relevant workplace practices to prevent and address issues for students and employees; and
 - responding promptly to allegations or incidents involving students, employees and visitors (including contractors, parents/caregivers and community members) and facilitating grievance resolution.

Guidance

Information supporting compliance and implementation is available in:

- *Appendix A Grounds of Unlawful Discrimination and Harassment.*
- *Appendix B Identifying Unlawful Behaviours.*
- *Appendix C Line Managers/Principals: Legislation and Policy Information.*
- *Appendix D Family Responsibility – Children in the Workplace Guidelines.*
- *Appendix E Breast Feeding.*
- *Equal Opportunity, Discrimination and Harassment (EODH) Policy Fact Sheets (refer to Appendix C).*

Refer to the Grievance Framework for grievance resolution information.

3.2.1 ACCOMMODATING SPECIAL NEEDS AND IMPAIRMENT/DISABILITY

Line managers/principals will:

- provide measures to maintain equal opportunity, including reasonable adjustments (such as modifying requirements, premises or equipment) to the recruitment process and/or work/school environment;
- provide access to facilities, services or opportunities to meet the special needs of persons who have, or acquire an impairment/disability, where reasonable and practicable;
- maintain confidentiality of information relating to a person's impairment/disability in the recruitment process and workplace, unless the employee gives written consent to disclose information to their colleagues; and
- accommodate staff and students who need to bring their child/children into the workplace/school in exceptional circumstances, where possible, after considering the factors in Appendix D.

Guidance

The Equal Opportunity Act 1984 requires:

- *equal opportunity is provided for the grounds of sex, marital status, pregnancy, breastfeeding; sexual orientation, race, impairment, and age; and*
- *special needs to be met in relation to employment, education, training or welfare, for the grounds of sex, marital status, pregnancy, breastfeeding, sexual orientation, race, age, impairment and family responsibilities or status.*

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. Refer to section 3.3.1 Guidance, Appendix C and the Department's [Transgender and Intersex Students webpage](#).

Important compliance information and resources for line managers/principals and selection panels is included in [EODH Policy Fact sheet 1: Accommodating Impairment/Disability in the Workplace](#).

Additional information regarding special needs and reasonable adjustments is available in:

- *Appendix C Line Managers/Principals: Legislation and Policy Information.*
- *Appendix D Family Responsibility – Children in the Workplace Guideline.;*
- *Appendix E Breast Feeding.*
- *[Guidelines for Supporting Pregnant and Parenting Young People to Continue their Education](#).*

For queries relating to special needs, policy, legislation and support resources, contact Workforce Policy and Coordination (contact details in section 6).

3.3 ADDITIONAL RESPONSIBILITIES OF PRINCIPALS

Principals will provide school leadership that promotes equity and diversity in the teaching and learning program, and within the school community.

Guidance

Students' and employees' legal rights to work and learning environments free of discrimination and harassment is promoted by the principal within the school community.

Principals should provide teachers with professional learning opportunities that enable:

- *countering of racism and discrimination in teaching and learning programs, and in the management of student behaviour;*
- *strengthening mutual respect and understanding between Aboriginal and Torres Strait Islander people and non-Aboriginal and Torres Strait Islander people to promote reconciliation; and*
- *integrating knowledge and perspectives of Aboriginal and Torres Strait Islander people, as well as people from other culturally and linguistically diverse backgrounds, into teaching and learning programs.*

The [EODH Policy Fact Sheets](#) (refer to Appendix C) contain information about professional learning, cultural awareness, curriculum and other resources, cultural considerations and strategies to promote equitable and inclusive work and learning environments.

3.3.1 SEXUAL HARASSMENT OF STUDENTS AND EMPLOYEES

Principals will:

- report all actual, alleged or possible incidents of sexual harassment of students by employees to Standards and Integrity Directorate in accordance with the [Child Protection](#) policy; and
- respond to any allegations or incidents of sexual harassment of employees by students.

Guidance

The process and sanctions for students who sexually harass employees is addressed in each school's Whole School Behaviour Plan, as required by the [Student Behaviour Policy](#).

Sexual harassment of students (by students or employees) is addressed in section 4.5 of the [Child Protection](#) policy.

Resources to address bullying, discrimination and harassment of students based on gender, sexuality and/or sexual orientation (perceived or actual) includes:

- *the Department's Transgender and Intersex Students webpage and Sexual Harassment Brochure for Students;*
- *WA Equal Opportunity Commission's Guidelines for supporting sexuality and gender diversity in schools and Sexuality and gender based bullying in schools fact sheets for staff, students and parents; and*
- *Australian Human Rights Commission's Information sheet on new protections in the Sex Discrimination Act.*

Advice for principals regarding gender identity, transgender and intersex students is available from the Lead School Psychologist in the education regional office. Further information is available in section 3.2.1 special needs; Appendix B.2 sexual harassment; and Appendix C of these Procedures.

3.4 RESPONSIBILITIES OF EMPLOYEES

All employees will:

- demonstrate professional and ethical behaviour, which includes not engaging in victimisation or making false or vexatious complaints;
- report incidents of discrimination or harassment to their line manager/principal (or their superordinate, if the line manager/principal is the subject of the complaint) where personal resolution of the issue is not suitable or possible;
- participate in investigations and grievance resolution processes, and comply with resolution agreements/decisions;
- maintain confidentiality (only discuss allegations with people who have official responsibility for handling the issue); and
- seek approval from their line manager/principal prior to bringing their child/children into the workplace in exceptional circumstances.

Guidance

Confidentiality of sexual harassment complaints is required by the Equal Opportunity Act 1984.

Refer to Appendix D for factors to be considered when bringing children into the workplace.

People involved in complaints are usually protected by qualified privilege as long as the complaint is not malicious, the facts presented are true, the complaint is made in accordance with workplace procedures and is only divulged to persons who are authorised to deal with the complaint.

Some incidents and allegations of inappropriate behaviour may be referred to the Standards and Integrity Directorate to deal with as a disciplinary matter under the Staff Conduct and Discipline policy. The Department's Code of Conduct and How to Comply With our Code of Conduct addresses discrimination, harassment and bullying. Repeated inappropriate behaviour may be a breach of the Workplace Bullying Policy and Procedures.

Support for employees includes:

- *Equal Opportunity Contact Officers (EOCO) – Appendix F
EOCOs provide employees with information about resolving discrimination, harassment and workplace bullying issues at the local level.*
- *Employee Assistance Program
The Department offers a counselling service to all its employees, their partners and dependent children under 25 years of age, who are entitled to six free sessions annually. This is an independent and confidential service. Appointments are available face-to-face, via telephone or Skype. Contact details are available in section 6.*
- *The Department's Complaints Advice Line
Employees can seek advice or report matters regarding staff misconduct on*

1800 655 985.

- *Use of a support person who the complainant or respondent elects to be present only as an observer at complaint resolution meetings. The support person does not participate in the meeting and is not permitted to express any opinions.*

Additional information for employees is available in:

- *Appendix A Grounds of Unlawful Discrimination and Harassment.*
- *Appendix B Identifying Unlawful Behaviours.*
- *Appendix D Family Responsibility – Children in the Workplace Guidelines.*
- *Appendix E Breast Feeding.*
- *The Grievance Framework provides grievance resolution information.*

3.4.1 SEXUAL HARASSMENT OF EMPLOYEES BY STUDENTS

All employees will report incidents of sexual harassment of employees by students to the principal.

Guidance

The process and sanctions for students who sexually harass employees is addressed in each school's Whole School Behaviour Plan, as required by the Student Behaviour Policy.

Employees can lodge a formal complaint with the Western Australian Equal Opportunity Commission (EOC). The legal age of responsibility under the EO Act is 18 years.

Employees have a right to make a police report where they consider a criminal offence has been committed.

4 DEFINITIONS

COMPLAINANT

A person who has made a complaint.

DISCRIMINATION

Is any practice that makes a distinction on the basis of attributes between individuals or groups that disadvantages some and advantages others.

Discrimination can be direct or indirect:

- **Direct discrimination** occurs when an individual or group is treated less favourably than another, in the same or similar circumstances, on the basis of one or more of the grounds.
- **Indirect discrimination** occurs when an apparently neutral rule, policy or practice has a negative effect on a substantially higher proportion of people with a particular attribute/characteristic compared to people without the attribute/characteristic, and the rule is unreasonable in the circumstances.

Indirect discrimination does not necessarily involve the intention to discriminate or even awareness, and may result from the continuation of past practices or policies that apply to all staff.

Refer to Appendix A of the Equal Opportunity, Discrimination and Harassment Procedures for the grounds of discrimination and harassment.

DIVERSITY

A term used to acknowledge differences between people in the community and where work practices are adapted to create an inclusive environment in which those differences are valued.

EQUAL EMPLOYMENT OPPORTUNITY

The process by which all existing and potential employees are treated fairly and equitably, and based only on their particular skills and attributes in regard to their capacity to perform a job, regardless of their differences.

EQUAL OPPORTUNITY CONTACT OFFICERS (EOCO)

Departmental staff who have undertaken training in equal opportunity. They provide information and assistance in resolving an equal opportunity (discrimination and harassment) or workplace bullying complaints at an informal level.

FORMAL COMPLAINT

A written complaint where the complainant implements proceedings through the Department's formal complaints process, and/or through an external agency such as the Equal Opportunity Commission.

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.

IMPAIRMENT (DISABILITY)

As defined in the **WA Equal Opportunity Act 1984**: *impairment* relation to a person, means one or more of the following conditions —

- (a) any defect or disturbance in the normal structure or functioning of a person's body; or
- (b) any defect or disturbance in the normal structure or functioning of a person's brain; or
- (c) any illness or condition which impairs a person's thought processes, perception of reality, emotions or judgment or which results in disturbed behaviour, whether arising from a condition subsisting at birth or from an illness or injury and includes an impairment —
 - (d) which presently exists or existed in the past but has now ceased to exist; or
 - (e) which is imputed to the person.

The **Commonwealth's Disability Discrimination Act 1992** definition: **disability**, in relation to a person, means:

- (a) total or partial loss of the person's bodily or mental functions; or
- (b) total or partial loss of a part of the body; or
- (c) the presence in the body of organisms causing disease or illness; or
- (d) the presence in the body of organisms capable of causing disease or illness; or
- (e) the malfunction, malformation or disfigurement of a part of the person's body; or

- (f) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or
- (g) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour;

and includes a disability that:

- (h) presently exists; or
- (i) previously existed but no longer exists; or
- (j) may exist in the future (including because of a genetic predisposition to that disability); or
- (k) is imputed to a person.

To avoid doubt, a **disability** that is otherwise covered by this definition includes behaviour that is a symptom or manifestation of the disability.

INFORMAL COMPLAINT

A verbal or written complaint where the person wishes to discuss the incident but not implement formal proceedings.

RACE

Under discrimination legislation, race is defined as colour, descent, ethnic or national origin or nationality. It is also unlawful to harass or discriminate against a person because a relative or associate of that person is of a different racial identity.

RACIAL HARASSMENT

Also referred to as racist bullying, may take many forms including threats, abuse, insults and taunts based on a person's race or a characteristic belonging to, or generally believed to belong to a particular race. Racial harassment can involve a single incident.

RACIAL HATRED

Insulting, humiliating, offending or intimidating a person or group in public on the basis of their race is unlawful. A variety of acts can constitute racial hatred, including speaking, singing, making gestures, drawings, images and written publications such as newspapers, leaflets and websites. Racial hatred is also known as racial vilification.

RACISM

The expression of intolerance or hatred towards another race or other races through behaviour or attitude.

RACIST BULLYING

Bullying or harassing a person because of their race is also referred to as racist bullying.

RESPONDENT

For internal complaints, the person who is the subject of a complaint. For external harassment complaints, both the Department of Education and the alleged harasser are the respondent.

SEXUAL HARASSMENT

An unwelcome sexual advance, unwelcome request for sexual favours or other unwelcome conduct of a sexual nature. Sexual harassment does not need to be repeated or continuous, it can involve a single incident.

SUPERORDINATE

The person to whom an individual's line manager reports or a more senior manager.

SUPPORT PERSON

A person who the complainant or respondent elects to be present only as an observer at complaint resolution meetings. The support person does not participate in the meeting and is not permitted to express any opinions.

VEXATIOUS COMPLAINT

A complaint which is instituted without sufficient grounds and serving only to cause annoyance.

VICARIOUS LIABILITY

The employer is vicariously liable (legally responsible) under the *Equal Opportunity Act 1984* for acts of discrimination and harassment committed by employees in connection with their employment. This does not apply if the employer took all reasonable steps to prevent that unlawful act from taking place.

VICTIMISATION

Actions such as threats, harassment or punishment of a person who is, will be or has been involved in a complaint under the *Equal Opportunity Act 1984*, is unlawful.

WORKPLACE BULLYING

Bullying is repeated, unreasonable or inappropriate behaviour directed towards a worker, or group of workers, that creates a risk to safety and health.

5 RELATED DOCUMENTS

RELEVANT LEGISLATION OR AUTHORITY

Age Discrimination Act 2004

Australian Human Rights Commission Act 1986

Criminal Code Act Compilation Act 1913 (WA)

Disability Discrimination Act 1992

Equal Opportunity Act 1984 (WA)

Occupational Safety and Health Act 1984 (WA)

Public Interest Disclosure Act 1986 (WA)

Public Sector Management Act 1994 (WA)

Racial Discrimination Act 1975
Sex Discrimination Act 1984
Spent Convictions Act 1988 (WA)

RELATED DEPARTMENT POLICIES

Child Protection
Staff Conduct and Discipline
Staff Induction
Student Behaviour Policy
Workplace Bullying Policy and Procedures

OTHER DOCUMENTS

Code of Conduct
Commissioner's Instruction No. 7 - Code of Ethics
Disability Access and Inclusion Plan
Equal Opportunity and Diversity Policy Fact sheets
Equity and Diversity Management Plan 2015-2019
Grievance Framework
Guidelines for supporting sexuality and gender diversity in schools
How to Comply with Our Code of Conduct
Part Time Work Guidelines
Policy Framework for Substantive Equality (WA)
Public Sector Commission: Aboriginal Employment Strategy 2011-2015
Public Sector Commissioner's Circular 2013-04 EEO Management Plans and Workforce Planning in the Public Sector
Public Sector Standards in Human Resource Management
Reconciliation
Sexual Harassment Brochure for Students
Strategic Plan for WA Public Schools 2016-2019
Substantive Equality Guidelines

6 CONTACT INFORMATION

Policy manager: Director
Workforce Policy and Coordination

Policy contact officer: Principal Consultant, Equity and Diversity,
Workforce Policy and Coordination
T: 9264 4892

Equity and Diversity website
W: <http://det.wa.edu.au/equityanddiversity/>
W: [Equal Opportunity Contact Officer contact list](#)

Employee Assistance Program
T: 1300 307 912

Equal Opportunity Commission (WA)

T: (08) 9216 3900

Country callers: 1800 198 149

TTY: (08) 9216 3936

W: www.eoc.wa.gov.au

Australian Human Rights and Commission (Cw)

T: 1300 656 419

W: <http://www.humanrights.gov.au/>

7 REVIEW DATE

1 April 2017

8 HISTORY OF CHANGES

Effective date	Last update date	Policy version no	Ref no	Notes
1 April 2014		2.0	D14/0144142	These new procedures support the Equal Opportunity, Discrimination and Harassment policy that replaces the Equal Employment Opportunity/Diversity, Anti-Racism, Workplace Sexual Harassment and Employment of People with Disabilities policies. Corp Ex endorsement 13.2.2014.
1 April 2014	3 September 2014	2.1	D14/0423601	Minor changes to contact information D14/0423587
1 April 2014	19 December 2014	2.2	D14/0556678	Minor changes to contact information D14/0556672
1 April 2014	22 January 2016	2.3	D16/0030371	Minor changes to guidance in ss3.2, 3.3, 3.4, definitions, contact information, appendices and updated links D16/0025669

1 April 2014	9 March 2017	2.4	D17/0104710	Minor changes to replace references to Substantive Equality Policy with Substantive Equality Guidelines and updated links D17/0104478
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APPENDIX A. GROUNDS OF UNLAWFUL DISCRIMINATION AND HARASSMENT

Students and persons applying for entry to a school, existing employees and persons applying for employment, have rights under the anti-discrimination legislation.

The areas of public life the legislation applies to include education, employment/work, the provision of goods, services and facilities and application forms for employment or entry to a school.

The EO Act prohibits discrimination on 13 grounds (listed below), and racial and sexual harassment is unlawful. The Equal Opportunity Commission also administers complaints about spent conviction discrimination. Both direct and indirect discrimination is unlawful (refer to section 4, Definitions of these procedures).

In addition, **Commonwealth legislation** (refer to section 5) also prohibits discrimination based on gender identity, intersex status, relationship status (includes same-sex couples), medical record, criminal record, social origin, trade union activity and disability harassment.

GROUNDS OF UNLAWFUL DISCRIMINATION UNDER THE WA EO ACT

Age: Treating a person less favourably because of their actual or assumed age, or the age of a relative or associate. Employees' industrial Awards or General Agreements may address part time employment relating to phasing into retirement.

Breast feeding: Treating a person less favourably because they are breast feeding or bottle feeding. See Appendix E Breast Feeding.

Family responsibility: Treating a person less favourably because they have responsibility for the care of another person, whether or not that person is a dependant.

Employees' industrial Awards or General Agreements contain a range of parental leave conditions and entitlements (for example, extension and conclusion of parental leave; returning to work on a modified/part time basis) and may address part time employment relating to the employee's caring responsibilities (or phasing into retirement). For further information refer to the Department's Part Time Guidelines and/or the employee's relevant Award/Agreement.

See Appendix D Family Responsibility - Children in the Workplace Guidelines and Guidelines for Supporting Pregnant and Parenting Young People to Continue their Education.

Family status: Treating a person less favourably because he or she has the status of being a particular relative, or has the status of being a relative of a particular person.

Fines Enforcement Registrar's website, publication of relevant details: Treating someone less favourably because a person's name and relevant details have been published on this website.

Gender History (in certain cases): This applies to someone who has undergone a gender reassignment procedure and has the relevant certificate.

Impairment (Disability): Treating a person less favourably because of a physical, intellectual or mental impairment, either current, past or imputed. (Refer to section 4 for definitions.)

Under the WA EO Act it is unlawful to discriminate against a person with:

- an impairment;
- a characteristic that does, or is imputed, to apply to person's with that impairment;
- a palliative device (therapeutic/auxiliary aids) related to the person's impairment;
- a guide dog or hearing dog; and/or
- a relative or associate who has an impairment.

For information relating to reasonable adjustments, the recruitment process and support resources, refer to [EODH Policy Fact sheet 1: Accommodating Impairment/Disability in the Workplace.](#)

Marital Status: Treating a person less favourably because they are married, not married, separated, divorced, widowed or living in a de facto relationship.

Political Conviction: Treating a person less favourably because of their political conviction, or lack of political conviction.

Pregnancy: Treating a person less favourably because they are pregnant.

Employees' [industrial Awards or General Agreements](#) contain a range of conditions and entitlements relating to pregnancy and parental leave (for example, modifications to duties; transfer to safe job; pregnancy related illness; communication during parental leave; returning to work on a modified/part time basis).

Resources: [Guidelines for Supporting Pregnant and Parenting Young People to Continue their Education](#) (Department of Education) and [Pregnancy Discrimination fact sheet](#).

Race: Treating someone less favourably because of their race – including their colour, descent, ethnic or national origin or nationality, or assumed characteristics of any race, or the race of a relative or associate.

Appendix B1 contains specific information relating to racism and racial harassment. Additional information is available in [EODH Policy Fact Sheet 4: Cultural Considerations](#); and [Fact Sheet 2: Aboriginal and Torres Strait Islander Employment and 50\(d\) Positions](#).

Religious Conviction: Treating a person unfairly because of their religious belief or lack of belief.

Sex: Treating a person less favourably because of their sex, whether they are male or female.

Sexual Orientation: Treating someone less favourably because of their actual or assumed heterosexuality, homosexuality, lesbianism or bisexuality, or that of a relative or associate.

For specific information relating to sexual harassment, refer to Appendix B2 and sections 3.3.1 and 3.4.1 of these procedures.

Spent Conviction: The Equal Opportunity Commission also investigates complaints of discrimination under the Spent Convictions Act 1988. The Australian Human Rights Commission Act 1986 also includes criminal conviction discrimination.

UNLAWFUL HARASSMENT

Racial Harassment: Racial harassment (also referred to as racist bullying) may take many forms including threats, abuse, insults and taunts based on a person's race or a characteristic belonging to, or generally believed to belong to a particular race. It is also unlawful to harass a person because a relative or associate of that person is of a different racial identity. Racial harassment can involve a single incident.

For specific information relating to racism and racial harassment, refer to Appendix B1.

Sexual Harassment: includes an unwelcome sexual advance, unwelcome request for sexual favours or other unwelcome conduct of a sexual nature. Sexual harassment does not need to be repeated or continuous. It can involve a single incident.

For specific information relating to sexual harassment, refer to Appendix B2 and sections 3.3.1 and 3.4.1 of these procedures.

Disability Harassment: can involve intimidation, insults, humiliation or a hostile environment.

Resources: *The WA Equal Opportunity Commission has a range of fact sheets, booklets and posters.*

APPENDIX B. IDENTIFYING UNLAWFUL BEHAVIOURS

B.1. RACIAL DISCRIMINATION AND HARASSMENT

What is Racial Discrimination?

It is unlawful under the Equal Opportunity Act 1984 to treat a person unfairly because of their race (or religion) or to discriminate against or harass a person because a relative or associate of that person is of a different racial identity.

Racial discrimination can be:

- direct (overt) – when a person is treated less favourably than another person, in the same or similar circumstances, based on their race, colour, ethnic or national origin or nationality. Examples of direct racial discrimination include:
 - being singled out for criticism;
 - excluded from applying for a particular job;
 - denying or limiting access to promotion, transfer, training or any other employment benefits;
 - dismissing the employee or subjecting them to any other detriment;
 - refusing admission as a student;
 - denying or limiting access to any benefits provided by the school; or
 - expelling a student or subjecting them to any other detriment.
- indirect (covert) – when an apparently neutral rule has a negative effect on a substantially higher proportion of people of a particular race, compared to people of another race, and the rule is unreasonable in the circumstances.

Examples of indirect racial discrimination include:

- job applicants are required to complete an English literacy test when literacy skills were not relevant to the position; and
- selection criteria for training or employment that unfairly disadvantages people of a certain race.

What is Racial Harassment?

Unlawful racial harassment can involve threats, abuses, insults or taunts about a person's race, colour, descent, ethnic or national origin or nationality, or the race of a relative or associate.

Examples of racial harassment (also referred to as racist bullying) include, but are not limited to:

- language or behaviour that is abusive, insulting, threatening or taunting;
- verbal or written racial slurs, jokes, comments, name calling or terms;
- remarks to a person that contain racial, derogatory or demeaning implications;
- verbal, written or physical expressions of hatred due to race;
- display or distribution of racially oppressive or demeaning objects, pictures, literature, magazines, cartoons, graffiti, calendars, posters or images;
- harassment involving objects or items historically or stereotypically associated with race; and
- racist telephone calls, emails or text messages or postings on social networking sites.

What is Racial Hatred or Vilification?

Racial hatred or vilification includes:

- offensive racist comments or drawings in a newspaper, leaflet, website or other publication;
- making racist comments on e-forums, blogs, social networking sites;
- writing racist graffiti in a public place;
- making racist speeches at a public rally or assemblies;
- placing racist posters or stickers in a public place;
- making racist comments at sporting events to players, spectators, coaches or officials; and
- making a racially abusive comment, joke, song or gesture in a public place, including shops, workplaces, parks, public transport, and schools.

[Source: [Australian Human Rights Commission](#)]

Criminal Offences

Racial discrimination and racial hatred in public is unlawful under the Commonwealth's *Racial Discrimination Act 1975*. The Western Australian [Criminal Code Act Compilation 1913 \(WA\)](#) Chapter XI, *Racial Harassment and Incitement to Racial Hatred*, applies to any conduct in public likely to promote animosity towards or harassment of a person or group based on race.

B.2. SEXUAL HARASSMENT

The procedures in section 3.3.1 and 3.4.1 refers to sexual harassment of staff and students.

What is sexual harassment?

Sexual harassment can occur between people of any gender and any sexual orientation. A person can be harassed by someone who has no sexual interest in them.

Sexual harassment is any unwanted, unwelcome or uninvited behaviour of a sexual nature. It can be an unwelcome sexual advance, unwelcome request for sexual favours or other unwelcome conduct of a sexual nature. Sexual harassment does not need to be repeated or continuous, it can involve a single incident.

Amendments to the [Sex Discrimination Act 1984](#) (in August 2013) now provide protections against discrimination and harassment based on a person's sexual orientation, gender identity, intersex status, and relationship status (includes same-sex couples).

For further information refer to:

- Appendix C Line Managers/Principals: Legislation and Policy Information
- the Department's [Transgender and Intersex Students webpage](#) and [Sexual Harassment Brochure for Students](#);
- Australian Human Rights Commission's [Information sheet on new protections in the Sex Discrimination Act](#); and
- [Equal Opportunity Commission's resources](#):
 - [Guidelines for supporting sexuality and gender diversity in schools](#)
 - [Sexual Harassment fact sheet](#);
 - [Sexual Orientation fact sheet](#); and
 - [Sexuality and gender based bullying in schools fact sheets](#).

Examples of sexual harassment include, but are not limited to:

- unwelcome physical touching, hugging or kissing;
- staring or leering;
- suggestive comments or jokes;
- insults or taunts of a sexual nature;
- repeated unwanted requests to go out on dates;
- intrusive questions about a person's private life or body;
- sexually explicit pictures, emails or text messages;
- accessing sexually explicit internet sites;
- displays of posters, calendars, graffiti or computer graphics of a sexual nature;
- unwelcome verbal or written comments;
- subtle or explicit demands for, or offers of, sexual favours;
- offensive gestures or actions of a sexual nature;
- comments or actions about a person's actual or assumed sexual orientation, (heterosexuality, homosexuality, lesbianism or bisexuality), gender identity, intersex status, relationship status (includes same-sex couples) or that of a relative/friend/associate;
- comments or actions about a person's gender history;
- behaviour which would also be an offence under criminal law, such as assault, sexual assault, indecent exposure, stalking or obscene communications; and/or
- cyber-harassment (via phone, email or social network sites). Harassment of employees/students that occurs out of work hours and on equipment privately owned by the employee is considered work related and is subject to this policy and procedures and the legislation.

What is not sexual harassment?

Sexual harassment is not attraction, friendship, flirtation or sexual interaction between consenting adults that is welcome, invited, mutual, consensual or reciprocated.

Criminal Offences

Some acts of sexual harassment may also constitute a criminal offence, such as assault, sexual assault, sexual coercion, indecent exposure, threats, stalking and obscene communications. These incidents should be reported to the police and the line manager/principal.

Behaviours that equate to sexual harassment between adults may also constitute a criminal offence when committed by an employee (or anyone who has the care, supervision or authority over a student) against a student because of the student's age, the duty of care owed to students and the unequal power that exists between a student and a person in authority. As a matter of law, students aged under 18 years cannot consent to sexual behaviour with a person in authority. For further information, refer to the [Child Protection policy](#).

B.3. VICTIMISATION, FALSE AND VEXATIOUS COMPLAINTS

People involved in complaints are usually protected by qualified privilege as long as the complaint is not malicious, the facts presented are true, the complaint is made in accordance with workplace procedures and is only divulged to persons who are authorised to deal with the complaint.

Providing False or Misleading Information

It is unlawful to provide false or misleading information under section 159 of the EO Act.

Confidentiality

Strict confidentiality of sexual harassment complaints is required under section 165 of the EO Act.

In all other cases, employees are required to maintain confidentiality by only discussing their complaint with people who have official responsibility for handling the issue.

Victimisation

Complainants and witnesses are protected from victimisation under section 67 of the EO Act. Threatening, harassing or punishing a person because they have, or will, make a complaint is unlawful. This protection also applies to anyone giving evidence about a complaint, or asserting their rights or someone else's rights under the EO Act.

Victimisation may include:

- threats;
- unfavourable treatment such as adverse changes in the working environment;
- denial of training or promotion;
- making negative or belittling comments;
- restricting access to information necessary to perform work; and/or
- exclusion by peers.

Contributing to Unlawful Behaviour

A person who causes, instructs, induces or permits another person to do something that is unlawful under the Act shall be taken to have done the act (section 160 of the EO Act).

Vexatious Complaints

A vexatious complaint is instituted without sufficient grounds (trivial or insignificant) and serving only to cause annoyance. Repeatedly lodging false or vexatious complaints is a type of bullying and is a breach of the *Workplace Bullying Policy and Procedures*.

APPENDIX C. LINE MANAGERS/PRINCIPALS: LEGISLATION AND POLICY INFORMATION

Legislation

Students and persons applying for entry to a school, existing employees and persons applying for employment, have rights under anti-discrimination legislation.

In addition to the grounds of unlawful discrimination and harassment under the Equal Opportunity Act 1984 (WA), the following sections apply:

- Section 161: The employer will be held vicariously liable (legally responsible) for acts of discrimination and harassment committed by employees in connection with their employment. This does not apply if the employer took all reasonable steps to prevent that unlawful act from taking place.
- Section 160: A person who causes, instructs, induces or permits another person to do something that is unlawful under the Act shall be taken to have done the act.
- Section 67: Complainants and witnesses are protected from victimisation. Threatening, harassing or punishing a person because they have, or will, make a complaint is unlawful.
- Section 159: It is unlawful to provide false or misleading information.
- Section 165: Confidentiality of sexual harassment complaints is required.

The Equal Opportunity Commission (WA) administers complaints under the EO Act and spent conviction discrimination.

The Australian Government (Commonwealth) also has a range of discrimination and human rights legislation (listed in section 5). Refer to Appendix A for these additional grounds. The Australian Human Rights Commission administers complaints under this legislation.

Some acts of discrimination and harassment may also constitute a criminal offence (refer to Appendix B).

Reasonable adjustments and meeting special needs

Equal opportunity and disability discrimination legislation recognises that to treat people equally, you may have to treat them differently. Under the legislation employers and educational institutions have an obligation to provide:

- reasonable adjustments such as modifying requirements, premises or equipment (for example, in the recruitment process and/or work/school environment) to provide equal opportunity; and
- access to facilities, services or opportunities to meet special needs.

It may not be reasonable or practicable to meet every special need or request. This could be due to the business needs of the organisation, or because the provision of services or facilities would impose unjustifiable hardship on the employer.

Guidance

The Equal Opportunity Act 1984 requires:

- equal opportunity is provided for the grounds of sex, marital status, pregnancy, breastfeeding; sexual orientation, race, impairment, and age; and
- special needs to be met in relation to employment, education, training or welfare, for the grounds of sex, marital status, pregnancy, breastfeeding, sexual orientation, race, age, impairment and family responsibilities or status.

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.

Further information is available:

- *Transgender and Intersex Students webpage;*
- *special needs in section 3.2.1 of these Procedures;*
- *sexual harassment in section 3.3.1 and Appendix B.2; and*
- *Transgender, intersex status and sexual orientation: Students in Appendix C below.*

Important compliance information and resources about special needs and reasonable adjustments is available in:

- *EODH Policy Fact sheet 1: Accommodating Impairment/Disability in the Workplace;*
- *Appendix D Family Responsibility - Children in the Workplace Guidelines; and*
- *Appendix E Breast Feeding.*

For queries relating to special needs, policy, legislation and support resources, contact Workforce Policy and Coordination (contact details in section 6).

- **Parenting Students**

Line managers/principals and teaching staff need to be aware that some students may be parent/caregivers and therefore the ground of family responsibility applies. The Guidelines for Supporting Pregnant and Parenting Young People to Continue their Education supports schools to meet the needs of pregnant and/or parenting young people and remain engaged in secondary education.

- **Transgender, intersex status and sexual orientation: Students**

Discrimination (treating a person less favourably; a rule, policy or practice has a negative effect and is unreasonable) in education and employment based on a person's sexual orientation, gender history or sex, and sexual harassment (any unwelcome conduct of a sexual nature) is unlawful under the Equal Opportunity Act 1984.

In 2013 the Commonwealth's Sex Discrimination Act 1984 introduced sexual orientation, gender identity, intersex status, and relationship status (includes same-sex couples) as grounds of discrimination and as factors relating to sexual harassment.

Both Acts allow for measures to enable equal opportunity and for special needs to be met for these grounds.

Resources to address bullying, discrimination and harassment of students based on perceived or actual gender, sexuality and sexual orientation includes:

- the Department's Transgender and Intersex Students webpage and Sexual Harassment Brochure for Students;
- Information sheet on new protections in the Sex Discrimination Act;
- Equal Opportunity Commission's resources:
 - Guidelines for supporting sexuality and gender diversity in schools
 - Sexual Harassment fact sheet;
 - Sexual Orientation fact sheet; and
 - Sexuality and gender based bullying in schools fact sheets.

Advice for principals regarding gender identity, transgender and intersex students is available from:

- the Lead School Psychologist in the education regional office; and
- Complex Learning and Wellbeing, Statewide Services Centre T: 9402 6133.

Targeted recruitment using 50(d) and 51 of the EO Act

Targeted recruitment of person's from a particular race is enabled by use of section 50(d) or 51 of the EO Act. This is used by the Department for employing, for example, Aboriginal and Islander Education Officers.

For further information refer to EODH Policy Fact Sheet 2 (see below) and the Public Sector Commission flyer: Sections 50(d) and 51 of the Equal Opportunity Act 1984.

Visitors

The authority to manage visitors (including parents/caregivers, contractors and community members) on Department worksites is governed by the Department's Visitor's and Intruders on School Premises policy.

Workplace Bullying

Repeated unreasonable or inappropriate behaviour such as discrimination or harassment, may be a breach of the Workplace Bullying Policy and Procedures, and potentially the Occupational Safety and Health Act 1984. Complaints to WorkSafe can only be made when certain conditions are met (refer to EODH Policy Fact sheet 8: Complainants Options and Process, page 3).

Support Resources

The Equal Opportunity, Discrimination and Harassment Policy fact sheets provide a range of information supporting implementation and compliance:

- Fact sheet 1: Accommodating Impairment/Disability in the Workplace;
- Fact sheet 2: Aboriginal and Torres Strait Islander Employment and 50(d) Positions;
- Fact sheet 3: Equal Employment Opportunity in Recruitment Processes and Employment Practices
- Fact sheet 4: Cultural Considerations
- Fact sheet 5 Cultural and Ceremonial Leave Entitlements:
- Fact sheet 6: Resources to Build Inclusive Schools and Workplaces (includes professional learning)
- Fact sheet 7: Workplace Equal Employment Opportunity Strategies
- Fact sheet 8: Complainant's Options and Process
- Fact sheet 9: Respondent's Options and Process
- Fact sheet 10: Children in the Workplace: Illness Exclusion Periods
- FAQs on sexual harassment and racism.

Contacts:

- The Manager Assistance Program is a confidential coaching and support telephone advisory service to assist managers effectively deal with workplace issues. This is part of the Employee Assistance Program T: 1300 307 912.
- Equal Opportunity Contact Officers (EOCO) – Appendix F
EOCOs provide information about resolving discrimination, harassment and workplace bullying issues.

- Contact the Department's Principal Consultant, Equity and Diversity on 9264 4892 if further information is required.

APPENDIX D. FAMILY RESPONSIBILITY - CHILDREN IN THE WORKPLACE GUIDELINES

Line managers should take reasonable steps to accommodate parents/caregivers (students or employees) who may need to bring their child into the workplace in unplanned, exceptional circumstances.

The EO Act allows for persons with a family responsibility (section 35K) to access facilities, services or opportunities to meet their special needs in relation to employment, education, training or welfare.

Approval by line managers/principals

Line managers/principals may accommodate staff and student requests to bring their child/children into the workplace/school in exceptional circumstances, taking into account the following factors:

- potential disruption to the work environment, other employees and students;
- duty of care responsibilities;
- the nature of the unplanned exceptional circumstance;
- age of the child;
- length of time involved;
- the risk the working environment poses to the child;
- any medical conditions and special needs of the child;
- safety and health issues; and
- the direct and constant supervision required by the parent/caregiver.

If it is not possible to accommodate the parent's/caregiver's request, the factors that led to the decision should be explained to the parent/caregiver.

Duty of care

Employees only owe a general duty of care to children brought into the workplace under the care of the parent/caregiver, not the special duty of care owed by teachers to students.

Responsibilities of parents/caregivers

Parents/caregivers should:

- consider the risk the work environment poses to the child before seeking approval;
- request approval from their line manager/principal prior to bringing children into the workplace or school;
- if approval is granted, be exclusively responsible for the direct care and supervision of their child. Failure to do so will result in approval being withdrawn immediately; and
- not bring a child into the workplace who is excluded from school, pre school or a child care centre for contact with, and cases of, infectious disease.

Refer to:

- Fact sheet 10: Illness – Recommended Exclusion Periods; and
- for further information, Communicable Disease Guidelines WA Department of Health.

Any injuries to the child caused by the child's own actions or lack of supervision by the parent/caregiver is the sole responsibility of the parent/caregiver.

Due to occupational safety and health reasons, some work areas are not suitable for children, even though they would be under the direct supervision of the parent/caregiver. These areas include laboratories, design and technology workshops and kitchens.

APPENDIX E. BREAST FEEDING

Line managers/principals take reasonable steps to meet the special needs (provide access to services, facilities or opportunities) of persons who are breast feeding or bottle feeding as required under section 31 of the EO Act.

The following information is from the Department of Commerce:

“Women returning from parental leave may need to either breast feed or express milk at work. Employers have an obligation to take all reasonable measures to accommodate these employees, for example, by providing adequate time and a suitable space during the working day.

“Lactation breaks allow time during work hours for a mother to either feed her baby or express breast milk. These are generally provided in addition to standard meal and tea breaks. The recognised standard for lactation breaks is two 30 minute breaks in each eight hour working day.

“There is no legal requirement for these breaks to be paid, and employees can be required to make up the time at the end of the day. Ideally, an agreement about the provision of lactation breaks should be reached prior to an employee returning from parental leave. Employers should discuss specific requirements with female employees who wish to continue breast feeding when returning to work.

“Employers should ensure that breast feeding employees are not subject to any criticism, harassment or discrimination.”

Source: Government of Western Australia, Department of Commerce, Breastfeeding at Work – Work life balance Fact Sheet 9, February 2009.

The line manager and parent/caregiver should consider the practical day-to-day needs and how work/schooling requirements can be met. This may include:

- identification of any potential issues to ensure work and study outcomes are achieved;
- feeding schedules and provision of flexibility to take lactation breaks; and
- provision of suitable facilities with a lockable door, access to a refrigerator and storage area for equipment.

Resources

- Contact the Department’s Principal Consultant, Equity and Diversity on 9264 4892 if further information is required.
- [Breastfeeding Discrimination](#), EOC brochure.

APPENDIX F. GUIDELINES: ROLE OF EQUAL OPPORTUNITY CONTACT OFFICERS (EOCO)

The EOCOs have a role in equal employment opportunity matters and complaints.

Their role in the informal complaint process is to:

- refer complainants to resources and further information to enable complainants to determine whether there are grounds for a complaint under the *Equal Opportunity Act 1984*;
- advise of the options for resolution;
- maintain records appropriately;
- inform the line manager/principal of requests for mediation from a complainant or respondent;
- identify support available, for example, the Employee Assistance Program; and
- follow up with the complainant after a reasonable length of time, if appropriate. This should be pre-arranged with the line manager/principal; and
- maintain confidentiality (only discuss with people who are involved in the resolution of the issue).

EOCOs do not:

- manage or investigate complaints;
- mediate;
- advise on a course of action; or
- solve the complaint.

Access to further information about EOCOs and the [contact details](#) is available from the intranet home page, Quick Links (left of screen), Equal Opportunity Contact Officers. W: [EOCO](#).