



Fair Treatment Procedure

Information Sheet: Fair Treatment – Discrimination

Purpose

The purpose of this Information Sheet is to increase awareness and understanding of the behaviours that constitute unlawful unfair treatment and to provide clarification on the practical application of the [University's Fair Treatment Procedure](#).

Q1 How do I identify unlawful discrimination?

Discrimination includes any practice which makes a distinction between individuals or groups so as to advantage some and disadvantage others and may be direct or indirect. Not all discrimination is unlawful.

Under Commonwealth and state legislation, unlawful discrimination refers to actions or decisions that are made on a ground that is unlawful to act on, or base decisions on, i.e.

- Age
- Disability
- Race
- Religion
- Sex or gender
- Marital or relationship status
- Family responsibilities
- Pregnancy
- Breastfeeding

This information sheet includes detailed information and examples for each of the grounds listed above.

Discrimination on the ground of age

Age discrimination means treating a person less favourably because of the person's age, or a characteristic generally associated with people of that age. It often arises because of stereotypes and incorrect assumptions about people's skills, needs, abilities and personal qualities based on how old they are.

Examples of age discrimination include:

- preferring an older person to a younger person for a job, without looking at their actual experience and qualifications, on the assumption that younger people will be insufficiently experienced or qualified to carry out employment duties
- preferring a younger person to an older person, on the assumption that older people are "set in their ways" and unlikely to adapt to new employment situations
- unreasonable requirements for length of work experience which indirectly discriminate against younger people
- requiring staff to retire at a certain age

Refer: [Age Discrimination Act 2004](#) (Cth); [Equal Opportunity Act 1984](#) (SA)

Behaviour and Conduct Handbook	Fair Treatment Procedure	Effective Date:	16 October 2014	Version 1.0
Authorised by	Manager, HR Business Partnerships and Advice	Review Date:	16 October 2017	Page 1 of 5
Warning	This process is uncontrolled when printed. The current version of this document is available on the HR Website.			

Information Sheet: Fair Treatment – Discrimination

Q1 How do I identify unlawful discrimination? (continued)

Discrimination on the ground of disability

Disability discrimination means treating a person with a physical or intellectual impairment less favourably than another because of that impairment. This applies not only in the areas of education, employment, accommodation and the provision of goods and services but also in respect to access to premises used by the public, sports, activities of clubs and associations, and the provision of facilities.

Refer: [Disability Discrimination Act 1992](#) (Cth); [Equal Opportunity Act 1984](#) (SA)

Discrimination on the ground of race

Race discrimination means treating a person less favourably on the basis of race, i.e. a person's colour, country of birth, ancestry, ethnic origin or nationality or because of the racial group with which the individual lives or associates, including relatives, friends or work colleagues.

Examples of possible race discrimination include:

- not hiring a person for a job because of their nationality or ethnic origin;=
- insisting on a high level of English language skills when the job does not require it
- having an unreasonable uniform policy which cannot be observed by certain ethnic groups
- refusing to accept an overseas qualification without first making reasonable attempts to check whether it is accredited here.

Refer: [Racial Vilification Act 1996](#) (SA); [Civil Liability Act 1936](#) (SA), s73

Discrimination on the ground of a person's religious belief or religious appearance or dress

Means treating a person less favourably than another because they wear clothing or adornments or have a hairstyle or facial hair that are required by or symbolic of their religion.

Refer: [Equal Opportunity Act 1984](#) (SA)

Discrimination on the ground of a person's political opinion; union or non-union involvement; medical record or prior criminal record (when irrelevant to their employment)

It is unlawful to treat a person less favourably than another on the grounds of their political opinion; whether they are involved in union or non-union activities; their medical record; or their prior criminal record (when this is irrelevant to their employment.)

Refer: [Australian Human Rights Commission Act 1986](#) (Cth); [Fair Work Act 2009](#) (Cth)

Discrimination on the ground of sex or gender

Sex discrimination means treating a person less favourably than a person of the opposite sex because of their sex or intersex status, sexual orientation or gender identity. Sex discrimination may be 'direct' or 'indirect'.

Examples of sex discrimination include:

- paying a male employee more than a female employee for doing exactly the same work
- policy statements that managers must work full-time as this might disadvantage women because they are more likely to work part-time because of caring responsibilities
- not hiring a homosexual person because they " would not fit in" or would make others feel "uncomfortable"
- refusing to teach a homosexual student
- making fun of a transsexual student in a tutorial.

Refer: [Sex Discrimination Act 1984](#) (Cth); [Equal Opportunity Act 1984](#) (SA)

Behaviour and Conduct Handbook	Fair Treatment Procedure	Effective Date:	4 March 2015	Version 1.1
Authorised by	Manager, HR Business Partnerships and Advice	Review Date:	16 October 2017	Page 2 of 5
Warning	This process is uncontrolled when printed. The current version of this document is available on the HR Website.			

Information Sheet: Fair Treatment – Discrimination

Q1 How do I identify unlawful discrimination? (continued)

Discrimination on the ground of marital or relationship status

Marital or relationship status discrimination means treating a person less favourably because of their status as single, married, divorced, separated, widowed or living in a defacto, or same-sex defacto, relationship.

Refer: [Sex Discrimination Act 1984 \(Cth\)](#); [Equal Opportunity Act 1984 \(SA\)](#)

Discrimination on the ground of family responsibilities

Family responsibilities discrimination means treating a person less favourably than another person because they have family responsibilities. Under the Sex Discrimination Act, family responsibilities include responsibilities to care for or support a dependent child or a member of your immediate family.

For example, it may be discrimination for an employer to refuse to employ a person, demote a person or reduce a person's hours of work because they need to care for a member of their family.

The University encourages a flexible approach to scheduling and work practices to enable students and staff to accommodate their family responsibilities.

Examples of flexibility include:

- permitting a working or studying parent flexible lunch/tea break arrangements in order to feed a young child in an on-campus facility
- students involved in group work taking account of the parenting requirements of one or more of their group in setting meeting schedules.
- not scheduling staff meetings outside normal working hours.

Refer: [Sex Discrimination Act 1984 \(Cth\)](#)

Discrimination on the ground of pregnancy or potential pregnancy

Pregnancy discrimination means treating a woman less favourably because she is pregnant, is or may be capable of bearing children, has expressed a desire to become pregnant, or is likely to become pregnant.

Examples of possible discrimination based on a woman's pregnancy include:

- not hiring an obviously pregnant woman when she is otherwise the most meritorious applicant, because of the inevitability of taking maternity leave
- requiring all staff to wear a uniform but not making provision for maternity wear for a pregnant woman.

Refer: [Sex Discrimination Act 1984 \(Cth\)](#); [Equal Opportunity Act 1984 \(SA\)](#)

Discrimination on the ground of breastfeeding

Direct breastfeeding discrimination means treating a woman less favourably because she is breastfeeding or needs to breastfeed over a period of time.

For example, it would be 'direct discrimination' if a cafe refused to serve a woman because she is breastfeeding. 'Indirect breastfeeding discrimination' occurs when there is a requirement or practice that is the same for everyone but disadvantages women who are breastfeeding. For example, it may be 'indirect discrimination' if an employer does not allow staff to take short breaks at particular times during the day. This may disadvantage women who are breastfeeding as they may need to take breaks to express milk.

Refer: [Sex Discrimination Act 1984 \(Cth\)](#)

Behaviour and Conduct Handbook	Fair Treatment Procedure	Effective Date:	4 March 2015	Version 1.1
Authorised by	Manager, HR Business Partnerships and Advice	Review Date:	16 October 2017	Page 3 of 5
Warning	This process is uncontrolled when printed. The current version of this document is available on the HR Website.			

Information Sheet: Fair Treatment – Discrimination

Q2 Are there exemptions which allow discrimination in specific activities and/or areas?

The [Equal Opportunity Act 1984 \(SA\)](#) contains a number of [exemptions](#) which allow discrimination in specific areas and activities. These include charities, private houses, clubs and insurance. If your situation is not covered by an existing exemption you may be able to apply to the [Equal Opportunity Tribunal](#) for a [temporary exemption](#).

For example the University of Adelaide does not discriminate against a person:

- with a disability if any adjustments required to accommodate the person (as either a staff member or a student) would cause unjustifiable hardship (financial or otherwise) to the University.
- because of their religious dress or appearance if the dress would create a safety hazard or conflicts with a reasonable work dress code or standard, or, the person is required to show their face for reasonable identification purposes.

The [Sex Discrimination Act 1984 \(Cth\)](#) includes special measures provisions, i.e. a measure (act, practice, program, plan, policy arrangement, mechanism or activity) taken for the purpose of achieving substantive equality between, or the adequate advancement of, certain groups or individuals. Special measures do not promote discrimination. Rather, they are a crucial means of preventing and eliminating it. Refer to the [Fair Treatment Information Sheet – Special Measures](#) for further information.

The University will act in accordance with the [Students with Prescribed Communicable Infections Policy](#) when making decisions concerning entry to academic programs in the Faculty of Health Sciences with clinical components that may involve exposure-prone procedures.

The University is not required to tolerate behaviour which is of a criminal nature, such as offensive behaviour or assault, even if that behaviour is a consequence of a disability, such as a mental illness or brain incapacity.

Q3 How do I identify racial vilification and racist behaviour?**Racial vilification**

Racial vilification is behaviour in a *public place* that incites hatred, serious contempt or ridicule of a person or group of people, because of their race. A person's race includes their colour, country of birth, ancestry, ethnic origin or nationality. A threat may include an implied or conditional threat.

People who believe they have been vilified can make a report to police or sue for damages under the [Civil Liability Act 1936 \(SA\)](#), s73.

Examples of racial vilification include:

- An aboriginal man is picked on by his workmates and they write anti-Aboriginal graffiti on his car. This man has been vilified because of his race.
- An Iranian woman and her child travelling on a bus are told to 'go back to where you came from' and threatened with violence by youths. The woman and her child have been vilified because of their nationality.

Racist behaviour

Racist behaviour exists in many different forms. Generally, racism is a set of beliefs, often complex, that asserts the natural superiority of one group over another, and which is often used to justify differential treatment and social positions. This may occur at the individual level, but often occurs at a broader systemic or institutional level.

Examples of possible racist behaviour include:

- oral racist comments, whether about an individual or a group, made in the course of lectures and classes, meetings or interviews, or by telephone or similar communication systems
- derogatory name calling, abuse, insults, taunts or racist jokes, including reference to a person's physical features, or accent, dialect or pattern of speech
- written racist comments including comments in any teaching materials, student publications, internet sites, social media, emails or other electronic or written communication systems
- racist graffiti
- distribution of racist material in the University, including posters and stickers
- making threats publicly against a person or group because of colour or ethnicity
- provocative behaviour, such as wearing racist badges or insignia, including Nazi insignia
- using University facilities to recruit students or staff to racist organisations or groups
- discrimination on the basis of racial or cultural stereotypes
- exclusion of the knowledge or experience of indigenous people from discipline areas to which these are relevant
- giving preferential treatment to one group or individual over another on the basis of race.

Continued

Behaviour and Conduct Handbook	Fair Treatment Procedure	Effective Date:	4 March 2015	Version 1.1
Authorised by	Manager, HR Business Partnerships and Advice	Review Date:	16 October 2017	Page 4 of 5
Warning	This process is uncontrolled when printed. The current version of this document is available on the HR Website.			

Information Sheet: Fair Treatment – Discrimination

Q3 How do I identify racial vilification and racist behaviour? (Continued)

Acknowledging the principle of freedom of expression, the following activities are not unlawful or against University policy:

- a reasonable act, done in good faith, for an artistic work or performance (e.g. a play in which racist attitudes are expressed by a character)
- a reasonable act, done in good faith, for academic, scientific or research purposes, or in the public interest, including discussion or debate regarding public policy issues such as immigration, multiculturalism or affirmative action for migrants
- publication of a fair report about someone else (for example, a fair media report of an act of racial incitement or racially offensive conduct).

Refer: [Racial Vilification Act 1996 \(SA\)](#); [Civil Liabilities Act 1936 \(SA\)](#), s.73

Q4 What is victimisation

Victimisation means treating someone unfairly because they have complained about unfair treatment, are proposing to complain or because they have supported someone else acting within their rights. It may include imposing unjust penalties or practices on a person as a result of a complaint. Victimisation in connection with a complaint of unlawful discrimination or harassment is itself unlawful. The University does not tolerate or condone victimisation.

Examples of victimisation include:

- calling someone a 'dobber' because they have made a complaint about another person's behaviour
- refusing to provide additional teaching support to a student because they have agreed to be a witness in a complaint of racial discrimination by another student.

Further Information

If you require further information, please contact:

- [Human Resources Service Centre](#) (Staff Members and Titleholders)
- [Student Services \(Students\)](#)
- [Office for Community Engagement](#) (Volunteers)

Behaviour and Conduct Handbook	Fair Treatment Procedure	Effective Date:	4 March 2015	Version 1.1
Authorised by	Manager, HR Business Partnerships and Advice	Review Date:	16 October 2017	Page 5 of 5
Warning	This process is uncontrolled when printed. The current version of this document is available on the HR Website.			