



THE UNIVERSITY
of ADELAIDE

Legal Compliance Education and Awareness

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Equal Opportunity Act 1984

(South Australia)

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seek LIGHT

What does the Equal Opportunity Act do?

- Promotes equality of opportunity by prohibiting direct or indirect discrimination against a person on the grounds of;
 - *gender & sexuality*
 - *marital status*
 - *pregnancy & breastfeeding*
 - *race, colour, descent or ethnic origin*
 - *disability*
 - *age*
 - *religious appearance or dress*
 - *caring responsibilities of a family member*
 - *association with a child*
- Establishes the [Equal Opportunity Commission](#) to review & reconcile complaints

How does the Act apply to the University?

- The University adopts the principles of both the South Australian *Equal Opportunity Act 1984* & the Commonwealth *Equal Opportunity Act 1995*
 - *The Acts are effectively the same*
- The Act prohibits discrimination by the University & its employees
- Any staff or student of the University may complain to the Equal Opportunity Tribunal or have a complaint brought about them

Discrimination & the University

Under the Act it is unlawful for the University to discriminate:

- In education
- In the provision of goods, services & accommodation
- On the grounds of impairment
 - *past or presumed*
 - *physical or intellectual*
- During all stages of employment
 - *Job advertisements*
 - *Applications*
 - *Offers of employment*
 - *Promotions*
 - *Training*
 - *Transfers*
 - *Dismissal*

Discrimination & the University (cont.)

The Act prohibits ***direct discrimination***:

- ***Obvious*** discrimination that;
 - causes a person to feel humiliated, embarrassed, ridiculed, denigrated or segregated
 - denies a person access to or refused serviceor
 - causes a person to lose an opportunity or income

The Act prohibits ***indirect discrimination***:

- ***Less obvious*** discrimination that appears to be equal treatment but is unfair to certain people or groups of people who are;
 - unable or less able to comply with the ruleor
 - are disadvantaged because of it

Discrimination & the University (cont.)

- Employers are not only responsible for their own behaviour but are jointly responsible for the behaviour of their staff;
 - *in all work situations*
 - *during functions, seminars, conferences, office parties, business or field trips*
- The University is liable for acts of discrimination & harassment by its employees & agents
 - *full time, part time, casual, contract & voluntary workers*
 - **UNLESS** it has taken all reasonable steps through its policies, procedures & practices to prevent harassment occurring

Unlawful Discrimination: Bullying

- The Act prohibits bullying behaviour which has the effect of intimidating, humiliating, or psychologically terrorising individual workers or groups of workers, for example;
 - *sarcasm*
 - *threats or verbal abuse*
 - *unwarranted criticism*
 - *innuendo*
 - *'ganging up' or deliberate exclusion*
 - *undermining or deliberately impeding a person's work or spreading malicious gossip about a person that is not true*

* Staff can now be prosecuted for bullying offences under South Australian OHS&W legislation, *Fair Work Act 2009 (Cth)* **as well as** the *Equal Opportunity Act 1984*

Unlawful Discrimination: Sexual Harassment

- The Act prohibits sexual harassment by customers, colleagues, patients, diners & students, for example;
 - *graphic or sexually offensive emails*
 - *smutty jokes, comments or name-calling*
 - *leering or staring*
 - *unwelcome conduct of a sexual nature*
 - *sexual pictures, objects, text messages or literature*
 - *direct or implied propositions, or requests for dates*
 - *questions about sexual activity*
- If a staff member notifies their supervisor or Manager of harassment by a regular visitor to the workplace, the University is legally obliged to act on the complaint

Unlawful Discrimination: Sexuality

- The Act prohibits discrimination on the grounds of sexuality, for example;
 - *mimicking or making fun of a person's behaviour because you think they are **bisexual***
 - *refusing to appoint or promote someone who is **transsexual** to a position involving contact with clients because you think the clients won't approve*
 - *refusing to allow a **heterosexual** to attend a Gay Pride event*
 - *refusing to provide services to students you suspect of being **homosexual** because you think they are likely to have AIDS*

Unlawful Discrimination: Pregnancy & Breastfeeding

- The Act prohibits discrimination against women because of pregnancy, future pregnancy or breastfeeding commitments, for example;
 - *Precluding a woman from employment because she specifies that she intends to have a family one day (**Direct Discrimination**)*
 - *Reducing a woman's work hours, against her wishes, after she advises that she is pregnant (**Direct Discrimination**)*
 - *Imposing a condition that requires the cashiers in UNI-books to stand at all times except while on breaks, as this is more difficult for pregnant women to comply with than for others, especially in the later stages of pregnancy (**Indirect Discrimination**)*

Unlawful Discrimination: Age

- The Act prohibits discrimination on the grounds of age, including when there is a rule or policy that has the effect of being unfair on people of a particular age, for example;
 - *Dismissing a job application of an older person because it is assumed that they would not have the ability to learn new computer programs (**Direct Discrimination**)*
 - *Refusing to promote a qualified staff member because you think that they might retire soon (**Direct Discrimination**)*
 - *A job advertisement asking for 10 years relevant experience, despite it not being necessary to do the job properly, meaning that younger workers could be well qualified but are ineligible for the job (**Indirect Discrimination**)*

Unlawful Discrimination: Disability

- The Act prohibits discrimination on the grounds of disability ***in most situations***
- Intellectual or Physical, for example;
 - *refusing to allow a student with epilepsy to participate in a sporting event because you are worried that they may have an epileptic seizure*
 - *making it a requirement of a University event that everyone must present a driver's license as identification, because it has a photo. This is discriminatory against some people with a disability who can't drive*
- Mental illness
- Learning disability
- Non-symptomatic infections, such as;
 - *HIV*
- Past or potential future disability, such as;
 - *Degenerative eye disorder*

Unlawful Discrimination: Exceptions

- The Act prohibits discrimination on the grounds of disability in most situations, **BUT** employees do not have to tolerate violence or aggression caused by an illness
- A disabled person must also still be able to perform the inherent requirements of the position
- An employer may make 'reasonable adjustments' to help the person do their job, for example;
 - *Modifying the height of a desk to accommodate a wheel-chair*
 - *Offering flexible work hours to accommodate doctor or therapist appointments*
 - *Allowing for extra unpaid leave for medical treatment*
 - *Providing an employee with diabetes some private space for injecting insulin, such as a sick room or empty office*
 - *Improving the lighting at a workstation for an employee with low vision*

Unlawful Discrimination: Victimisation

- The Act prohibits all forms of victimisation
 - treating a person unfairly, to the point that the person feels offended, intimidated or humiliated for;
 - *complaining or helping others to complain*
 - *either within their organisation or to the Equal Opportunity Commission*
- The Act specifically prohibits victimisation on the grounds that someone is a whistleblower
 - 'Blowing the whistle' is revealing information (which is in the public interest) about a person who has;
 - *risked public health, safety or the environment*
 - *acted illegally*
 - *wasted public money*
 - *misused public resources*

Unfavourable treatment: Identity of a spouse or partner

- The Act prohibits unfavourable treatment on the grounds of the identity of a persons spouse or partner, for example;
 - *refusing to employ someone job because of who their spouse is or was*
 - **Except** where there is a;
 - threat to confidentiality
 - conflict of interest
 - a risk to health or safety

Unfavourable treatment: Personal Association

- The Act prohibits unfavourable treatment on the grounds of personal association & characteristics of a companion, for example;
 - *You can not be treated unfairly if your friend has a disability, your colleague was not born in Australia, or your father is a politician*
 - *If you & your friends are refused entry to an event because of the race, disability or sexuality of one of you, that is considered discrimination against all of you*

Unfavourable treatment: Caring Responsibilities

- The Act prohibits unfavourable treatment on the grounds of caring responsibilities for a close family member, including setting an unreasonable requirement that is harder for carers to meet, for example;
 - *Always scheduling early meeting times which a mother or father taking their children to school in the morning, is unable to attend*
 - *Having a policy of not letting any staff work part-time - where there are not strong business grounds for this decision - which could disadvantage people with children or family responsibilities*

Unfavourable treatment: Religious Dress

- The Act prohibits unfavourable treatment on the grounds of religious dress:
 - Staff are entitled to wear the dress & adornments of their religion to work
 - *a hijab*
 - *a crucifix*
- **Except** where the dress would present a safety hazard

Unfavourable treatment: Transgender

- The Act prohibits unfavourable treatment on the grounds of transgender:
 - The University cannot require such a person to present as a member of their former sex
 - *Such as requiring an male-to-female transsexual to wear a suit & tie to work*
- **However** employers can set reasonable dress standards for the workplace

General exemptions under the Act

- In certain circumstances, there are special rules permitting:
- Favorable discrimination in respect of pregnancy or childbirth, for example;
 - *maternity leave*
- Measures intended to achieve equality, for example;
 - *Schemes that benefit a particular race, age or persons with an impairment*
 - *Scholarships for Indigenous Australians*
 - *Positive discrimination in favour of women to redress past occupational bias*
 - *In providing management development plans*
- Gender requirements in relation to employment for which gender is a genuine occupational requirement, for example;
 - *Female advisors for sexual matters*

What can happen if I don't comply?

Individual Consequences:

- Individuals could be liable for a claim of discrimination or harassment if they knew about it (or should have known about it) & did nothing to stop it or prevent it from happening again
- Compensatory payments of up to \$5,000 for injury to feelings
- Ancillary orders, such as;
 - *compulsory Equal Opportunity training*
 - *public apology*
- A breach of the Act may be considered misconduct under the University's Enterprise Agreement

What can happen if I don't comply? (cont.)

University Consequences:

- Compensatory payments or payment of damages for economic loss or loss of wages
- Ancillary orders, such as;
 - *Adjustment of employment hours, pay or conditions*
 - *Allowing access to previously refused services, courses or accommodation*
 - *Changes to policies & procedures to prevent discrimination*
- Negative publicity
 - *Damage to the University's reputation*
 - *Attraction & retention of staff & students is compromised*

University obligations under the Act

- Do not engage in discrimination, harassment, bullying, vilification & victimisation
- Treat your co-workers fairly in all your dealings with them
- Behave in a manner consistent with University policies & procedures including;
 - [Fair Treatment Policy](#)
 - [Fair Treatment Guidelines for Staff](#)
 - [Code of Conduct](#)
- Listen & respond if asked to modify behaviour
- ***REMEMBER: You are representing the University and your behavior is a reflection of the University as an institution & all of its staff***

Obligations of Managers

- Promote a discrimination-free environment
 - *Provide staff with the opportunity to attend Equal Opportunity sessions*
 - *Inform all staff of how you expect them to behave*
 - *Value diversity & promote mutual respect among staff & students*
 - *Make it clear when behaviour is unacceptable*
- Ensure equitable staff recruitment, pay & conditions for all people
- Ensure a broad range of flexible work arrangements is offered to all staff
- Assist the [Equal Opportunity Commission](#) if it becomes involved & be open & transparent in your dealings with them

Obligations of Managers (cont.)

- Know how to handle inappropriate behaviours before they escalate
 - *Encourage staff to come forward with problems or complaints*
 - *Treat complaints seriously, quickly & confidentially*
 - *Resolve misunderstandings in a non-adversarial manner*
- Direct all serious complaints to [Gerald Buttfeld](#), Manager, Health Safety & Wellbeing
 - A complaint can to the EO Commission will **only** be considered if it is not resolved at University level first

Additional Resources

- [Gerald Buttfield](#), Manager, Health Safety & Wellbeing
 - 8313 4353
- [Rebecca Tremaine](#), Organisational Development Advisor
- [Fair Treatment Policy](#)
- [Fair Treatment Policy Guidelines](#)
- [Staff Complaints Policy & Guidelines](#)
- [Safework SA](#)
- [Equal Opportunity Commission of South Australia](#)
- [Equal Opportunity Act 1984 \(SA\)](#)



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Disclaimer

The content of this material is intended only to provide a summary & general overview of the *Equal Opportunity Act* as it applies to the University of Adelaide.

It is not intended to be comprehensive nor does it constitute legal advice.

Please contact *Gerald Buttfeld, Manager Health, Safety & Wellbeing* or *Legal & Risk* if you are unsure of your compliance obligations under the Act.