



%"56CI H'H< =G'; I =89

This is a guide for people who hire people. Today's job market is competitive, hiring employees is costly, and not hiring the right person is more costly.

This Guide aims to help ensure you get the right person for the job by following best practice, avoiding some of the common pitfalls and complying with Equal Opportunity law

Job seekers also have the right to have a fair go. They are entitled:

- to have access to information about what jobs are available
- to be able to apply for these jobs
- to undergo a fair selection process; and
- to know that common prejudices and assumptions are set aside in the process.

Do this, and you the employer, will get the widest field of candidates from whom to make the best choice.

This guide will help you to plan ahead, to prevent discrimination and harassment from occurring in your workplace and in your recruitment practices.

Good policy and practice can protect your business from a potential complaint of discrimination in the future.

This guide also provides information about what will happen if you do receive a complaint.

K \c`Wb`i gY`h]g`[i]XY3

- small and large businesses
- recruitment agencies
- labour hire firms
- companies that hire out contract workers
- non-government organisations
- HR professionals
- online recruitment companies; and
- community-based organisations

=b`gi a a Ufnž`h]g`; i]XY`]g`Zcf dYcd`Y`k \c`\]fY`dYcd`Y.

- who are involved in any aspect of the recruitment process
- who are committed to a fair and open recruitment process
- who want to make sure they comply with Western Australian Equal Opportunity laws; and
- who want to exercise best practice and do better than the minimum requirements.

The information in this guide will help you understand what you need to do and how to go about developing appropriate policies and systems to prevent discrimination and harassment from occurring in your business.

Best practice brings multiple benefits for employers and recruiting agents

Key benefits of best practice

- Complying with and exceeding the minimum requirements of Equal Opportunity law
- Adopting the process and attitude that aims for the best in merit and fairness in the complete process; and
- Individuals encouraging others to do likewise.

Key benefits of best practice

Best practice brings multiple benefits for employers and recruiting agents:

- Will attract the best applicants
In a tight labour market you want to be able to choose the best
- Will improve productivity and staff morale by using the skills of a diverse workforce
Attracting and retaining good staff will ensure the best level of productivity for your business. Staff commitment and support are essential.
A diverse workforce will also enable businesses to draw on a range of experiences and expertise to take their business to a more diverse range of clients.
- Develop a reputation as a fair employer
If you are known to be a good employer then you will attract better, more committed staff who stay longer.

Key benefits of best practice

- Reduce time in dealing with complaints
Good policies and good staff training will prevent complaints from having to be dealt with externally and avoid costly legal actions
Lost time, legal costs and business disruption can be expensive and damaging to business

' "5B `CJ 9F J =9K `C: `H< 9`@5K `"" =B `K 9GH9F B `5I GHF 5@=5

The Western Australian *Equal Opportunity Act 1984* obliges employers to ensure their employment practices do not discriminate against people because of commonly held assumptions relating to certain characteristics, and that employees are appointed solely on merit, by fair processes.

This includes every step of the recruitment process and everyone involved. It applies to all employers – government, non-government, private, big business and small.

Applicants and employees are included - full time, part time, permanent and casual; commission agents; contract workers; partnerships; professional or trade organisations; qualifying bodies and employment agencies.

; fci bXg`cZ`X]gW]a]bUh]cb

In Western Australia it is unlawful to discriminate because of a person's

.

Treating a person less favourably because of their actual or assumed age, or the age of a relative or associate.

Anna was asked at interview whether, at her age (she was 57) she would be retiring in the near future. This may show an intention to discriminate against her because of her age.

Treating someone less favourably because they have the responsibility for the care of another person, whether or not that person is a dependant, other than in the course of paid employment.

Karen applied for her children to attend a course. She was told as a single mother she would not be able to afford it and must provide evidence of a male partner.



They indicated they did not want to employ someone who might become pregnant. This is direct discrimination based on marital status and pregnancy. Joanne withdrew her application saying she did not want to work for such an employer. In a tight job market, she found another position immediately.

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.

An Aboriginal woman was not employed because the employer said his clients would not accept her.

Treating a person unfairly because of their religious belief, or lack of belief.

A public transport worker who was a Seventh Day Adventist was rostered to work on Saturdays, his Sabbath.

7UgY`ghi Xmi

In a complaint made to the WA Equal Opportunity Commission, a young man, whose wife was pregnant, was interviewed for a job located in a city away from his normal place of residence.

During the interview the man was told about the difficulties of relocating a wife and baby to a new city when the support of family and friends was elsewhere.

The man did not get the job, and was allegedly told that the successful applicant was a local person who could offer greater stability, and that his family responsibility obligations influenced the decision not to employ him. The complaint was conciliated and the man paid \$6,000. *(Complaint conciliated, details confidential)*

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

John was refused work in a child care centre because he was male.

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

Dave was rejected for a position, which advertised for a couple, when the employer found out his partner was a man. This could be direct discrimination on the ground of sexual orientation, unless the employer could show that being a heterosexual couple was a genuine occupational qualification.

Key Concepts: Liability

Liability for unlawful discrimination can arise in a number of ways. Any party involved in the process may be affected.

Complaints of unlawful discrimination can be made against anyone or any organisation involved in the recruitment process.

The employer is liable for the unlawful acts of employees, contractors and agents.

In certain circumstances employees or company officers may also be liable for such acts.

A person who causes, instructs, induces, aids or permits another person to do something that is unlawful under the Act may be seen as having also performed the act and may be liable.

Case Study: Hopper & Ors v Virgin Blue Airlines Pty Ltd (2005)

Virgin Blue Airlines requested their employment agency to test applicants for 'Virgin flair', an attribute which was found by the Queensland Anti-Discrimination Tribunal to indirectly discriminate on the ground of age.

Both the employment agency and the company were found to be liable.

Hopper & Ors v Virgin Blue Airlines Pty Ltd (2005)

Most employers would know that they are responsible for their own actions in relation to Equal Opportunity law.

They may not be aware that in most circumstances they are responsible under the *Equal Opportunity Act 1984* for the actions of their employees as well.

This means there is individual as well as corporate liability.

Key Concept: Sexual Harassment

The employer could be liable for sexual harassment committed between employees if:

- The employer or their representative knew it was occurring (or should have known)



It is not unlawful to perform an act that ensures pregnant women have equal opportunities under the Act, or ensure that pregnant women have access to facilities, services or opportunities to meet their special needs in relation to employment.

Employment when the job is one of two to be held by a

(P S O R L ` V W S H V L R Q W S H X U U I R S H D F

Ch Yf i b`Uk Zi `UVtg

It is unlawful to publish or display an advertisement that shows an intention to unlawfully discriminate. This includes television, newspaper, radio and internet advertisements as well as circulars, catalogues and price lists.

Victimisation is also against the law. 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, or intends making a complaint, under the Act.

Victimisation also applies to anyone giving evidence about a complaint.

Ch Yf `Uk g

Under the *Spent Convictions Act 1988* it is unlawful to discriminate against a person whose conviction has become spent under the Act in the following types of employment or work:

There are numerous exceptions, based on either the type of offence, or the nature of the work.

A number of Federal anti-discrimination laws also apply in Western Australia. These are:

- *Sex Discrimination Act 1984*
 - prohibits discrimination on the grounds of sex, marital status, pregnancy and or potential pregnancy and family responsibility. Sexual harassment in employment is also unlawful.
- *Disability Discrimination Act 1992*
 - prohibits discrimination on the ground of a past, present or future disability or assumed disability.
- *Age Discrimination Act 2004*
 - prohibits discrimination on the ground of age.
- *Racial Discrimination Act 1975*
 - prohibits discrimination on the ground of race and also outlaws racial vilification.
- *Human Rights and Equal Opportunity Commission Act (1986)*

There are many overlaps between Western Australian and Federal law however there are also differences.

In particular there are some personal characteristics which are covered by Commonwealth laws

- medical records
- irrelevant criminal record; and
- trade union activity

To find out more about these laws contact the Human Rights and Equal Opportunity Commission on 1300 369 711 or check their website at: www.hreoc.gov.au.

7UgY`ghi Xm

A woman claimed marital status discrimination when she was refused employment because her partner worked for a business in a similar field. She claimed there was no likelihood of collusion between herself and her partner and there was no risk to her prospective employer. The complaint was conciliated when she accepted a \$10,500 payment. (*Complaint conciliated, details confidential*)

Cj Yf`Ud`k]h`ch`Yf`Uk g

Some Equal Opportunity matters are included in laws such as the Commonwealth *Workplace Relations Act 1996* and the *Industrial Relations Act 1979 (WA)*.

Western Australian's *Minimum Conditions of Employment Act 1993* covers some related matters such as maternity leave and return to part-time work following the birth of a child.

Getting the right person on board means making sure you have in place a fair, consistent process of appointment based on merit.

Getting the right person on board means making sure you have in place a fair, consistent process of appointment based on merit.

Employers must have clear policies and systems for the recruitment, selection and hiring of staff which have been communicated to staff.

Employers must have clear policies and systems for the recruitment, selection and hiring of staff which have been communicated to staff.

All staff, whether involved in the recruitment process or not, should also be aware of company policies that relate to Equal Opportunity.

These policies should also be communicated to anyone contracted to undertake recruitment on your behalf, such as HR professionals or employment agencies.

Your policy should aim to eliminate discrimination in the work environment and promote Equal Opportunity for all employees.

It should reinforce basic principles of access. That is people receive, without discrimination, the same rights, entitlements and benefits as others and have equality of opportunity to apply for the same services, entitlements and benefits.

Not only will your policy help you find the best person for the job, it will also allow applicants to seek out the best employer.

Having a policy in place, which is readily available to all employees, can be a defence if a complaint of discrimination or harassment is lodged with the Commission, naming you or your organisation as a respondent.

Having a policy in place, which is readily available to all employees, can be a defence if a complaint of discrimination or harassment is lodged with the Commission, naming you or your organisation as a respondent.

You are trying to win the best staff. You want to attract the widest pool of suitably qualified applicants from which to choose. Your reputation is on the line.

For a sample Equal Opportunity policy see:

www.eoc.sa.gov.au/site/eo_for_business/getting_started/creating_policies_and_procedures.jsp

Some things you should make clear when developing a policy or developing a brief for a recruitment agency.

equal opportunity act wa 1984

- Comply with Equal Opportunity practices and laws. If you choose a recruitment agency or use HR professionals, ensure they are familiar with and use best practice recruitment policies in accord with your own.
- Use selection methods that are relevant to the position and your organisation.
- Attract the widest pool of suitably qualified applicants

- Base selection decisions on the available relevant evidence from application forms, interviews and reference checks.
- Treat all applicants with dignity and respect.
- Maintain the confidentiality of the information; and
- Provide feedback to applicants who request it.

- Focus on the genuine job requirements.
These should not include reference to any of the grounds or characteristics in the Act unless they are covered by exceptions. That is they can be shown to be genuine qualifications for the position or are measures which are intended to redress past discrimination.
- The brief should list the skills, abilities and experience the employer is looking for.



Determine the main functions for the position. What are the inherent requirements of the job:

- skills
- knowledge
- experience; and
- what tasks will be required.

The more specific you can be about these requirements, the better applicants can assess whether or not they will be a competitive candidate for the job.

The interview panel should include people who have a good knowledge of Equal Opportunity principles and who understand that only questions relating to the selection criteria can be used in the interview.

- Include someone with a close knowledge of the job.
- Include someone with a knowledge of selection procedures.
- Include people from diverse backgrounds.
- Ensure that all panel members receive information about the business selection and recruitment policy and documentation regarding the job; and
- Include people of both sexes on the panel.

▪ **"H\ Y`UXj Yfh]gYa Ybh**

To attract the best candidates possible for any job vacancy you need to cast the net as widely as possible.

Advertisements and those publishing them are covered by the *Equal Opportunity Act 1984*.

-
- Advertising within your own organisation as well as externally
 - Multiple print and internet sites
 - Ethnic and Indigenous media
 - In-house email lists
 - Professional and trade publications; and
 - Community newspapers.

- If you use the internet to advertise interstate and overseas be aware of different laws that could apply.
- The advertisement should specify clearly the skills, experience and knowledge required to perform the job – not characteristics relating to the potential applicant.
For example use 'seeking experience' rather than 'junior' or 'personal office assistant' rather than 'Girl Friday'.
- Arrange translations if necessary.
- Ensure the language is not restrictive or discriminatory.
- Include an Equal Opportunity statement.
- Avoid any reference to personal characteristics such as age or marital status; and
- Include specific instructions to candidates that they must address the selection criteria.

) "H\ Y`g\ cfh`]gh

This is the initial assessment of the applications. In order to develop a short list of applicants for interview ensure you:

- Keep an open mind to find the best person for the job.
- Test all applicants against the selection criteria only. Make

- If job seekers have a disability discuss how the disability affects them and what strategies they have in place to deal with the consequences of the disability.
- Always discuss the skills they have to offer; and
- Ensure job seekers are aware of their rights and responsibilities in relation to employment.

*** "H\ Y]bhYfj]Yk "**

Interviews are difficult and stressful for applicants. Ensuring that all short-listed candidates can perform at their best will provide the best opportunity to find the right person.

Before you start interviewing:

- Prepare physical setting -check to see if any candidates require assistance or special measures, such as disabled access to your premises.
- Prepare the questions which should be relevant to the needs of the job. Provide candidates with a copy of the questions before the interview to give them time to prepare.
- Don't ask about previous workers compensation claims, rather whether the applicant is able to undertake the physical requirements of the job; and
- If you require someone for fixed and regular hours, don't ask how they will care for sick children, rather whether they can perform during the hours required.

.....**7UgY' ghi Xm**

In two cases brought under the Commonwealth *Sex Discrimination Act 1984*, personal questions were found by the Federal Court to be 'unwelcome conduct of a sexual nature'.

The judge found that questions on matters which were irrelevant to the prospective employment and which constituted an unwelcome intrusion on the privacy of the interviewee could amount to sexual harassment in the sense of unwelcome sexual conduct.

These included questions about the candidate's sexual life, boyfriends and the candidate's intention to marry.

Hall & Ors v A & A Sheiban Pty Ltd & Ors (1989) and Bennett & Anor v Everitt & Anor (1988)

Do not ask for information you do not require and which could indicate an intention to discriminate. Do not ask:

- applicant's future intentions in relation to becoming pregnant
- about child care arrangements
- details of irrelevant medical history; and
- details of previous worker's compensation claims.



•, "H Y fYZYfYbW WYWg

Reference checks are an important phase of the selection process and can provide valuable information about candidates' suitability.

It is unlawful to discriminate on any of the grounds in the Act in the course of reference checks.

To ensure a fair, non-discriminatory process:

- Only contact referees when you have completed interviews and formed an opinion.
- Questioning of referees should only relate to the selection criteria.
- Questions should be the same for each referee.
- Record information collected in a consistent format; and
- Permission should be sought from the candidate if you wish to contact referees not nominated in their application.

• 8]X'nci '_bck 3

A recent Australian study found that businesses that were non-discriminatory and established a family-friendly workplace performed better.

They were found to have lower staff turnover, lower absenteeism, higher employee satisfaction and higher productivity than other organisations.

The study also found that an effective work/life balance performance extends to employees having a positive view of the organisation's performance as a corporate citizen, acting ethically and contributing to society, not just taking profits.

(The Eighth Annual Work/Life Balance Benchmarking Study, 2005 Managing Work/Life Balance International in conjunction with CCH Australia).

••• - "H Y gY`YVW]cb

Awarding the job to the right person is putting the selection process into action without prejudice and unfairness.

Make sure that you:

- Follow a consistent approach.
- Discuss all of the information collected with selection panel.
- Discuss only the information collected from the applicant and referees that is relevant to the job; and
- Document all steps in your decision making.

Best Practice Recruitment

Once the selection has been made best practice recruitment requires that:

- The offer be made in writing to the successful applicant advising all relevant information, including:
 - starting date
 - type and conditions of employment, including any probationary period
 - hours of work
 - leave entitlements; and
 - policies on Equal Opportunity.
- All unsuccessful applicants should be advised, with thanks, for their application.
- All applicants should be offered feedback. This should be available from a named and easily accessible person. It should focus on performance criteria and advice on improving performance.

Age Discrimination

A survey by the Australian Computer Association found that one in five Information Technology professionals alleged they had been discriminated against on the basis of age.

) "'588=H=CB5@'=B: CFA 5H=CB K 5BH'HC '?BCK 'A CF 93

- A wide range of brochures about various aspects of the Act are available from the Commission. PDFs and text documents on each ground of the Act can be downloaded from the Commission's website at: www.eoc.wa.gov.au.
- Commission officers provide training sessions on the Act and other related Equal Opportunity issues, which can be individually tailored to meet the specific needs of your organisation and workplace. A current training program is available and can be downloaded from the Commission's website.

CI F 'H< 5B?G'HC

- The Queensland Anti-Discrimination Commission's informative website: www.adcq.qld.gov.au - for background information on some issues addressed in this booklet.
- The South Australian Equal Opportunity website: www.sa.gov.au has extensive information on recruiting, and the Victorian Equal Opportunity website also contains a booklet on recruitment.
- Office of Equal Employment Opportunity: www.oeeo.wa.gov.au - for detailed information on fair and lawful recruiting practices.

* "' < CK 'HC '7CBH57H'H< 9'9EI 5@
····CDDCF HI B=HM7CA A =GG=CB

General enquiries

08 9216 3900

equal opportunity act wa 1984





5F 9'MCI ; 9HH=B; 'H'F =; < H3 '5 '7< 97? @=GH

Your best practice recruitment checklist.

Ensure your recruitment and selection process is best practice, that it is fair and free from discrimination.

- reviewed the position
 - selected the interview panel
 - advertised widely in appropriate media, specifying skills, knowledge and experience required for the job
 - provided a job application form free from assumptions and stereotypes
 - interviewed all short listed candidates
 - checked references and collected only information on selection criteria
 - awarded the job by assessing candidates against selection criteria
 - made the job offer to successful candidate; and
 - advised other applicants and offered feedback.
-