

Equity in employment

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Equity in Employment

Establishing sound equal opportunity policies and practices will foster an environment whereby individuals can feel valued, and develop their abilities and potential without the fear and barriers caused by discrimination. Preconceptions and assumptions about people are damaging to the individual, the team they work in, and the National as a whole. It is essential that all employees, contractors and also customers are treated in a manner that is fair, and equitable consideration is given in all aspects of employment and business situations.

To this end, the National is committed to providing a work environment that respects diversity and is free from all forms of discrimination.

It will endeavour to make this commitment a reality by:

- preventing any form of direct or indirect discrimination, victimisation, bullying or vilification;
- promoting through role modelling, a harmonious working environment where all individuals are treated with respect and dignity. Intimidation or harassment will not be tolerated in any form;
- fulfilling all legal obligations under both Federal and State legislation;
- ensuring our customers are treated in a fair and equitable manner in our dealings with them. Likewise, employees will be protected from harassment and discrimination in dealings with customers.

Responsibilities

Every employee has the right to work without fear of discrimination and harassment, and each employee has a responsibility to protect that right. People leaders have particular responsibility for ensuring that complaints of discrimination and harassment are taken seriously, and that everything possible is done to create an environment free from any form of harassment. Apart from the impact on the complainant, discrimination detracts from a productive and supportive working environment and therefore, has a direct impact on organisational effectiveness.

There are significant penalties associated with discrimination for both the employee and the organisation. The excuse of 'not knowing' about the legislation is not an acceptable defence. Therefore it is important that we are all aware of our responsibilities in this regard. It is up to each of us, and particularly management, to promote self-awareness and to cultivate appropriate business behaviours among employees who report to them.

Types of Discrimination

Generally, unlawful discrimination in employment occurs as a result of prejudice, misconception and stereotyping which hinders the proper consideration of an individual's skills, abilities, potential and experience. Discrimination can be direct or indirect.

Direct discrimination is where someone receives less favourable treatment because of a particular attribute or characteristic associated with that person.

Indirect discrimination as the name implies, is a less obvious form of discrimination. It is typified by having some sort of policy, procedure, practice, requirement or condition, which appears neutral on the face of it but when applied, disadvantages some group/individual.

Harassment is unwelcome behaviour or conduct which has no legitimate workplace function and intimidates, humiliates or offends a person. Harassment on any of the grounds specified in the equal opportunity legislation (e.g. sex, race and disability) is unlawful.

Bullying is repeated, unreasonable or inappropriate workplace behaviour that intimidates, humiliates, insults and/or undermines a person or group. The basis for bullying behaviour is much broader than the grounds on which it is unlawful to harass someone e.g. malicious teasing of an employee because they are shy.

Victimisation is treating someone badly because they are a complainant, a respondent or a witness to a complaint of discrimination or harassment.

Vilification is publicly encouraging or inciting hatred, ill-feeling or severe contempt for someone or a group of people on the basis of their race or certain other personal characteristics (e.g. HIV status).

Current Legislation

Equal Opportunity legislation exists at both the Federal and State levels. The legislation sets limitations on the use of such personal characteristics as sex, race and marital status as determinants of a person or group's employment opportunities and conditions of work.

The grounds of discrimination contained in Federal and State legislation include race, colour, sex (gender), sexuality (includes homosexuality, heterosexuality, bisexuality and transsexuality), religion, political opinion, national extraction or social origin, age, medical record, criminal record, impairment (including HIV infection), marital status, disability (physical, intellectual, psychiatric, sensory and serious illness), nationality, trade union activity, parental status, physical features, family responsibilities (including pregnancy), breastfeeding, racial vilification, sexual harassment, and association with or in relation to or with a person identified as having of any of the above attributes.

In general terms, in all aspects of employment, (that is recruitment, training, promotion, allocation of salaries and benefits and conditions of employment), discrimination based on any of the specified grounds listed is unlawful. Employers can be held responsible for discriminatory acts carried out by their employees, and individual employees can also be liable for their own discriminatory behaviour under existing legislation. This could include situations where lack of supervision or indifference allows the discrimination to occur.

Examples of unacceptable activities – Ground for Discrimination

Term	Description
Gender	A woman is continuously overlooked for promotion where she is the best person for the job.
Race	A person is not recruited into the organisation because they are of Asian decent.
Disability	A visually impaired candidate is excluded from employment without consideration of their ability to perform inherent job requirements.
Age	An employee is made redundant because they are near retiring age.
Physical appearance	A person is harassed because they are short.
Marital status	A woman is constantly overlooked for promotion in an all-male team as it is assumed she will fall pregnant.
Pregnancy and breast feeding	A woman's request to work part-time while she is still breast-feeding is refused without consideration of alternatives.
Parental or carer status	A parent takes carer's leave and is treated badly upon return to work as they are seen as unreliable.
Sexual orientation	A gay man is overlooked for selection for a role despite being the best person for the job because the manager is uncomfortable about homosexuality.
Political belief or activity	A person's progressive political beliefs aren't tolerated in a conservative office.
Industrial belief or activity	A union organiser is constantly overlooked for performance rewards despite being the highest achiever in the team.

It is important that we all acknowledge and recognise our own prejudices to ensure that we do not let them, and other assumptions about specific groups of people, influence our behaviour and interactions in the workplace.

Avoiding Unlawful Discrimination

Avoid unlawful discrimination by ensuring the following:

- all recruitment decisions are made solely on the basis of merit;
- all decisions for selecting employees for training are made on the basis of improving competency and upgrading skills, and that no irrelevant factors such as gender become part of the decision making process;
- all decisions relating to career planning are taken only on the basis of an objective assessment of competence, skill base and potential;
- all decisions for promotion are based on definable objective criteria relating to competence to perform the position, (i.e. merit);
- all decisions taken to offer benefits or conditions of employment are made in line with National policy which does not discriminate against individuals on the basis of personal characteristics;
- fellow employees and customers are treated in a fair and equitable manner.

Discrimination Complaints Procedure

General

All employees and contractors working for the National have the right to a work environment that is safe and free from discrimination, harassment or victimisation of any kind. It is important that if anyone feels that they have been treated in a manner that is in breach of this right, their complaint will be treated seriously.

Professional, confidential advice and counselling can be made available from any of the National's trained Contact Officers. Please contact the People Advisory Centre on 1300 662 091 or for MLC employees, the Employee Service Centre on 1300 554 224, and ask to speak with a contact officer.

Complaints should be raised as soon as possible so that the situation can be dealt with quickly and confidentially. The matter should be first raised with the individual concerned. If this is not appropriate the matter can be raised with the complainant's People Leader, a Contact Officer or People and Culture. The circumstances of the case will determine who is most suitable to talk to about the complaint and whether the matter should be dealt with informally or formally.

The types of outcomes expected by the complainant may govern which of the procedures will be most appropriate.

A complainant may be seeking:

- Behaviour to stop
- Apology face-to-face
- Written apology
- Public apology
- Formal discipline
 1. written warning
 2. person moved
 3. person demoted
 4. termination

The principles of natural justice require that all parties to a complaint will have the opportunity to put their positions fully. They will be protected from further intimidation, victimisation or discrimination as a result of filing a complaint or assisting in an investigation. Retaliation and/or breach of confidentiality is a disciplinary offence and will be dealt with immediately.

This procedure is the National's internal process for dealing with complaints of discrimination or sexual harassment. In no way does this replace or reduce an employee's statutory rights.

Process of Resolution

There are three avenues available in resolving a complaint:

- Direct
- Informal
- Formal

The National has a legal obligation to ensure the work environment is free from all forms of discrimination. As such, there will be instances where the National will need to determine the most appropriate course of action. This may include formal investigation even when the complainant does not wish to pursue a formal resolution process. Whilst the wishes of the complainant will be considered along with all other relevant information, the decision to formally investigate any allegation will remain the prerogative of the National.

Direct Resolution Procedure

If a complainant is able to, they are encouraged to make direct contact with the respondent as soon as the discrimination is encountered.

The Direct Resolution Method is not advisable for all employees and does NOT need to be used if it makes anyone feel uncomfortable.

If this method of resolution is not suitable, employees should consider either the 'informal' or 'formal' resolution methods.

If a complainant wishes to resolve a situation using the Direct Resolution Method, they should

- meet privately with the respondent, advising them that their behaviour is unacceptable and that they would like it to cease immediately;
- advise the respondent that if their behaviour does not change then they will have no option than to proceed to the informal/formal method of resolution.

In taking this approach the complainant will need to:

- outline clearly what behaviour the respondent is exhibiting that makes them feel uncomfortable;
- ensure that the meeting is constructive to maintaining/improving ongoing personal and working relationships.

Informal Resolution Procedure

A confidential interview will be arranged for the complainant with either the people leader or a contact officer to establish the full details. The initial interview with the manager should be documented and signed by the complainant to verify that the record reflects the person's concerns. The people leader or contact officer involved will take notes of the complaint, and forward the outline of the complaint to the complainant for signing.

In speaking with a contact officer the facts will be recorded. Information will be provided by the contact officer regarding their role, and the options available to the complainant. If the complainant has a record of events and dates relating to the incident/s, this will assist in collating the facts. This information should be forthcoming from the complainant. This preliminary step will determine whether an outcome on an informal basis can be achieved or whether a formal investigation is required regarding the allegations made.

Examples of the options offered to the complainant will be:

- the people leader asks for the behaviour of the respondent to stop;
- for the respondent to provide an apology face-to-face, or a written apology;
- where necessary, instigation of formal disciplinary measures on advice from People and Culture;
- mediation conducted by People and Culture may also be an option for the parties involved.

If the complainant wishes their complaint to go straight to a formal process it is not necessary:

- for them to have first told the person whose behaviour is causing concern to stop;
- to have gone through the informal steps before making a formal complaint.

Formal Resolution Procedure

A formal complaint is usually made in writing to the People Leader/People and Culture outlining the situation. This can also be made directly to a contact officer. The complaint will then be handed to an appointed investigations officer. In a formal procedure, a prompt and thorough investigation will be conducted by an impartial investigator. While it is preferred that a formal complaint should be made in writing, this will not preclude the investigation of a complaint which has been made verbally.

It will be advisable for the complainant to have a record of events, incidents and dates to assist the investigation.

The formal procedure will provide:

- A right for both parties to have a support person during the interviews, if sought.
- A commitment with regard to a realistic time frame for resolution.
- A commitment to confidentiality and adherence to principles of procedural fairness.
- Support to all parties during and after the complaint/investigation through EAP.
- A fair and impartial hearing.

If the investigation reveals that the complaint is well founded, prompt attention and disciplinary action designed to stop the behaviour immediately will be taken to ensure prevention of its recurrence. Any disciplinary action taken against the respondent will be based on evidence obtained through investigation, and may include action up to and including dismissal, depending on the seriousness of the actions.

If the investigation reveals that the complaint is malicious, disciplinary action may be taken against the complainant.

