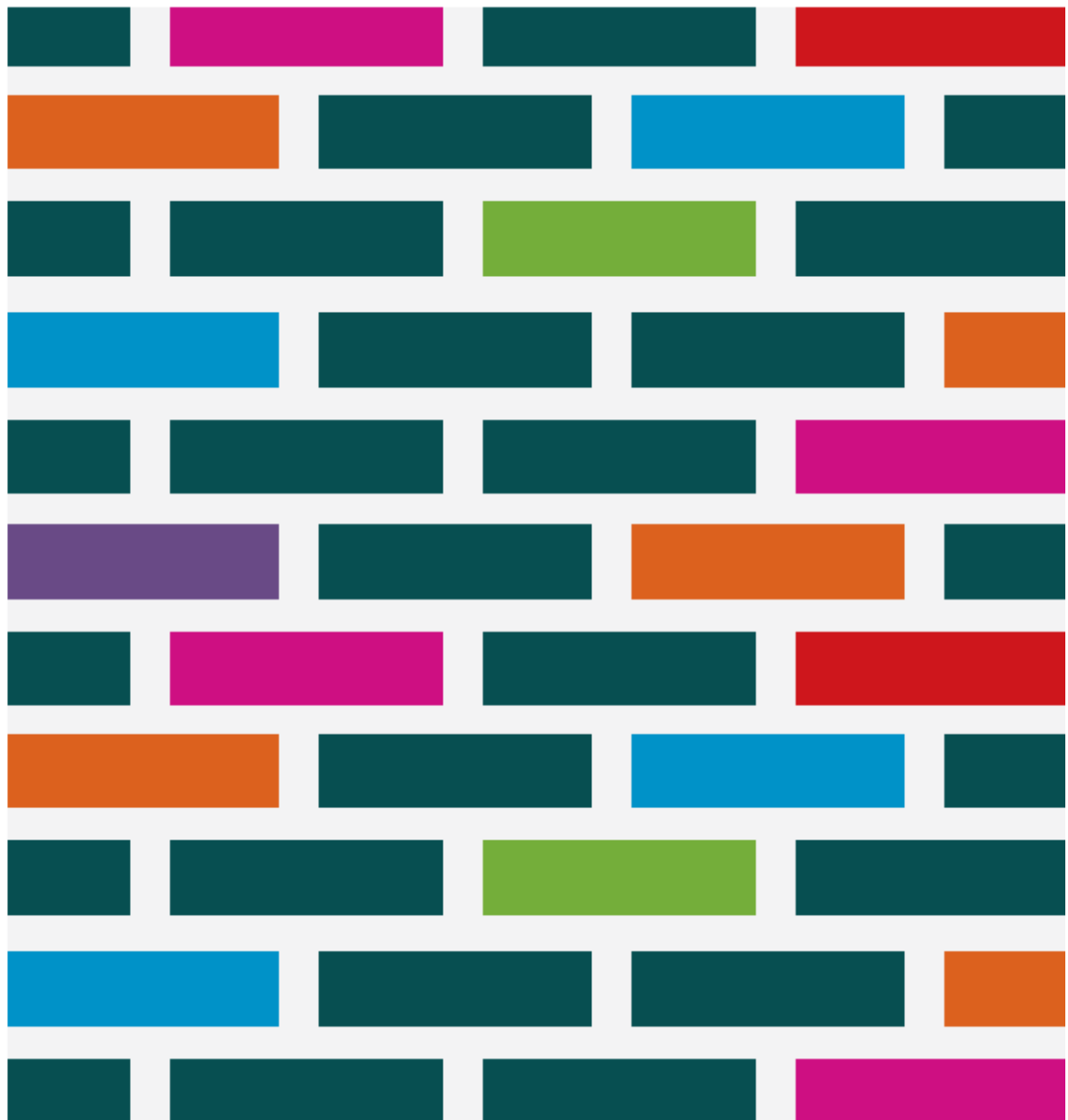


Equal Opportunity  
Tasmania

# Equal Opportunity: a workplace guide for employers in Tasmania



July 2020

## Disclaimer

This information is for guidance only and is not to be taken as an expression of the law. It should be read in conjunction with the *Anti-Discrimination Act 1998* (Tas) and other relevant legislation.

While care has been taken to ensure that information contained in this guide is accurate at the time of publication, changes in circumstances after the time of publication may impact on the accuracy of this information. Equal Opportunity Tasmania accepts no legal liability arising from or connected to the accuracy, reliability, currency or completeness of any material in this guide.

We welcome your feedback on this guide.

Please send feedback to: [training@equalopportunity.tas.gov.au](mailto:training@equalopportunity.tas.gov.au).

## Acknowledgement

Equal Opportunity Tasmania acknowledges and gives thanks to the Equal Opportunity Commission South Australia for their assistance and permitting us to adapt to a Tasmanian context their publication *Equal Opportunity at work – A handbook for employers in South Australia*.

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## Introduction

Equal Opportunity Tasmania is the office of the Anti-Discrimination Commissioner. We administer the *Anti-Discrimination Act 1998* (Tas).

Equal Opportunity Tasmania has prepared this guide for everyone involved in employment in Tasmania – business owners, chief executives, managers, supervisors, human resource departments, and recruitment agencies. It gives you practical ways to make Equal Opportunity work for and not against you. It provides action checklists which will help you make your workplace fairer.

Equal Opportunity laws cover many areas of public life but we find that **employment** is where there are the most complaints of unfair treatment.

All employers, big or small, have to work within the law. It also makes good business sense.

Equal Opportunity helps you manage and get the best out of people.

## Why have Equal Opportunity?

Equal Opportunity can deliver advantages to your business and workplace:

- more customers and diverse markets
- better reputation and public image
- less conflict and fewer complaints
- lower costs
- less absenteeism
- less stressed supervisors and managers
- more people to select from for jobs
- the best applicant gets the job
- everyone can develop to their full potential
- greater productivity and creativity
- higher staff morale and retention

Equal Opportunity works and for these reasons you can't afford not to be an Equal Opportunity employer.

# Understanding Equal Opportunity

Equal Opportunity means everyone has a right to be treated fairly and to not experience discrimination and other prohibited conduct.

## Discrimination

Discrimination refers to when someone is:

- treated unfairly because they have a particular characteristic (called an 'attribute') compared to another person
- disadvantaged by a condition, requirement or practice that applies to everyone, because they have a particular characteristic – this must also be unreasonable in the circumstances

Under the *Anti-Discrimination Act 1998* (Tas), it is against the law to discriminate on the basis of any of the following (22) protected attributes:

- race
- age
- sexual orientation
- lawful sexual activity
- gender
- gender identity
- intersex variations of sex characteristics
- marital status
- relationship status
- pregnancy
- breastfeeding
- parental status
- family responsibilities
- disability
- industrial activity
- political belief or affiliation
- political activity
- religious belief or affiliation

- religious activity
- irrelevant criminal record
- irrelevant medical record
- association with a person who has or is believed to have any of these attributes

## Prohibited conduct

Prohibited conduct refers to:

- conduct that offends, humiliates, intimidates, insults or ridicules someone on the basis of specific attributes
- sexual harassment: any unwelcome sexual contact, advances, comments, gestures, actions, conduct and displaying sexual material
- inciting hatred, serious contempt or severe ridicule of someone on the basis of specific attributes (also known as vilification)
- victimisation: when a person is treated badly because they have been involved in a complaint (whether formal or informal) or have helped someone with a complaint
- causing, aiding or inducing discrimination or prohibited conduct
- advertising or promoting discrimination or prohibited conduct

The Act applies to the areas of:

- employment
- education and training
- provision of facilities, goods and services
- accommodation
- membership and activities of clubs
- administration of State laws and programs
- awards, enterprise agreements and industrial agreements

Other states have their own anti-discrimination legislation.

There are also Commonwealth laws that apply:

- *Racial Discrimination Act 1975 (Cth)*
- *Sex Discrimination Act 1984 (Cth)*



- *Disability Discrimination Act 1992* (Cth)
- *Age Discrimination Act 2004* (Cth)
- *Australian Human Rights Commission Act 1986* (Cth)

Contact the Australian Human Rights Commission for more information:

<https://humanrights.gov.au/>.

# Who is responsible for Equal Opportunity at work?

Everyone has to comply with the law at work.

No matter the size of your business, it has a legal obligation to take every reasonable step to create a workplace that is free from discrimination and other prohibited conduct.

Section 104 of the *Anti-Discrimination Act 1998* (Tas) states that organisations must make sure all members, officers, employees and agents (including volunteers, interns, and contractors) are aware of the discrimination and prohibited conduct to which the Act relates. If your organisation does not take reasonable steps to do this, your organisation can be held liable for the behaviour of workplace participants that breach the Act. It covers all stages of employment, from job advertisements, applications, offers, terms, conditions and benefits to promotions, training, transfers, retrenchment and dismissal. It includes how your staff treat each other and your customers. It also applies to all situations relating to work including functions, conferences, office parties and customer service.

Your business may be liable for the conduct of:

- individual or groups of employees
- directors, supervisors or managers
- people working on your premises
- agents or people acting on your behalf
- contractors

Employers have a responsibility to:

- take all reasonable steps to prevent discrimination, sexual harassment, victimisation and other prohibited conduct
- respond quickly, seriously and effectively to any complaints
- support those who have been discriminated against or harassed

## What steps are reasonable for your business?

To decide what steps are reasonable for your business, consider your:

- size and structure
- resources

- industry nature
- working hours
- level of supervision
- workplace culture
- history of workplace discrimination or harassment
- other relevant factors such as location, close working or live-in arrangements

## Making your business the employer of choice

Promoting Equal Opportunity and preventing and managing discrimination and other prohibited conduct is good practice, and good for business. Having a safe, fair and respectful workplace helps position your organisation as an employer of choice with:

- high productivity
- better teamwork and morale
- improved recruitment and retention
- workplace diversity

Developing and implementing effective policies and procedures will help you to minimise complaints, disruptions, legal problems and threats to the reputation of your business.

### Seven steps for employers

To start with you need to understand your responsibilities and have a policy and a complaint procedure.

You need to:

- Step 1. Have a policy which rules out discrimination and other prohibited conduct.
- Step 2. Tell your employees about it regularly.
- Step 3. Have a procedure to deal with complaints.
- Step 4. Handle complaints quickly, fairly and confidentially.
- Step 5. Treat employees fairly in your dealings with them.
- Step 6. Consider making an employee a Workplace Support Contact Officer.
- Step 7. Monitor and maintain a culture of Equal Opportunity.

## Step 1: What makes an effective policy or procedure?

A good policy stays focused on its purpose: to work towards best practice, and a fair and inclusive workplace. An effective policy gives employees an easy-to-follow framework for action so they can get on with their job.

Without effective policies and procedures, discrimination and harassment will not go away. Issues are likely to become worse and more difficult to deal with as time goes on. A lack of complaints does not necessarily mean that you have achieved a safe and fair work environment – it could also be a sign that an organisation has serious problems but no-one feels safe or comfortable raising an issue.

Effective policies make it clear that employees are accountable for their behaviour in your workplace, and encourage employees to raise issues when they occur. This will enable your organisation to deal with issues promptly and fairly, with the least disruption and cost to your core business.

If you want your policy to work, you need to make sure that it is:

- fair
- clear, accessible and easy to understand
- compliant with State and Commonwealth legislation, standards and guidelines
- supported by management, from the most senior executives down to work area supervisors
- known and available to everyone, at all levels of the organisation
- applied equally to everyone, at all levels of the organisation
- integrated and mutually reinforcing with other organisational policies

### Consultation

Involving a wide range of people can help ensure policies are fair and reasonable, as different individuals will be able to identify different issues and suggest ways to avoid unintended outcomes. It also 'walks the talk' of equal opportunity, showing that your organisation respects and values the contributions of all participants.

### Accessibility

Once you have ensured your policies and procedures are fair and functional, you also need to make sure they are accessible. Policies and procedures are more likely

to be effective when they are clearly written, easy to find, and monitored and reviewed.

### ***Clearly written***

Writing in Plain English can help to address this first point.

Keep your policies and procedures as short and simple as possible. Use clear, direct and everyday language that everyone can understand.

If you have to use some terms that might confuse people, make sure to provide a short explanation of the term.

### ***Easy to find***

Making policies and procedures easily readable is an important first step, but you also need to make it easy for people to find and refer to policies and procedures in the workplace:

- give your policies and procedures a clear, explanatory title
- note in the policy document where copies are kept
- keep digital and printed copies of all policies and procedures in logical places that are easy to access by all (e.g. a central place in each work area, shared drive, staff intranet)
- include policies and procedures in induction processes
- explain policies and procedures in training
- refer to policies and procedures in regular meetings and emails to staff

### ***Monitoring and review***

Policies may need fine-tuning to be really effective, especially when the policies are new, or circumstances have changed.

Monitoring and review processes will help you to check that your organisation's policies and procedures are: fair, accessible, compliant, known, supported, and applied equally to everyone at all levels of the organisation. Your workplace's written policy should include a review date.

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## Checklist

Your policy can:

- state why you support Equal Opportunity listing the benefits to service and productivity
  - state who the policy covers
  - define discrimination, sexual harassment, victimisation and other prohibited conduct and state that it is against the law
  - commit to not tolerating such behaviour in your workplace
  - state employees' and employers' responsibilities and rights
  - explain what to do if discrimination or harassment happens
  - explain that people who breach the policy or the law will be disciplined
  - explain the complaint procedure
  - provide protection from victimisation
  - be supported and signed by the Chief Executive Officer
-

## Step 2: Tell your employees about it regularly

It is important that all staff, including contractors and volunteers, know about and understand your policy and where to find it. You may need to translate it for some people or provide it in ways which makes it easy for everyone to access.

Ensure your managers and supervisors are equipped to promote it.

If you provide goods or services, it is also helpful to make customers and trade contacts aware of your policy.

We recommend that your policy is officially endorsed and launched by your Chief Executive Officer at an all staff meeting. It needs to be emphasised that everyone is required to comply.

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### Checklist

You can:

- promote your policy internally and externally
  - publish it on your website or intranet
  - produce a brochure for all staff and customers
  - periodically attach a copy to pay slips or email it to staff
  - display it on notice boards
  - include it in company manuals, business plans and performance appraisals
  - discuss it at staff meetings
  - give it to new staff and get them to acknowledge it by signing it
  - make someone responsible for updating and circulating your policy regularly
-



## **Step 3: Have a procedure to deal with complaints**

Clear procedures that focus on efficient and effective complaint resolution can help fix workplace issues and provide a better environment for all employees. It is important that staff clearly understand all the options available and how to proceed with each option. Employees should feel free to choose any complaint option or options, and in any order, as they see fit.

### **Self-management / direct action**

Sometimes it is possible to stop inappropriate behaviour or challenge discrimination simply by speaking up and asking the other person to stop their behaviour, and your organisation should encourage this. However, differences in power (because of status, seniority, age, disability, gender, religion, race etc.) can make it difficult for someone to speak directly about their concerns.

Inappropriate behaviour does not always stop after someone does speak up, so you need to provide other options for dealing with their concerns.

### **Informal complaints**

An informal complaint might involve someone asking for help from a colleague, manager, or Workplace Support Contact Officer. This person can then give some information about different options, including self-management.

Managers could also support a staff member to initiate a conversation, or they might speak up on their behalf and let someone else know their behaviour is causing concern or discomfort. Informal complaints do not need reports or official decisions.

### **Internal formal complaints**

An internal formal complaint process will have a number of steps. You need to have a clear procedure for how each step will proceed:

- how long can it take?
- who will be involved?
- what record-keeping and reporting will there be?
- what might the outcomes be?

You may want to set firm time limits for different stages. Shorter timelines are better. For example, ten days to a month is usually appropriate for an investigation, depending on the nature of the organisation and the complaint. The sooner you deal with inappropriate behaviour, the sooner people can move on and get on with their work.

## External complaints

Your organisation needs to include external options when advising employees about their options for making a complaint about workplace issues.

Employees have legal rights to make complaints through external organisations, such as:

- Equal Opportunity Tasmania
- Australian Human Rights Commission
- WorkSafe Tasmania
- Fair Work Commission
- Tasmanian Industrial Commission
- Unions
- Tasmania Police (in cases of criminal conduct, such as but not limited to physical or sexual assault)

## Victimisation

It is important that employees feel safe to raise concerns about workplace behaviour.

Your organisation needs to be clear that it is not acceptable for something bad to happen to someone for raising a concern, making a complaint, or helping someone with a complaint – whether internal or external. It needs to be clear that any retaliation could lead to disciplinary action.

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## Checklist

A thorough complaint procedure will:

- be clearly documented, easily understood and accessible to all employees
  - offer options for resolving complaints
  - guarantee a fast, fair and confidential process
  - be administered by trained people
  - step through the process
  - outline records to be kept
  - guarantee protection from being victimised for complaining
  - be reviewed regularly for effectiveness
-

## **Step 4: Handle complaints quickly, fairly and confidentially**

If an employee complains to you about discrimination or harassment you have a responsibility to act. Using this guide may be helpful.

### **Talking to the complainant**

You should:

- be aware they may be feeling anger, fear, distress, discomfort, frustration, powerlessness
- reassure them they have done the right thing in seeking help
- listen, take them seriously, be sensitive
- make no judgements
- state your policy and procedures
- let them know they have a right to complain and they won't be victimised
- discuss options and outcomes and ask them how they want the situation handled
- advise them of the need for confidentiality

### **Talking to the person the complaint is made against**

Approaching a person who is the subject of a complaint also requires care and attention.

Fair treatment for all is paramount and everyone's rights are respected.

You should:

- give an accurate report of the complaint
- listen to their version of events
- be aware they may also be feeling anger, fear, distress, discomfort, powerlessness
- make no judgements
- state your policies and procedures
- inform them that any breach is against the law
- advise them of any potential disciplinary action if such behaviour occurred

- advise that even without intention, offence has been taken and it needs resolving
- discuss any action to resolve the complaint
- advise them of the need for confidentiality
- advise them that people cannot be victimised for complaining

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## Checklist

- assist the complainant to approach the person who is offending them
- immediately remove anything offensive – graffiti, posters, screen savers
- convey the concerns to the person the complaint is made against without making judgements and restate your policy
- discuss support options
- ask them to consider coming together with the other party to mediate
- monitor their behaviour to ensure offensive behaviour is not happening
- monitor the situation to ensure neither of the parties is victimised
- make notes of your actions
- keep both parties informed of any action you have taken
- discuss any continuing problems with senior management, human resource personnel or seek advice from Equal Opportunity Tasmania

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## Complaints requiring investigation

In this situation employers need to document every step to ensure consistency and fairness.

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## Checklist

The steps are usually:

- interview the person complaining and document the allegations
  - inform the person being complained about and ask them to respond
  - if the facts are disputed, seek more information including evidence from any witnesses
  - make a finding about whether or not the complaint has substance
  - report the process, the evidence, the finding and recommend an outcome
  - implement the outcome or decide on other action
- 

The parties involved must be permitted to have support people with them at any interviews or meetings.

## Evidence

Given the nature of discrimination and sexual harassment, there are often no witnesses. In dealing with a complaint formally, consider any surrounding evidence such as:

- supporting evidence from co-workers
- reports of changes in behaviour or performance
- requests for transfers, shift changes or increased sick leave
- complaints from other employees
- records kept by the person complaining
- consistency of the evidence presented by the people involved

## Outcomes

Outcomes can include:

- mediation
- counselling
- apology
- re-crediting leave

- training
- warnings
- disciplinary action against the person being complained about – demotion, transfer, suspension, probation or dismissal

If there is not enough proof to decide whether or not discrimination or sexual harassment has happened, employers can still:

- monitor the situation
- remind the people involved of the expected conduct standards
- consider general awareness training for all employees

## Step 5: Treat employees fairly in your dealings with them

You can build the morale and productivity of your employees by minimising complaints and disruptions so everyone can get on with their work.

This will increase your profits and enhance your reputation.

### Workplace environment

These guidelines will help you with the best practices for staff induction, appraisal, promotion, development and training, and a positive work environment.

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#### Checklist

- provide induction for new employees
  - have a performance appraisal system that works
  - offer opportunities for promotion to all staff
  - offer different types of staff development and training
  - have a considerate and flexible work environment
- 

#### Inductions

You need to give all new employees information that will help them do their jobs well.

Your induction process will:

- give them information that is directly related to the job
- provide a mentor for more information and follow up
- ensure information is accessible
- introduce new employees to their colleagues and explain their roles
- encourage questions
- ensure new employees know how to get help
- give new employees your policies and procedures
- make reasonable adjustments for people with disabilities



## ***Appraisal***

Good performance appraisal systems help both the employer and employees.

Your appraisals need to:

- be easily understood by your employees
- be specific in assessing performance against job requirements
- include positive feedback
- be conducted by trained supervisors
- be freely accessible to employees

## ***Promotion***

You can advertise vacancies widely throughout the workforce and give all employees the opportunity to consider applying.

Your way of promoting people needs to be:

- fair and consistent with your employment procedures
- based on reviewing each job when it becomes vacant and selecting on job requirements rather than the person who last filled it
- give feedback to unsuccessful applicants

## ***Staff development and training***

To ensure all staff access training you can examine whether you are providing equal access to training, as well as the type of training such as internal or external training or skill specific.

Your training plans can:

- increase the whole workforce's skills
- be resourced
- train supervisors to deal with problems before they develop

## ***Positive work environment***

Your employees will at times have special circumstances which affect their work.

To help them you can consider:

- flexible working hours
- job sharing
- carer's leave
- child care provisions

## **Step 6: Training and Workplace Support Contact Officers**

Without education, employees might not know what discrimination and harassment are, or how to respond if they are the target of unacceptable behaviour.

As a first step, every employee should have a copy of the discrimination and harassment policy. It is really important that employees read and understand the policy; this can be supported by education sessions. All new employees should attend an education session of some kind as part of their induction and job training.

Some organisations ask employees to sign a statement saying they have read and understand the policy. You could think about getting new employees to do this after they have received the policy and training; this helps to reinforce how seriously your organisation takes these issues.

### **Ongoing training**

Ongoing training, every year, will help to make sure no one misses or forgets important information on discrimination and harassment. Including training and development in regular performance review processes is one way to make sure workplace participants understand their rights and responsibilities.

### **Management training**

The more managers know about how to identify and manage discrimination and harassment, the better. Providing specialised training and education for managers will help your organisation to prevent and manage issues quickly and easily, so everyone can get on with their work.

### **Workplace Support Contact Officers**

The role of the Workplace Support Contact Officer is an important one which should not be confused with the role of a professional counsellor or mediator.

Workplace Support Contact Officers are an important first point of contact for people who believe they have an issue in the workplace. Issues may relate to discrimination, harassment, bullying or other workplace concerns.

Workplace Support Contact Officers are staff who are trained to provide other staff with confidential information and support to address discrimination, harassment and/or bullying in the workplace.

Workplace Support Contact Officers have access to information about complaint resolution options within and outside the organisation and provide support to people to help them make informed decisions about how best to address the grievance.

Workplace Support Contact Officers need to receive full training before starting in the role, and it is important that they attend regular refresher training and professional development opportunities to make sure their knowledge and skills stay up to date. You can contact Equal Opportunity Tasmania for Workplace Support Contact Officer Training.

## Step 7: Monitor and maintain a culture of Equal Opportunity

Maintaining Equal Opportunity is a work in progress. You will need to review, check and update your policy and procedures regularly and ensure your employees and customers are familiar with them.

You will need your employees to be aware of Equal Opportunity and have ways to collect information on your Equal Opportunity progress and status.

### Awareness

You may need to consider training employees from the top down. Executive managers set the culture by being trained first and then lead the rest of the workforce.

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### Checklist

- communicate Equal Opportunity from the top down in your workplace
  - identify any skills gaps in your management and consider training
  - make Equal Opportunity part of a new employee's induction
  - train Workplace Support Contact Officers
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### Record keeping

You can collect employee and customer information on complaints and on your Equal Opportunity progress.

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## Checklist

- record the numbers and types of any discrimination and harassment complaints
  - observe leave patterns
  - interview employees when they leave your organisation
  - record who is employed at what level
  - track who applies for what jobs or promotions at what level
  - record who gets staff development and training opportunities
  - analyse your customer base
  - conduct employee satisfaction surveys
-

## Small business quick steps

Small and family businesses may find it more difficult to have policies and procedures in place.

However these businesses often have more potential for complaints and in particular sexual harassment problems because of the close and sometimes complicated relationships between employers and employees.

Equal Opportunity law applies to all employers no matter the size of the business.

We recommend that even very small businesses have a code of conduct outlining appropriate behaviours and a procedure to deal with any complaints.

Businesses in a particular sector may consider getting together to write a joint policy with their industry association's help.

Small business owners can nominate themselves or a senior employee as a Workplace Support Contact Officer. They can be trained in the general principles of informal and formal complaint procedures. You can get training with Equal Opportunity Tasmania.

Small business owners can distribute and promote Equal Opportunity brochures and posters available from Equal Opportunity Tasmania.

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### Checklist

- tell all staff that discrimination and harassment will not be tolerated
  - tell them disciplinary action will be taken
  - tell them it applies to behaviour by or towards co-workers and customers
  - tell new staff it is a condition of employment
  - keep a note of when all staff are told
  - provide them with Equal Opportunity information brochures
  - advise them to complain to the owner if discrimination or harassment occurs
  - follow your complaint procedure
  - advise them of their right to complain to Equal Opportunity Tasmania
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## Contact Equal Opportunity Tasmania

If you have any questions or would like more information about anything in this guide or about discrimination and prohibited conduct, please contact us:

**Phone:** 1300 305 062 (in Tasmania) or (03) 6165 7515

**E-mail:** [office@equalopportunity.tas.gov.au](mailto:office@equalopportunity.tas.gov.au)

**Text:** 0409 401 083

**Translating and Interpreting Service:** 131 450

**National Relay Service:**

Internet users: Connect at <https://internet-relay.nrscall.gov.au> then enter 1300 305 062

Speak and Listen users: Phone 1300 555 727 then ask for 1300 305 062

Teletypewriter (TTY) users: Phone 133 677 then ask for 1300 305 062

**Office:** Level 1, 54 Victoria St, Hobart TAS 7000

**Post:** GPO Box 197, Hobart TAS 7001

**Facebook:** [www.facebook.com/equal.opportunity.tasmania](http://www.facebook.com/equal.opportunity.tasmania)

**Website:** [www.equalopportunity.tas.gov.au](http://www.equalopportunity.tas.gov.au)