

Policy & Procedure HR004

Policy Title:	Equal Opportunity		
Policy Number:	HR004	Effective Date:	
Purpose:	To ensure that all employees have a fair and transparent process available to them through which their concerns regarding equal opportunity can be promptly and appropriately addressed.		
Scope:	All staff, Board Members, Implementation Committee Members, employment providers and members of other committees and practitioner bodies of the North Central Catchment Management CMA.		
Training Assumptions:	Bullying, Harassment & EEO Training Compulsory for all employees		
Legislative Context (if relevant):	<i>Equal Opportunity for Women in the Workplace Act 1999, Disability Discrimination Act 1992 (Commonwealth), Racial Discrimination Act 1992 (Commonwealth), Sex Discrimination Act 1984, Human Rights and Equal Opportunity Commission Act 1986, Victorian Equal Opportunity Act 1995, Workplace Relations Act 1996, Age Discrimination Act 2004, Racial and Religious Tolerance Act (Vic) 2001</i>		
References:	North Central CMA Certified Agreement 2005 Equal Employment Opportunity – VPS Standards and Guidance		
Approved by:	Audit Committee		
Effective Date:	XX September 2006		
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Documents superseded by this document:	Human Resources Policy No:18 adopted 14 September 2000		
Relevant forms:			
Key Words:	EEO, Equal Opportunity, Discrimination, Redress, Grievance		

CODE OF CONDUCT – Victorian Public Sector

The Victorian Public Sector Code of Conduct outlines the standards of behaviour expected of public sector employees. The code of conduct is a public statement of how we conduct our business and how we treat the public, our clients and colleagues, and is designed to assist employers and employees understand their responsibilities and obligations. The 'conduct principles' guide behaviour in the Victorian Public Sector and the 'employment principles' complement these by providing guidance in establishing the right work environment for high standards of behaviour to flourish.

Note: This policy should be read in conjunction with the standards and guidelines issued by the Public Sector Standards Commissioner in accordance with section 66 of the *Public Administration Act 2004*.

EQUAL OPPORTUNITY

North Central Catchment Management CMA

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- § employment decisions are based on merit;
 - § employees are treated fairly and reasonably;
 - § equal opportunity is provided; and
 - § employees have reasonable avenues of redress against unfair or unreasonable treatment

The North Central CMA (“CMA”) is committed to the principle of equal opportunity for employees in all employment related matters using the full potential of the work force in an open, competitive and flexible manner. Accordingly, all employees are entitled to access employment, promotion, training, transfers and the benefits of employment on the basis of merit and will be assessed on the basis of their skills, qualifications, abilities, motivation and performance.

The CMA’s position on equal employment opportunity (“EEO”) reflects our desire to enjoy a workplace free of discrimination where each person has the opportunity to progress to the extent of his or her ability.

Purpose

The purpose of this policy is to provide a framework to assist all staff identify, address and eliminate behaviours that may constitute discrimination. It is the aim of the CMA to operate in a manner that incorporates both the spirit and intent of equal employment opportunity and anti-discrimination legislation.

The CMA is committed to eliminating any harassment and discrimination by dealing with all EEO matters quickly, fairly and with confidentiality. This commitment extends to protecting employees against the possibility of any victimisation in association with EEO matters.

This policy establishes a means for all employees, without fear of reprisal, to address concerns that may constitute discrimination. Where instances of discrimination are established, action will be undertaken in accordance with the procedures set out in the CMA’s Employee Grievance and/or Employee Conduct and Performance policy.

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1 Introduction

The North Central CMA will not tolerate discrimination, either real or implied, on the grounds of:

- § Age
- § Breastfeeding
- § Gender identity
- § Impairment
- § Industrial activity
- § Lawful sexual activity
- § Marital status
- § Parental status or status as carer
- § Physical features i.e. person's height, weight, size or other bodily characteristics;
- § Political belief or activity
- § Pregnancy
- § Race
- § Religious belief or activity
- § Sex
- § Sexual Orientation
- § Personal association (with a person who is identified by reference to any of the above attributes)

The Equal Opportunity Act 1995:

- § makes it unlawful to discriminate against a person on the attributes listed above
- § prohibits direct and indirect discrimination
- § places responsibility on employers and employees for maintaining a workplace free of discrimination and sexual harassment
- § makes it unlawful to sexually harass a person
- § promotes equality of opportunity between persons of different sex, age, marital status, race and other specified attributes
- § provides redress for those who have been subject to discrimination
- § prohibits victimisation

It is unlawful to request, instruct, induce, encourage, authorise or assist another person to discriminate. To comply with such a request could result in a complaint against both parties.

In determining whether or not a person discriminates, the person's motive is irrelevant. Most importantly, discrimination by acting with others and by not acting, is also irrelevant. Discrimination can occur by a person acting alone or in association with any other person or doing an act or omitting to do an act.

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Essentially, an Equal Opportunity 'safe workplace' is a fair and inclusive workplace. The cornerstones of a fair and inclusive workplace include:

- social connection - belonging, being part of a group, participation, support;
- freedom from - discrimination, harassment, bullying, ridicule, contempt, hatred and violence;
- providing a safe environment to work in.

The *Equal Opportunity Act 1995* does permit an employer to discriminate against a staff member or prospective staff member in certain conditions such as, but not limited to, reasonable terms of employment, care of children, and standards of dress and behaviour.

Vicarious Liability

In many cases the CMA will be responsible for an act of discrimination by an employee even if the CMA is not aware of the discrimination-taking place. In other words, the CMA is vicariously liable for the actions of its employees.

2 Commitment

The North Central CMA acknowledges the needs of disadvantaged groups (including women, aboriginal or Torres Strait Islanders, people of non-English speaking background, people with a disability and other groups as deemed necessary) and will work towards ensuring that these groups receive an equitable share of employment opportunities. The North Central CMA has a commitment to:

- § create a working environment which is free from discrimination and where all members of staff are treated in a fair and reasonable manner, that is, being just and working within commonly accepted rules, exercising sound judgement, and taking a sensible approach
- § become pro-active in developing programs to achieve an organisation which promotes sound equal opportunity practices
- § implement training and awareness-raising strategies to ensure that all employees know their rights and responsibilities with respect to Equal Employment Opportunity
- § provide an effective procedure for redress, against unfair or unreasonable treatment
- § treat all complaints in a sensitive, fair, timely and confidential manner
- § guarantee protection from any victimisation or reprisals
- § encourage the reporting of behaviour that breaches this equal opportunity policy
- § promote appropriate standards of conduct at all times.

Discrimination is prohibited in all North Central CMA work-related activities. For example, discriminatory behaviour is prohibited at the workplace, during working hours and at work-related activities such as training courses, conferences, field trips, work-related official and social functions.

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3 Definitions

What is a Workplace?

A workplace:

- § extends beyond the physical boundaries
- § extends beyond the set times of work
- § includes interactions between members
- § includes interactions with other organisations and the public

Equal Opportunity

EEO is about recognising and valuing diversity by ensuring that individuals do not face unnecessary barriers to participating in, or realising their potential in employment.

Direct Discrimination

Discrimination occurs when a person is treated “less favourably” than another person, on the grounds that the person belongs to a particular category or has a particular attribute.

Discrimination does not have to be calculated or conscious. It can result from entrenched beliefs and attitudes. The intention of the person discriminating is generally irrelevant.

Indirect Discrimination

Indirect discrimination may occur as a result of actions, which appear to be neutral, but in practice result in a person or group being treated less favourably.

Victimisation

Victimisation occurs when someone is treated less favourably because he or she has made a complaint about discrimination, harassment or perceived discrimination or harassment or that person has taken action, or intends to take action against the CMA under the relevant legislation. The CMA will not permit victimisation of complainants.

Natural Justice

Natural justice requires that a decision maker must act in good faith and without bias, provide an opportunity for a person whose interests will be affected by the decision to put their case before a decision is made, and that the decision is based on evidence. It is also important that participants are kept informed of progress of a matter.

4 Application

EEO is based on sound, progressive management principles utilising its human resources efficiently by promoting fair and equitable employment practices, and removing any discriminatory and inefficient procedures. The CMA will establish and encourage processes to support Equal Opportunity and support the activities of the Staff Consultative Committee whose role is to act as an EEO Advisory Committee.

4.1. Recruitment & Selection

The North Central CMA is an equal employment opportunity employer and has established *Recruitment and Selection Procedures* to ensure it recruits staff based solely on merit. Merit

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refers to the abilities, qualifications, experience, standard of work performance and personal qualities of those persons that are relevant to the performance of those duties, regardless of irrelevant personal characteristics.

4.2. Promotion and Advancement

Promotion and advancement within the CMA will be from individuals selected in fair and open competition on the basis of relative efficiency measured in relation to the position involved. Individuals should have the freedom to choose his or her occupation limited only by individual ability and the availability of particular jobs.

4.3. Employment Rights

All workplace participants (including continuing full and part-time, temporary, casual, contractors and work experience) have a basic right to work in an environment free of harassment and discrimination, and the CMA will inform workplace participants of their rights and of their responsibilities.

4.4. Pay Equity

Equal pay will be provided for work of equal value with appropriate consideration being given to the different requirements of various occupational employment categories.

4.5. Staff Development

Employees will be provided equitably with effective education and training where this will result in better organisational and individual performance.

4.6. Dismissal, Retrenchment and Retirement

CMA staff will not have their employment terminated on any unlawful grounds or be forced to retire. If retrenchment or redundancy are necessary, decisions will be made without reference to irrelevant factors and in a manner which is sensitive to the individual/s concerned and to the morale of the CMA and which conform with the legislative obligations of the CMA, and in particular, its obligations under the *Workplace Relations Act 1996*.

4.7. Performance Reviews

Performance reviews will be carried out for each individual to ensure that the employee is achieving their required outputs and to access incremental progression in accordance with the Certified Agreement. Such reviews will not encompass any consideration of factors, which are irrelevant to the workplace, and functions of the work role. Performance reviews will focus on specific outputs and behaviours of individuals and will not generalise on unlawful attributes.

5 Complaints

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The CMA will regard an act of unlawful discrimination as misconduct. Acts of misconduct are subject to formal disciplinary action which may include dismissal.

The CMA will treat seriously and confidentially grievances and complaints made by employees or members of the public in relation to discrimination. All reports of discrimination will be immediately acted upon with a guarantee of timeliness, confidentiality and objectivity.

All employees must avoid defamation issues by refusing to participate in gossip or speculation, and restricting comment or information relating to their involvement in an EEO matter to those who are directly involved in the complaint process.

Immediate disciplinary action will be taken against anyone who abuses confidentiality, victimises or retaliates against a person who has made a complaint or intends to make a complaint pursuant to this policy.

6 Procedure

Personal grievances will be treated confidentially, seriously and expeditiously. If a member of staff believes they have not been treated equitably in accordance with this policy, they should refer to the North Central CMA's grievance procedure for further guidance on the process that will be applied.

At any time the complainant may seek the support and advice of the Human Resources practitioner or an EEO Contact Officer. The individual also has the right at any time to refer the matter to the Australian Industrial Relations Commission, the Equal Opportunity Commission and/or any other appropriate body for conciliation.

An Employee who feels he/she has been treated unfairly or unreasonably should immediately advise their manager, Human Resources practitioner or an EEO Contact officer. The Human Resources practitioner will be able to provide the complainant with information about the grievances process and available options.

- If the complainant is seeking mediation, the Human Resources practitioner or another nominated objective person will conduct mediation. Both parties will initially meet separately with the mediator. The mediator will then arrange a meeting between both parties to progress the relationship on common ground. Each has a right to have a support person present during the mediation process.
- If the complainant or respondent chooses not to participate in mediation, then the complainant may lodge a formal written grievance with the Human Resources practitioner for investigation. Full details of the incidents, together with dates, must be provided. The respondent will be advised of the details of the complaint and be advised if an investigation is forthcoming. The grievance will be investigated by either an impartial internal or external investigator and an outcome determined.
- Should the complainant choose not to participate in mediation but request an investigation,

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the complainant and respondent will meet separately with the investigator. Each has a right to have a support person present during the interview. Interviewing witnesses will be at the discretion of the investigator and only if the finding is unclear after meeting with the complainant and respondent. Investigations will be undertaken expeditiously ensuring confidentiality and objectivity, and based on the principles of natural justice.

- Depending on the severity of the case, consequences can include a written or verbal apology, formal counselling or disciplinary action.
- Immediate disciplinary action will be taken against anyone who victimises or retaliates against another person. Refer to the North Central CMA's 'Employee Conduct and Performance Policy'.
- The Human Resources practitioner will convey the outcome of the investigation to the complainant and respondent, both verbally and in writing.
 - § If the matter is not resolved the complainant has the option of requesting the CEO to review the decision of the Human Resources practitioner or referral to an external body (eg Equal Opportunity Commission Victoria, union delegate, or the Australian Industrial Relations Commission).
 - § Specifics of any incidents and parties involved will be maintained in the strictest of confidence at all times and details will not be recorded on personal files.
 - § When the EEO matter has been resolved, or the grievance procedure has been exhausted, the CMA reserves the right to inform Managers who may need to be made aware of the issues and initiate disciplinary procedures in appropriate cases.

The Human Resources practitioner, in conjunction with the relevant manager, is responsible for ensuring that any required follow-up action is implemented.

7 Responsibilities of Management and Staff

The CMA has a legal responsibility to prevent discrimination in the workplace, otherwise it can be liable for the actions of its employees [eg; vicarious liability]. It is a management responsibility to identify, prevent and redress potential problems in the workplace before they become grievances. This means that managers have a responsibility to:

- Monitor the working environment to ensure that acceptable standards of conduct are observed at all times
- Promote the CMA's EEO policy within their work area
- Treat all complaints seriously and take immediate action to investigate and resolve the matter
- Refer all complaints to another officer if they do not feel that they are the best person to deal

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with the case. For instance, if there is a conflict of interest or if the complaint is particularly complex or serious

- Ensure that all staff are aware of current employment legislation and their pursuant rights and responsibilities under that legislation
- Attend training and refresher training as provided by the CMA
- Model appropriate behaviour

All staff have a responsibility to:

- Comply with the organisations anti-discrimination and employment equity policies
- Offer support to anyone who is being discriminated against and let them know where they can get help and advice
- Maintain complete confidentiality if they provide information during the investigation of a complaint. It should be noted that spreading of rumours may expose one to a defamation action.
- Attend training and refresher training as provided by the CMA
- Model appropriate behaviour

8 Further Information

Advice and action under the provisions of the Equal Opportunity Act 1995 can be sought through the Equal Opportunity Commission Victoria.

Telephone Enquiries	(03) 9281 7111
Toll Free	1800 134 142
Facsimile	(03) 9281 7171
Address	Level 3, 380 Lonsdale St, Melbourne, Victoria 3000