

## RELIGIOUS BELIEF

### Case Study 8 – Staff

**Hannah** is a Student Services Officer and often works on the front desk of a busy office. Hannah is Jewish and asks to have a Monday off for Yom Kippur, the Day of Atonement. She explains to her supervisor that on this day she will be fasting and this makes it difficult for her to work and concentrate. The supervisor tells Hannah that she is rostered to work on the front desk on that day and will be expected to be at work. Hannah is told that she can take a flex-day on the Friday when another staff member is rostered to work the front desk.

Hannah advises the Department that she feels she is being indirectly discriminated against on the basis of her religious beliefs.

The Department considers possible solutions to the issue including:

- Arranging for Hannah to swap her front desk duties with her colleague so that she works on Friday rather than Monday
- Allowing Hannah to use the University policy that entitles staff, with the approval of their supervisor, to substitute any University holiday for a cultural or religious day of significance.

### Further advice and assistance

Often it is not completely clear whether a policy or practice would indirectly discriminate against a particular group, or whether this would be reasonable or justifiable in the circumstances. Complaints may also be received from a student or staff member about existing rules, policies or practices. In these situations it is advisable to seek assistance and clarification of obligations under equal opportunity legislation and University policy.

#### Equal Opportunity Unit

Staff of the University's Equal Opportunity Unit are available to provide advice about policies and practices and to deal with concerns and complaints which may be raised by staff and students. For further information contact the Unit on 8344 4438 or visit the Equal Opportunity Unit's website at: <http://www.hr.unimelb.edu.au/e/>

#### Anti-Discrimination Advisers

The University has a network of Anti-Discrimination Advisers (ADAs) who provide confidential advice and support to staff and students with any concern which may involve discrimination. ADAs are also able to provide advice and support to supervisors and managers who are drafting new policies and procedures, or who feel an existing policy or procedure may be in breach of equal opportunity legislation.

For an up-to-date list of ADAs see the Equal Opportunity Unit's website at: [http://www.hr.unimelb.edu.au/e/eo\\_advice.html](http://www.hr.unimelb.edu.au/e/eo_advice.html)

#### Information Sessions for Staff and Students

A key strategy in preventing discrimination is training for staff and students on rights and responsibilities under University policy and legislation. In law, it is not enough for a manager or staff member to know that a policy exists – it is expected that every reasonable step will be taken to ensure that all staff understand and comply with equal opportunity legislation. Information sessions and training can be requested through the Equal Opportunity Unit by contacting **8344 4438**.

#### Policies and Procedures

Further information on the University's Equal Opportunity Policy and Discrimination Complaints Policy and Procedures can be found in the Personnel Policies and Procedures Manual at: <http://www.unimelb.edu.au/ppp/docs/>

Information on equity and diversity issues at the University is available on the Equity and Learning Programs websites:

<http://www.services.unimelb.edu.au/elp/>  
<http://www.unimelb.edu.au/diversity/>

#### Equal Opportunity Commission (Victoria)

Staff and students may also seek advice from the Equal Opportunity Commission either directly on: 1800 134142 or through their website at: <http://www.eoc.vic.gov.au/>



### Reasonable adjustment

'Reasonable adjustments' are modifications or adjustments to a job, to the work or study environment, or to a student or employment practice that make it possible for an individual to enjoy equal opportunity. The reasonable adjustment should aim to reduce or eliminate unnecessary barriers between an individual's skills and abilities and the usual requirements for performing essential task functions.

### Unjustifiable hardship

In some cases an adjustment may impose an 'unjustifiable hardship' on a workplace. In determining what constitutes unjustifiable hardship, all relevant circumstances of the particular case are to be taken into account. For example, an adjustment may not be deemed 'reasonable' when the cost of the adjustment is beyond the reasonable financial resources of an employer or service provider.

## WHAT STEPS CAN BE TAKEN TO AVOID INDIRECT DISCRIMINATION?

When introducing new policies and procedures into your department it may be helpful to consider the checklist below.

- The department has sought advice on a proposed policy/procedure that could give rise to indirect discrimination.
- Every effort has been made to ensure that there is flexibility in work/study arrangements, in order to accommodate the particular needs of staff members/students.
- All staff have received information and training on their rights and responsibilities in relation to equal opportunity and discrimination.
- Serious consideration has been given to accommodating the diverse needs of students and staff.
- Job advertisements and selection criteria address the inherent requirements of the job and do not indirectly discriminate.
- Class materials are formatted in a manner that will accommodate the needs of students with different disabilities.
- The Department's website meets the international standards for accessibility (These design standards are widely published, for example: [http://www.sunriseresearch.com.au/OZeWAI\\_2001/IMS/IMS-secX.html](http://www.sunriseresearch.com.au/OZeWAI_2001/IMS/IMS-secX.html) and [http://www.hreoc.gov.au/disability\\_rights/standards/www\\_3/www\\_3.html](http://www.hreoc.gov.au/disability_rights/standards/www_3/www_3.html))
- Processes for dealing with complaints that may arise from department/faculty/division policy and procedures are clear, accessible to students and staff, and responsive in resolving the concern.

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THE UNIVERSITY OF  
MELBOURNE

equity and diversity

# Indirect Discrimination: Fair in Form: Fair in Effect?

## Why is indirect discrimination an issue?

There are many reasons why indirect discrimination is an issue for the University. For example:

- the majority of complaints received by the Equal Opportunity Unit involve indirect discrimination;
- indirect discrimination is less well understood and more difficult to recognise as it is often imbedded in the culture of "the way we do things here"; and
- indirect discrimination affects student participation and staff recruitment and may be a barrier to progress and achievement.

This brochure explains what is meant by indirect discrimination using some practical examples and case studies, and discusses the responsibilities of staff of the University in preventing and addressing indirect discrimination.

## The responsibilities of University staff

It is the responsibility of every member of the University community to prevent discrimination. In the case of indirect discrimination, University staff have a key responsibility in ensuring that policies, procedures, rules and practices do not have unintended but discriminatory outcomes. This means that careful attention is needed when policies and rules are being drafted, and when courses and events are being planned. It also means reviewing policies regularly and in response to concerns raised by staff or students.

## The University's policy on discrimination

The University aims to be a

*"preferred destination and a supportive workplace for outstanding staff and students from Australia and around the world"* (Operational Plan 2003).

In order to achieve this aim and meet its obligations under Federal and Victorian law, the University is committed to the principle of equal opportunity in education, employment and welfare for staff and students and will not tolerate direct or indirect discrimination, as defined in Victorian and Federal legislation.

The University's position and its strategies to achieve these aims are clearly articulated under a number of policies including the Equal Opportunity Policy and the Discrimination Complaints Policy and Procedures.

## What does the law say?

In Victoria it is against the law to directly or indirectly discriminate on the basis of one or more of the following attributes:

- age
- disability
- gender
- marital status
- pregnancy
- breastfeeding
- sexual orientation
- gender identity
- parental status
- carer status
- physical features
- race
- religious belief or activity
- industrial activity
- political beliefs or activity
- personal association with a person who is identified by reference to any of the above attributes

## How are direct and indirect discrimination defined in law?

**Direct discrimination** means treating or proposing to treat another person less favourably on the basis of an attribute that the person possesses or is thought to possess.

For example:

- A supervisor refuses to support a student's application for a PhD because she is pregnant
- A staff member is refused entry to a training course because they are considered too old.

**Indirect discrimination** occurs when a rule, practice or policy appears to be neutral, but in effect has a disproportionate impact on a particular group. It arises with practices that are fair in form and intention but discriminatory in impact and outcome. Indirect discrimination is unlawful when the rule, practice or policy is not reasonable in the circumstances.

For example:

- All tutorial classes and tutor consultation times for a subject are held after 5 PM. While this requirement applies equally to all students, it may have a disproportionate impact on, for example, students with family responsibilities. The requirement may therefore amount to indirect discrimination.
- Short-listed applicants for a job are all invited to attend an interview that is held on the third floor of a building with no lifts. Applicants with a disability that affects their ability to use stairs would be disproportionately affected. This situation may give rise to indirect discrimination.

## The cost of discrimination

The costs of any kind of discrimination can be considerable. Discrimination can affect staff and student performance, commitment and retention, and has a negative impact on the University's reputation as an employer and educator of choice. Discrimination concerns may also be taken to a Commission or Tribunal resulting in significant costs in time and resources.

In contrast the benefits of equal opportunity, respect for diversity and an environment free from harassment and discrimination are considerable. All staff and students stand to gain from efforts to address indirect discrimination in the University context.



## Examples of indirect discrimination

Following are eight case studies relating to indirect discrimination that may affect students and staff and an outline of possible strategies that could be undertaken to address the discrimination. These situations could have been avoided if policies and procedures had addressed the potential for indirect discrimination more effectively.

### DISABILITY

#### Case Study 1 – Student

**Luke**, a student with Chronic Fatigue Syndrome, is undertaking a subject that involves a practical session held on the first floor in an old building of the University. Luke knows that he will be unable to walk up the stairs on the majority of the weeks during the semester. There is no lift in this old building. He requests, well in advance of the classes commencing, that the prac class be held in another laboratory. The Department indicates that no other facility would be available. Luke seeks advice and notifies the Department that he feels he has been indirectly discriminated against on the grounds of his disability.

The Department recognises that the resolution of this issue requires both short and long term strategies.

#### Short term solutions

The Department considers possible immediate solutions to the issue including:

- Minor alterations to another laboratory facility that would allow the venue to be changed
- An additional demonstrator employed to work with Luke in a downstairs laboratory. However this would mean that Luke would not be able to benefit from class participation.

#### Long term solutions

The Department realises that forward planning is essential and contacts Property and Buildings to discuss:

- Construction of a ground floor laboratory facility within the department
- Construction of a lift, or
- Installation of a fixed stair climber.

### DISABILITY

#### Case Study 2 – Staff

**Paula** has worked in an administrative position at the University for over 8 years and has always been highly regarded. Paula was recently diagnosed with a chronic illness and has taken six weeks sick leave to recuperate. Paula advises her supervisor that she would like to return to work part-time to assist her in managing her illness. Her supervisor says that her particular job can only be done full-time. Paula says that she would be happy to job share, or to take on a different role at the same level as her former position. The supervisor insists that the job could not be done part-time and that there is no other position available.

Paula advises her manager that she feels she is being indirectly discriminated against on the basis of her illness. The manager contacts Client Services in Human Resources and possible solutions to the issue are explored and discussed with Paula, including:

- Setting up a job-share arrangement where Paula and another person share the full-time position, each working on a part-time basis
- Agreeing on an arrangement that Paula work from home two days per week
- Creating a new position in the Department that is part-time, at the same HEW level and with similar responsibilities
- Seconding Paula to a half-time position for a period of 1–2 years, in a similar role in another department.

The Department agreed that any of these options would be for a trial period, open to renegotiation, and that Paula would retain her substantive position.

### PARENTAL STATUS

#### Case Study 4 – Student

**Siobhan**, a mature age student with young children, has enrolled in a course that has three core units and three optional units. There are three alternative streams for the core units, set out on the timetable listed on the web.

Prior to the commencement of the semester Siobhan organises child-care to fit in with Stream A as outlined on the web. However at the beginning of the semester Siobhan is informed that she has been allocated to Stream B. This conflicts with the child-care arrangements. Siobhan attempts to change the child-care arrangements but is unable to do so.

Siobhan contacts the Department and advises them of her difficulty. The Department recognises that it has indirectly discriminated against students with parental and carer responsibilities and considers how this could be avoided in future including:

- Ensuring that, where there are multiple streams for a subject, students are given the opportunity to nominate their chosen stream
- Notifying students of their confirmed timetable as early as possible
- Providing some flexibility in Departmental policies and procedures in relation to timetabling and class allocation.



### CARER STATUS

#### Case Study 3 – Student

**Nishan** is a student who is commencing a course that, according to the handbook, can only be undertaken on a full-time basis. Nishan has primary carer responsibility for his elderly parents and believes that his carer responsibilities would make full-time study difficult. He requests permission to undertake the course part-time. The faculty argues that this would not be possible as the course is only provided every second year. Furthermore, it has been designed so that the practical and theoretical elements are inter-related and need to be completed at the same time.

Nishan is annoyed about the lack of flexibility and advises the Department that he feels he

has been indirectly discriminated against on the grounds of his carer responsibilities.

The Department seeks advice about indirect discrimination from staff in the Equal Opportunity Unit. It is advised that the requirement that students with family responsibilities study full-time may amount to indirect discrimination. However, the discrimination may not be unlawful if the requirement that students study full-time can be justified. Taking all the circumstances into account, the Department believes that the condition is justifiable and writes to Nishan to explain the need for the requirement in more detail.

### PARENTAL STATUS

#### Case Study 5 – Staff

**Elizabeth**, an academic staff member and single mother, has worked part-time (0.5) over a number of years and applies for a Level C Senior Lecturer position. She and a full-time colleague, Miranda, are short-listed for the position. While Elizabeth has more teaching experience than Miranda and has received excellent teaching evaluations, Miranda is awarded the position on the basis of her publication record. Miranda has twice as many publications as Elizabeth.

Elizabeth advises the Department that she considers that she has been disadvantaged in the selection process because she works part-time. She argues that her publication record is of excellent quality and of a quantity commensurate with her time-fraction. She says that if this had been taken into consideration she would have been the better candidate, given her superior teaching record. She feels that, as she works part-time because of her parental responsibilities, she has been indirectly discriminated against on the basis of her parental status.

The Faculty recognises that this situation could have been avoided by:

- Considering all applications on the basis of merit, giving due consideration to the particular circumstances of the applicant, including time fraction and career breaks
- Ensuring that selection panel members have attended Academic Recruitment and Selection training which includes discussion of discrimination and equal opportunity legislation and policy.

#### Case Study 6 – Staff

**Tehn**, a researcher and father of two primary-school aged children has been asked to present at an important interstate conference. Tehn is excited about the conference, which falls during the school holidays. He has asked the Head of the Research Group for financial assistance to cover the cost of taking his children with him as his partner will be overseas during this period. The Head advises Tehn that such allowances are not available and that the Department is only able to pay for the costs of staff. He advises Tehn that it wouldn't be good for his career to refuse this conference invitation and that he needs to manage his personal affairs so they don't impact upon his work and career progression.

Tehn advises his Department that he feels he is being indirectly discriminated against on the basis of his parental responsibilities.

The Department considers possible solutions including:

- Covering the child care expenses of staff with dependents who are presenting at conferences interstate or overseas
- Suggesting that Tehn contact the conference organisers to find out if there is funding and/or resources available to assist presenters who have dependent children.

The Department decides to introduce a policy that child care will be offered at conferences and functions organised by the Department.

### BREASTFEEDING

#### Case Study 7 – Staff

**Malina** has recently returned from maternity leave and is continuing to breastfeed her baby. During the day she expresses milk that she takes to the child care centre during her lunch hour. Malina asks her manager if she can take extra breaks during the day so that she can express. She says that she is happy to start work a little earlier to cover this time. She also asks if there are any facilities available where she can express and store her milk. Malina's manager advises her that all staff are entitled to a lunch hour and two 10 minute breaks and that she cannot make special conditions or provide special facilities for Malina. Malina advises the Department that she feels she has

been indirectly discriminated against because she is breastfeeding.

The Department considers solutions to the issue including:

- Allowing Malina to use an empty office with a lockable door and a comfortable chair, and providing a small fridge
- Allowing Malina lactation breaks while she is breastfeeding
- Introducing flexi-time in the work unit.

They also explored the possibility of introducing a family-room with breastfeeding and nappy change facilities.