

COMMISSIONER FOR PUBLIC EMPLOYMENT

GUIDELINE

for the South Australian Public Service

Protection of Merit and Equity

MARCH 2001



Government
of South Australia

INTRODUCTION

The principles of merit and equity are central to public sector accountability and have long served to ensure an objective, apolitical public service which will carry out the policies of the elected Government in service to the community.

This Guideline provides principles on which South Australian public sector agencies can base human resource management to ensure that merit and equity are protected within the workplace.

KEY RESULT AREA

This guideline is linked to the Protection of Merit and Equity key result area of the Strategic Human Resource Management Framework for the South Australian Public Sector.

Appoint and promote staff on merit, prevent nepotism and patronage, use workforce diversity to advantage, prevent unlawful discrimination, address grievances and treat all employees fairly.

(eg Managing Diversity approach, grievance resolution, promotion and grievance appeals, appointment and promotion processes)

DEFINITIONS

Agencies may find the following definitions useful when interpreting this Guideline.

Merit

The Public Sector Management Act 1995 defines merit in the context of selection processes as:

- the extent to which each of the applicants has abilities, aptitude, skills, qualifications, knowledge, experience (including community experience) and personal qualities relevant to the carrying out of the duties in question
- if relevant:
 - the manner in which each of the applicants carried out any previous employment or occupational duties or functions
 - the extent to which each of the applicants has potential for development.

Equity

Equity means fairness and impartiality, but not, necessarily, treating everyone in the same way. There are occasions when equity involves a decision made in good conscience to treat a person differently according to their social or other circumstances.

Natural Justice

Natural justice requires that:

- people are entitled to be informed of allegations made against them
 - all persons affected by a decision should be given the relevant information to enable an informed submission to be made to the decision maker or person subsequently reviewing a decision
 - during the review of a decision, all persons affected by a decision should have an opportunity to put their case, relevant arguments should be heard, and relevant information should be accessible to all parties
 - decision makers must act fairly and impartially.
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Nepotism and patronage

Patronage means bestowing favours on a person by virtue of your position, authority or influence because of who that person is or your relationship with that person. Nepotism means patronage bestowed by reason of a family relationship.

Unlawful discrimination

Unlawful discrimination occurs when a person or group of people are treated less favourably than others on the basis of a real or presumed characteristic which is specified in legislation (eg gender, sexuality, marital status, race, age, pregnancy, or impairment).

It can be direct discrimination which is overt, but also includes indirect and systemic discrimination.

Indirect discrimination occurs when policies, procedures and practices which appear to be fair in fact suit a particular group of people and disadvantage other groups, ie when applied equally, they affect different groups unequally.

Systemic discrimination occurs when an entire network of rules and practices disadvantages less empowered groups while serving at the same time to advantage the dominant group.

Unjustifiable discrimination

The Public Sector Management Act also prohibits unjustifiable discrimination, which is discrimination occurring because of a bias held by a person which may not necessarily be specifically defined as unlawful under any legislation. A bias against a person's appearance or religion for example, could result in unjustifiable discrimination.

Discrimination may be appropriate in some circumstances, but only if it is not illegal and can be justified (eg equal employment opportunity programs established to benefit specific groups under Section 67 of the Public Sector Management Act, or not employing a person with a criminal history where this is directly relevant to the position).

PRINCIPLES

1. The protection of merit and equity is approached strategically

Systematically addressing merit and equity issues through agency human resource policies and practices will reflect community expectations and support a high performing public sector.

Agencies should:

- (a) address merit and equity issues at all stages within their strategic planning processes, and in particular when:
 - determining agency values
 - assessing the environment in which the agency operates
 - developing their objectives
 - identifying and implementing programs and strategies
 - establishing key performance indicators
 - evaluating agency performance
 - (b) take active steps to objectively measure and assess their performance in the protection of merit and equity
 - (c) ensure systems are in place to effectively support the monitoring of agency performance in the protection of merit and equity.
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2. Agency staffing decisions are based on merit

Basing all selection decisions on a proper assessment of merit is essential to achieving the best possible staffing outcomes.

Agencies must make it known that all selection decisions will be made on the basis of merit, even when formal selection processes need not be followed. Selection decisions include decisions to appoint or assign persons to positions. Agencies should:

- (a) only specify essential requirements for appointment which do not unnecessarily restrict or discriminate against potential applicants. Care needs to be taken that agencies do not base these requirements only on how such positions have been 'traditionally' performed
 - (b) ensure that selection processes involve an assessment of the merit of each applicant against the essential requirements for the position. Particular care should be taken to recognise and value diverse community, family and cultural skills and experience
 - (c) make active efforts to ensure selection processes are not unduly restrictive so as to exclude or discourage particular groups within the public sector and/or the community
 - (d) ensure that members of selection panels are informed of appropriate selection and decision making processes.
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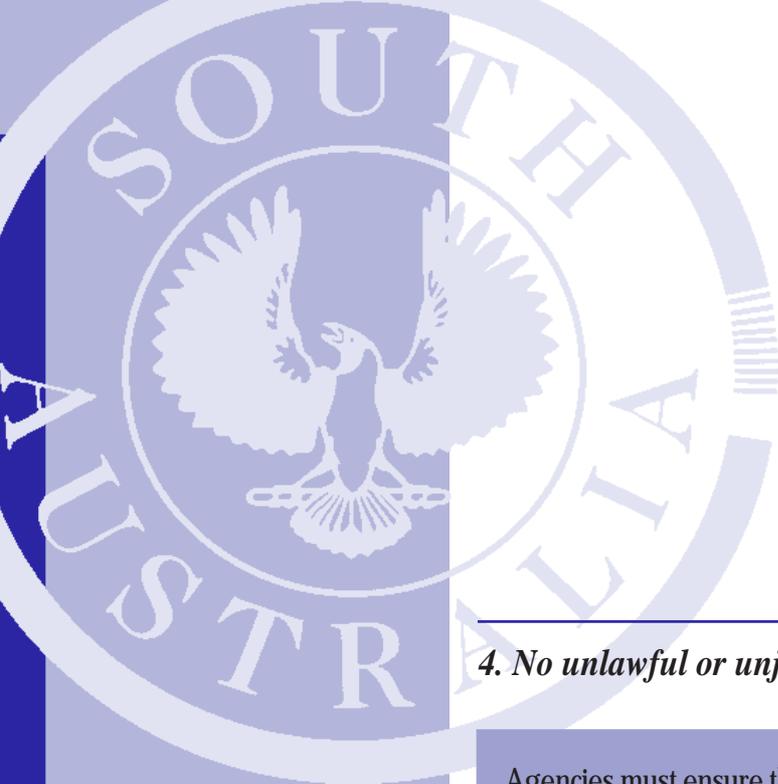


3. All employees are treated fairly, consistently and equitably

Fair, consistent and equitable treatment of all employees is essential to building and maintaining harmonious employee relations and upholding employee rights.

Agencies must ensure all employees are treated with equity when decisions are made which affect their employment. Agencies should:

- (a) consider providing training to line managers in the management of diversity and the rights and responsibilities of employees and managers in relation to merit and equity
 - (b) give particular consideration to decisions affecting equitable access to:
 - employment conditions, including voluntary flexible working arrangements
 - leave, including unpaid leave
 - performance management
 - employment opportunities
 - training and development opportunities
 - (c) ensure that employees are made aware that there may be variations in human resource policies and practices between agencies which reflect the different operating environments and priorities of those organisations
 - (d) ensure that human resource policies and practices within an individual agency are consistent and equitable
 - (e) ensure that agency human resource management practices are free from nepotism and patronage.
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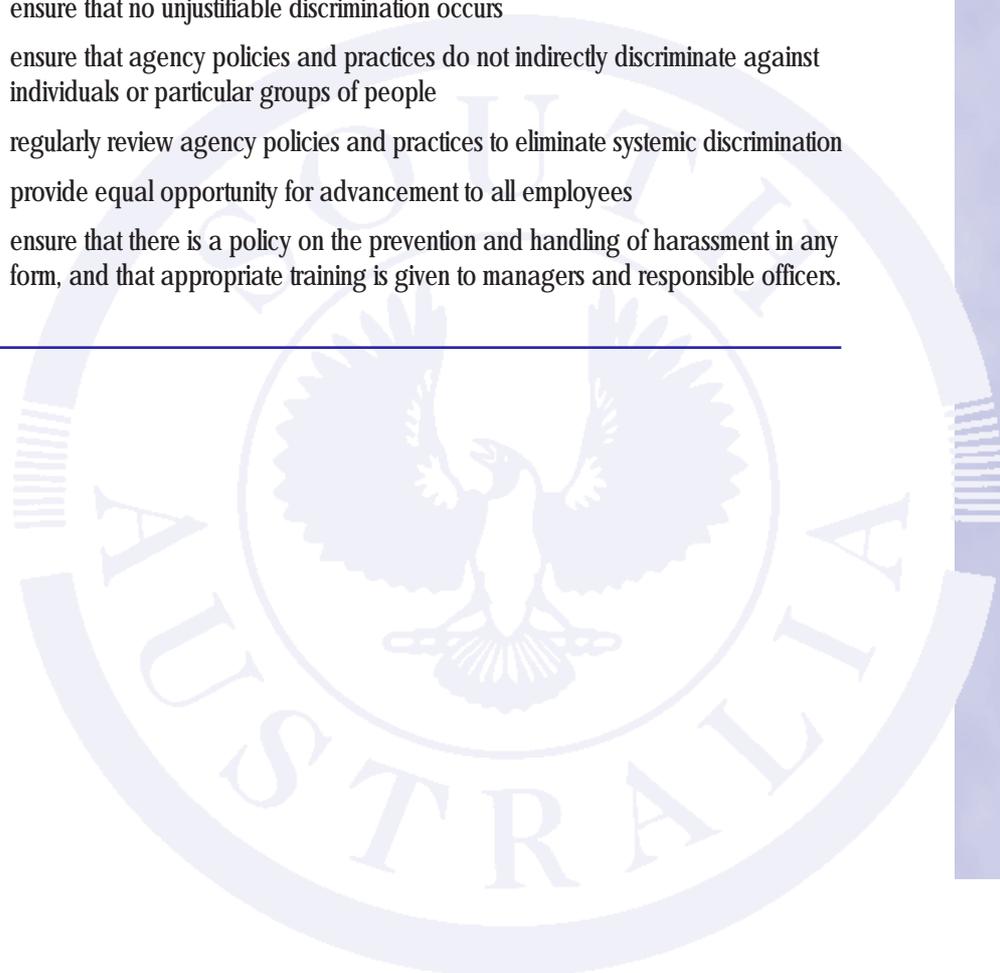


4. No unlawful or unjustifiable discrimination occurs

Agencies must ensure that employment practices do not result in unlawful or unjustifiable discrimination.

Agencies must:

- (a) prevent unlawful discrimination against employees or persons seeking employment in the public sector on any of the grounds outlined in relevant equal opportunity, disability or employment legislation (Refer to list of relevant legislation in Other Information at the end of the Guideline)
 - (b) ensure that no unjustifiable discrimination occurs
 - (c) ensure that agency policies and practices do not indirectly discriminate against individuals or particular groups of people
 - (d) regularly review agency policies and practices to eliminate systemic discrimination
 - (e) provide equal opportunity for advancement to all employees
 - (f) ensure that there is a policy on the prevention and handling of harassment in any form, and that appropriate training is given to managers and responsible officers.
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5. Diversity is managed

Effective management of the diversity of the workforce within the public sector will assist the implementation of equal opportunity and human rights legislation and will enhance service delivery and operational effectiveness. It will provide opportunities to benefit from the skills, experiences and knowledge of all employees.

Agencies should ensure their workforce appropriately reflects the diversity of its customer base and related needs by:

- (a) valuing and fully utilising the diversity of skills and experiences which exist amongst its employees
 - (b) establishing a human resource plan which is fully integrated with the agency's strategic plan, and which identifies the range of human resource diversity which will be required to achieve the business objectives of the agency
 - (c) promoting difference within the workforce as a valuable asset, and encouraging management practices that create and sustain an environment where every employee can achieve his or her potential in contributing to agency objectives
 - (d) considering the establishment of formal equal employment opportunity programs pursuant to Section 67 of the Public Sector Management Act, to assist persons of a defined class to have equal opportunities in relation to employment in the public sector with persons not of that class
 - (e) accessing and using resources available from appropriate organisations to ensure that diversity issues are addressed appropriately in agency policies and practices
 - (f) establishing systems to analyse and address the diversity of its workforce and customer base.
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6. Fair grievance processes exist

Natural justice requires that employees have access to appropriate avenues of redress against improper or unreasonable administrative decisions.

Internal grievance processes must be established and made known to and fully understood by employees (including information on the rights and responsibilities of individual employees). Agencies should:

- (a) ensure grievance processes are not overly onerous for employees
 - (b) apply the principles of natural justice in decision making about grievances
 - (c) provide support to line managers to inform them of their responsibilities in relation to grievance management and conciliation processes
 - (d) seek to resolve by conciliation any grievances, before they are considered under independent grievance resolution processes
 - (e) ensure that employees are informed about the independent grievance resolution processes available to them through:
 - the Promotion and Grievance Appeals Tribunal for promotion appeals and administrative grievances (PSM Act employees)
 - the Disciplinary Appeals Tribunal for disciplinary appeals (PSM Act employees)
 - the Commissioner for Public Employment for reviews of remuneration levels (PSM Act employees) and other personnel management issues
 - the Equal Opportunity Commission in relation to complaints of discrimination.
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OTHER INFORMATION

Legislation

Public Sector Management Act 1995

- Part 1 Preliminary
- Part 2 General Public Sector Aims and Standards
- Part 5 Commissioner for Public Employment
- Part 6 General Employment Determinations and Positions
- Part 7 Public Sector Appointments (Apart from Chief Executives)
- Part 8 General Public Service Employment Provisions: Division 8 - Conduct and Discipline; and Division 9 - Appeal Against Administrative Decisions
- Part 9 Miscellaneous
- Schedule 3, Promotion and Grievance Appeals Tribunal and Disciplinary Appeals Tribunal
- Regulations 8, 9, 11, 12, 16, 17

Equal Opportunity Act 1984

Racial Vilification Act 1996

Commonwealth Disability Discrimination Act 1992

Commonwealth Sex Discrimination Act 1984

Commonwealth Racial Discrimination Act 1975

Whistleblowers Protection Act 1993

All other relevant legislation which sets terms and conditions for employees of public sector agencies

Industrial and Employee Relations Act 1994 and any relevant awards, determinations or enterprise or industrial agreements in force under this legislation

Workers Rehabilitation and Compensation Act 1986

Publications issued by the Commissioner for Public Employment

- Guideline for Executive Employment
- Guideline for the Recruitment and Employment of Non-Executive Employees
- PSM Act Determination 1 – Executive Employment
- PSM Act Determination 2 – Recruitment and Employment of Non-Executive Employees
- PSM Act Determination 5 – Voluntary Flexible Working Arrangements
- People Mean Business - Managing Diversity in the South Australian Public Sector
- Background Briefing Paper - Grievance Resolution
- Background Briefing Paper - Recruitment and Employment of Non-Executive Employees (being developed)
- Background Briefing Paper - Voluntary Flexible Working Arrangements

Other organisations which can provide advice and assistance

- Equal Opportunity Commission
- Office for Multicultural and International Affairs
- Office for the Status of Women
- State Aboriginal Affairs
- Commonwealth Human Rights and Equal Opportunity Commission



About Guidelines

The Commissioner for Public Employment issues guidelines in accordance with Section 22 of the Public Sector Management Act 1995.

The guidelines detail the principles underpinning the eight key result areas of the Strategic Human Resource Management Framework for the South Australian Public Sector.

This guideline has been prepared in consultation with agencies with a view to facilitating agency level decision making. Where a requirement exists under legislation, or in government policy, the guideline indicates this.

Where necessary, the Commissioner issues PSM Act Determinations and supporting material. The determinations are binding, so as to ensure the effective implementation of Government public sector workforce policies and the personnel management standards of the Act, and the protection of key employment conditions. The supporting materials explain best practice in human resource management and provide additional information to agencies.