Human Resources Manual
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WORKPLACE RELATIONS
> HUMAN RESOURCES MANUAL

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1. Strategic human resource management

1.1 Human resource management (HRM)

Human resource management (HRM) is the proactive management of people, which includes sourcing and managing people within the employer-employee relationship. It involves the productive use of employees' skills, experience and attitudes to achieve the organisation's strategic and operational goals. It also requires thinking ahead and planning ways to create an environment of competitive advantage for an organisation while meeting individual employee needs.

It is the responsibility of human resources professionals and managers to implement proactive and fully-integrated HRM practices in their workplaces. Other practitioners who may also have responsibility for HRM in an organisation include other senior level employees with HRM expertise, external consultants and other outsourced providers who administer and provide a range of HRM services on a project or ongoing basis.

Increasingly, traditional HRM functions are being outsourced. However, these services still need to be understood and managed competently from within the organisation by the relevant human resources professionals.

This requires HRM to be managed closely, linking all stakeholders, suppliers and customers to maximise the effectiveness of all HRM initiatives.

Basic HRM functions required in an organisation are:

> planning human resource needs (i.e. how many employees are required?)
> identifying qualifications, skills and attitudes that are required
> recruiting and selecting appropriately-skilled people
> motivating, assessing and rewarding employee performance
> educating and training employees
> organising, monitoring, and evaluating HR activities and outcomes
> management of employee issues and grievances.

1.2 HRM strategy

A strategy, broadly defined, clarifies the direction an organisation intends to go and establishes the framework for action it intends to take to get there. A strategy should reflect the organisation's approach to achieving its objectives. Therefore, an HRM strategy provides the foundation for effective HRM by identifying critical people-management issues and the means for the organisation to address them.

a) Objectives

Within the HRM strategy, a number of clearly articulated objectives should be developed. It is important that these objectives are clearly linked to the organisation's objectives and specifically address the key issues facing the organisation.

HRM objectives include outcomes and activities. The HRM objectives outline what is to be achieved in specific terms, with the overall objective being to maximise workforce levels of productivity and performance.

b) Policies and procedures

HR policies and procedures are then developed to support the objectives in the strategy and are the mechanics behind the objectives. Policies and procedures clarify the 'how'. They articulate the processes that must be followed to achieve the HR objectives and provide employees with a clear picture of their rights and responsibilities as part of the employment relationship.

HRM strategy should be designed to help an organisation to achieve its organisational business goals. The human resources professionals should therefore be confident that the HR objectives are aligned to the organisational business goals, and that the policies and procedures are relevant and help create a competitive advantage.

1.3   Purpose of HRM strategy

Organisations need to adopt a strategic mindset if they are to maximise the return on their HRM investment. Failure to be aligned at the strategic level will result in a negative impact on the capacity of the HRM function to contribute to the achievement of the organisation's operational and corporate goals.

A clear link between the organisation's HRM objectives and those of the business will ensure that HRM strategy supports the organisation to achieve its business objectives. HRM will:

> ensure the organisational business planning processes are supported by a relevant and effective HRM function

> forecast and manage HRM requirements as part of the strategic planning process

> design and manage the culture, climate and organisational processes of the business to create a productive and efficient working environment

> identify the mix of competencies required across all levels of the organisation, and a strategy to build and maintain these competencies

> assess and manage the performance requirements needed across the organisation.

Without a strategic view, HRM activities may fall short of adding maximum value to an organisation, and may be reactive in shaping the relationship between the organisation and its employees.

For example, an organisation may have forecast a downturn in sales in a given area. The resultant need is to reduce labour costs, requiring a reduced head count and improved employee performance, to ensure the corporate business plan objective is still achieved. Such goals necessitate specific human resources objectives and activities, such as the introduction of a performance-based reward system to motivate employees to improve productivity levels.

1.4   Influences that affect HRM strategy

To ensure the HRM strategy supports and contributes to the achievement of the business objectives an analysis of the major factors that may impact on the HRM function should be undertaken before the HRM strategy is developed. This approach to development of the HRM strategy also ensures that the human resources manager is proactive, rather than simply reacting to issues as they arise. An analysis of both internal and external influences should occur.

1.4.1   Internal influences

Internal influences are those factors that relate to the internal operation of the organisation. Internal influences may include:

> culture of the organisation
> business mission and vision
> corporate business objectives
> management and leadership
> turnover and age of the workforce
> skills, knowledge and experience of the workforce.

Such issues must be considered in terms of their possible impact on the organisation and how the HRM strategy can minimise any negative impact and maximise positive outcomes for the organisation. For example, how will the business objectives impact on employee numbers and the structure of the organisation? Will the organisation have the skills and knowledge required to achieve its objectives? What can the organisation expect in terms of attrition rates, and how should this be managed? How does the management style in the organisation affect the likely effectiveness of HR programs?

By completing a thorough analysis of all of the factors within the organisation that may impact on HRM, a proactive, effective HRM strategy can be developed.

1.4.2   External influences

The HRM strategy should also identify the external influences on the organisation and the likely impact on HRM. *External influences* are those issues that are imposed on the business from sources outside the organisation that may include:

Political influences

These influences relate to the nature of the relationship between the government, employer organisations, unions and the business community. A political change (e.g. change of government at state or federal level) may have significant impact on the regulation of employment law. Issues such as management of strikes, secondary boycotts, enterprise bargaining and minimum terms and conditions of employment may differ from state to state, and between federal and state government legislation.

Legal influences

These influences encompass the myriad of laws and regulations regarding issues such as employee entitlements, equal opportunity (including harassment, discrimination and affirmative action), and health and safety. The HRM strategy must reflect the organisational obligations in all of these areas and include policies that prevent potential breaches and subsequent penalties, and workplace consequences.

Technological developments

These influences impact on the way in which a product is produced or a service is delivered. Technological advancements will influence areas such as the type and level of skills required. Functions within HRM (e.g. employee recruitment and selection, training and development, remuneration and benefits, and health and safety) must keep pace with and reflect the level of technological advancement within the organisation. For instance, our increased reliance on electronic technology in the workplace has put increased demands on employees' skill levels and flexibility.

Organisation changes

These changes (e.g. degree of competition, downsizing, mergers, nature of customers and suppliers) all require specific corporate strategies, which then influence HRM requirements. For instance, there has been significant change in the retail and manufacturing sectors, with many Australian producers looking overseas for production of their merchandise in order to remain competitive. This has created labour management issues such as retrenchment, use of casual and temporary employees, and union issues.

Economic influences

These influences encompass issues such as unemployment levels, the inflation rate, level of investment and availability of credit, and impact on the stability of business, markets and employment. Such issues will directly affect an organisation and, in particular, in HRM areas such as employee levels, salaries and benefits, and training and development budgets.

Social and cultural influences

These influences are constant - with longer hours of work and greater demands placed on full-time employees a growing concern - and there is increasing expectation that organisations must provide a better balance between work and personal life if they are to retain effective employees. These solutions include looking at supports such as childcare and aged care programs, communication strategies, flexible work practices and career management. With regard to cultural issues, equal opportunity legislation demands that organisations take into consideration the rights of employees from minority backgrounds - such rights extend to religion, language, beliefs, needs, sexual orientation and political persuasion.

1.5   Effective HRM systems

The key elements of an effective HRM system are:

Strategy and policy that is linked to corporate business plans provides the foundation for effective HRM by identifying the critical issues and means for the organisation to address these issues.

Operating systems and procedures gives effect to company policies (i.e. the processes that make a policy work). These must be practical and relevant to organisational needs, having regard to availability and accessibility to resources and other workplace considerations.

Consultation and communication enables an organisation to gain employees' understanding of, commitment to, and involvement in corporate programs.

Training and education equips employees with the knowledge and skills necessary for them to effectively carry out their duties and effect change.

Delegation of responsibility (and authority) clearly defines employees' key result areas (KRAs) and key performance indicators (KPIs) detailing job-related responsibilities and accountabilities, and empowers employees to achieve.

Documentation provides information on employees, policies and procedures to enable the organisation to effectively manage its employees and achieve its objectives.

Evaluation and review enables policies, procedures and performance to be adjusted in line with changes within the organisation or its environment.

1.6   The future of HRM

HRM assists an organisation to reach its business goals through the productive use of its human resources. To achieve this objective, it must be identified as a key strategic issue and is the responsibility of all managers rather than just the human resources manager. This also leads to the need for HRM to be fully integrated into the values and behaviours of line managers (i.e. practiced, and modelled to others).

The HRM function has broadly shifted from reactive, operational-level responsibilities to one that involves strategic initiatives, organisation design, and enterprise-based employee relations. Consequently, the human resources manager's competencies need to include personal, business and organisational learning that includes leadership, consulting expertise and effective problem-solving. Future HRM strategies and functions will include:

> devolution of traditional HRM responsibility to line managers
> up-skilling of line managers in HRM
> concentration of strategic-level HRM initiatives involving effective consultation across all levels of the organisation
> HRM professionals acting as internal consultants to other employees with HRM responsibility
> provision of strategic HRM expertise to the executive group
> outsourcing of operational-level HRM functions
> creation of a genuine learning culture
> managing diversity.

2.   Human resources management – planning and review

With changes occurring so rapidly – in technology, expectations and the marketplace – consistent HRM planning, record-keeping and evaluation activities are critical to the future success of the organisation. Without planning, organisations may have unsuitable numbers of employees and inappropriate skill combinations, thereby risking missed opportunities to maximise the on-going success of the organisation. With adequate and timely evaluation of HR practices and procedures, and initiatives, skills and numbers can be match appropriately to the organization.

2.1   Human resources planning (HRP)

Human resources planning (HRP) is the process of forecasting and managing the organisation's short and long-term human resources (HR) requirements.

HRP identifies the organisation's labour force requirements and establishes a path to secure the human resources needed. The purpose of HRP is to ensure timing and availability of the correct skills and knowledge that are required at different stages and phases of the organisation's business cycle, to ensure it can achieve its business goals.

The business strategy will put specific demands on the organisation's human resources. For this reason, HRP must be undertaken with consideration of the business objectives and integrated as part of the overall business strategy. This process ensures a more effective and efficient use of HR and provides a clear link between the management of HR and achievement of the business objectives.

2.1.1   The HRP process

The HRP process enables an organisation to forecast:

> short and long-term demand for human resources
> supply of external human resources
> supply of internal human resources.

The *HRP Planning Flow Chart (page 7)* assists an organisation to systematically undertake the HRP process.

Environmental considerations are imperative to determine the short-term and long-term demand for HR. Issues such as the availability of specific skills and expertise in the labour market should be considered well in advance if an organisation is to source the appropriate skill mix to meet its future business objectives.

Strategy considers issues such as current productivity and performance levels, organisation style and planning, and identifies current resources such as individuals suited to succession planning or accelerated career paths.

At the **Operational** level, an organisation should consider the compliance factors associated with issues such as equal employment opportunity (EEO), affirmative action (AA), and termination and redundancy. Finally, the review will highlight whether the organisation is facing a surplus or shortage of labour supply. Adjustments to funding, employee numbers and allocations will need to be made to ensure the organisation has access to the right type and level of skills that will meet the anticipated business demands.

HR Planning Flow Chart

Determine the skills and abilities needed to meet the business objectives, both long and short term through consideration of the three tiers – environmental, strategy and operational.

Environmental

Internal

> Business objectives
> Culture
> Structure
> Workforce analysis

External

> Politics
> Economy
> Business
> Markets
> Technology

Strategy

> Succession planning
> EEO
> Organisation style
> Organisation planning
> HRM Review – current policies/ procedures
> Current performance and productivity levels

Operational

> EEO
> AA targets
> Individual succession plans
> Accelerated career paths
> Training and development
> Position descriptions
> Termination and redundancy
> Compensation and benefits management

Realign resources allocation with identified short and long term needs by adjustment of:

> Employee numbers and allocations
> Funding
> Program reviews
> Recruitment and selection programs
> Training and development programs
> Overtime usage
> Mix of full-time, part-time and casual labour

2.1.2   Qualitative and quantitative HRP processes

There are essentially two methods to the HRP process: quantitative and qualitative *(Stone, R. Human Resource Management, 1995).*

a) Quantitative approach

The quantitative approach is at its core a 'numbers approach' underpinned by statistical techniques and is mainly used in large organisations. This approach ranges from complex and sophisticated analysis to simple approaches such as basic succession planning charts and manual records. More complex approaches are workforce supply and demand analysis.

The main focus of the quantitative approach is to identify labour surpluses, labour shortages, and career limitations or opportunities. Quantitative analysis enables the organisation to predict demand for types of skill/labour based on the organisation's previous performance and projected performance.

b) Qualitative approach

The qualitative approach conversely relies on expert opinion and operator input to determine likely future labour force requirements. This technique considers issues such as current employee performance, promotability and succession planning.

The Delphi technique is a more complex approach to qualitative analysis. The Delphi technique uses a panel of experts, such as key senior managers, and other experienced employees, to make independent, anonymous predictions. The answers are compiled and analysed, and fed back to the panel. The panelists are then provided an opportunity to review their answers in light of the analysis. The main aim is to make the information as objective and as accurate as possible through this process of re-clarification.

2.2   Human resources review (HRR)

HRR is an audit of the HR function within an organisation to determine its effectiveness. It is a tool used to assess the many activities of the HR function and how they are contributing to the overall achievement of the business objectives.

An HR audit can be a useful tool in a variety of situations. In particular, the HR manager may find a review is necessary due to:

> dramatic change to the business such as a merger, or entering a new market
> need to assess the overall effectiveness of the HR function
> consideration of new human resources/industrial relations initiatives, such as development or review of an enterprise agreement
> appointment of a new HR manager.

2.2.1   Conducting HRR process

An HRR should be undertaken with a planned and systematic approach to ensure the information is complete, accurate and useful for decision-making. Before deciding how the HRR will be conducted, the specific objectives of the review should be identified and clearly understood.

The information sought from an HRR may be collected in a number of different ways. In most cases, a combination of methods would be appropriate. Some methods that may be used to gather information as part of an HRR are:

> collection of written policies and procedures and related documentation

> questionnaire to be completed by the HR manager

> surveys to be completed by people at different levels within the organisation

> interviews with a sample of people from different levels within the organization

> focus groups conducted with groups that are representative of the organisation.

A Victorian Chamber consultant can undertake a comprehensive HRR using a tailored format, which provides objective and effective assessment of your organisation's HR function.

Once the information has been collected and presented in a report format, decisions about the structure and functions of HRM within the organisation can be made. The review may highlight the need for additional HR investment, the need for specific HR programs or initiatives, and/or the areas in which HRM programs have contributed to particular achievements.

2.2.2   Sample HRR questions

The following questions are examples of the type and depth of detail required to undertake a comprehensive HRR. Responses to these questions may be sought using a combination of the methods listed in 2.2.1 Conducting HRR process.

1. HR strategy

> Is there an HR strategy or action plan in place?

> Is the HR strategy or plan linked to the corporate business plan or strategy?

> Is there a senior manager directly responsible for HR? (Who is this?)

> Does the manager responsible for HR have sufficient time and skills to consider strategic HR issues?

> Do you evaluate the outcome of the HR strategy?

> Is the HR spend (i.e. all employee-related spending) per employee planned?

> Is the HR strategy defined, linked to the corporate plan, well-resourced and managed as a key function in this organisation?

2. HR service delivery

> Are there HR performance indicators in place across the organisation?

> Is HR performance data collected?

> Is employee turnover and absenteeism below the industry average?

> Do managers seek assistance readily on HR issues?

> Do managers follow HR advice given?

> Do managers receive reports on HR performance, such as absenteeism or turnover?

> Has HR accountability been delegated to line managers through their position descriptions?

> If HR has been delegated, were HR-related tools and training supplied to line managers?

> Does the organisation have documented HR policies and procedures?

> Could any employee independently find the answer to an HR policy or procedure question?

> Are HR policies and procedures reviewed annually?

> Have there been breaches of the HR policies/procedures?

> Does the organisation maintain HR files, including appointment details, performance, attendance records and leave information? How is personal leave recorded?

> Does the organisation have an HR Information System (HRIS)?

> Is the HRIS accessible and used by line managers?

> Can employees access their own HR files electronically, to check leave entitlements etc.?

> Are salaries and wages paid by EFT (Electronic Funds Transfer)? Does each employee receive a payslip in accordance with the requirements of the *Fair Work Act 2009 (Cth)*?

> Are HR files kept in a secure and confidential area?

> Are HR files and pay records kept securely for at least seven years?

3. Compliance

> Does the organisation have anti-discrimination policies?

> Have all employees been informed of their rights and responsibilities according to anti-discrimination and harassment legislation?

> Have all managers/supervisors been informed of their rights and responsibilities according to anti-discrimination and harassment legislation?

> Does the organisation have a nil-rate of anti-discrimination claims?

> Does the organisation have an internal resolution process for managing these issues?

> Does the organisation have any employees with a disability?

> Has an external occupational health and safety (OHS) consultant (or ergonomist for office environment) reviewed your compliance with OHS?

> Do you have an induction program that includes employee instructions on safety?

> Have employees been instructed on safe working procedures (e.g. forklift, machinery, hazards, manual handling)?

> Have your managers and supervisors been trained on safe working procedures?

> What OHS regulations or legislation apply to you?

> Are there regular workplace safety checks at all sites?

> Is there an OHS preventive maintenance program in place across all sites?

> Do you have a nil-rate of Prohibition or Improvement Notices served on the organisation by an OHS inspector?

> Are accidents thoroughly investigated in all workplaces?

> If OHS advice is outsourced, is there a strategic alliance/stable provider?

> Do you record average lost-time due to death, injury or illness per employee?

> Do you have a Register of Injuries in accordance with the Accident Compensation Act 1985 (Vic)? (Who is your WorkCover insurer?)

> Do you know what your WorkCover rate is?

> Have you developed an occupational rehabilitation program?

4. Organisation culture and employee relations

> Are HR measures that are potentially related to motivation/morale, reported and monitored monthly (e.g. labour turnover, absenteeism, climate survey results)?

> Do you regularly conduct confidential employee attitude surveys or focus groups to measure employee expectations and perceptions?

> Do you act on the issues highlighted by the employee attitude survey?

> Are employees generally satisfied with their working conditions?

> Is labour turnover below industry average?

> Is most information about the organisation freely shared with all employees?

> Are employees encouraged to contribute ideas to improve the organisation in areas outside their position descriptions?

> Do you have an employee improvement/suggestions process?

> Are employees' improvement suggestions responded to?

> Do you have a disciplinary and counselling procedure?

> Are managers and supervisors trained in disciplinary processes before the need arises?

> Are employees aware of and do they understand the disciplinary processes if conduct/performance is unsatisfactory?

> Does the organisation have a clean (zero) unfair dismissal record (modern award employees) or civil prosecution record (non-modern award employees)?

> Do you have a grievance/complaint procedure (e.g. is there a process for employees to follow if they have a problem or complaint about a work matter)?

> Do you know which modern awards are applicable to your organisation?

> Do you know which industry sector wage rates govern your employees' terms and conditions of employment?

> Do modern award-covered employees receive at least terms and conditions of employment in accordance with the modern awards by which you are bound?

> Are superannuation contributions paid as per the *Superannuation Guarantee Act* (note: this is increasing from 9 per cent to 12 per cent)?

> Is an enterprise agreement in place in your organisation?

> Have you considered developing an enterprise agreement?

> Do you use individual contracts of employment / letters of offer / letters of appointment?

> Do you have an HR consultative committee?

5. Structure

> Do you have an organisation chart in place that reflects the organisation's business goals and key processes?

> Is there a current organisation chart that clearly defines reporting lines and position titles?

> Are workloads and workflows reviewed routinely?

> Does every employee have a written job description?

> Do position descriptions (PDs) include standards of performance and measures?

> Do PDs include core skills and competencies for roles?

> Do PDs include authorities and accountabilities?
> Are PDs reviewed at least annually?
> Are PDs linked to organisational goals and outcomes?

6. Labour planning

> Is labour needs forecasting a critical step in your organisation when drafting your business plans?
> Are labour market trends considered in HR forecasting?
> Are total employee costs identified in the budget?
> Are temporary employees used to cover peak periods?
> Does a succession plan exist for key specialist positions?
> Does a succession plan exist for all top team/executive positions?
> Can all employees clearly describe their next career move?
> Are exit interviews held on resignation?

7. Recruitment and selection

> Does the organisation have a clear, consistent recruitment process?
> Are at least two reference checks carried out?
> Are relevant employees trained in the same recruitment processes?
> Is recruitment linked to the competencies required by the vacant job?
> Does all recruitment use Behavioural Event Interviewing?
> Are all pre-employment medical checks clearly linked to the inherent requirements of the job?
> Are all employees legally allowed to work in Australia?
> Are vacancies advertised internally?
> Are redeployment opportunities available in redundancy situations?
> If using external recruitment consultants did the organisation brief them so they communicate a consistent and accurate 'story' about the organisation's culture, and its strengths and weaknesses?
> Are all internal promotions based on merit?
> Is it easy to recruit good employees?
> Is it easy to keep good employees in all areas, regardless of age and gender?
> Do you recruit at all levels of the organisation?
> Are written offers or contracts of employment issued prior to commencement?
> Do the letters of offer/contracts specify a probationary period?

8. Reward and recognition

> Is there a clear policy on pay and benefits?
> Is there a formal salary review mechanism?
> Is there a pay system that enables managers to clearly move employees from pay as 'learners' to 'competent' to 'expert' according to appraisal results?
> Do managers have responsibility for making decisions relating to pay?
> Are employee benefits well publicised and understood?
> Are benefits consistent across the organisation?

> Is there a menu of non-pay rewards accessible to employees?

> Is CPI adjustment to salaries done as a separate event from appraisals?

> If linked to performance, are bonuses to be re-earned from period to period?

> Do performance bonuses or other financial reward systems exist for high-performing employees?

> Are there objective and consistent methods for allocating employees' rewards?

9. Performance management

> Is there a documented performance review process?

> Does the performance review process apply to every employee?

> Are managers trained in the use of the performance management system?

> Are employees trained in the use of the performance management system?

> Are copies of appraisal documentation available for the employees to keep?

> Are reviews undertaken at least annually?

> Does this system promote continuous informal feedback?

> Does the system use position descriptions as the basis for performance evaluation?

> Is the performance management system considered to be a positive communication tool within the organisation?

> Is the performance appraisal tool clear and simple to understand?

> Does the performance management system have objective measures?

> Are the objectives and goals, set down during the planning period, agreed to by the employee?

> Does the system/tool include qualitative and quantitative measures?

> Are all employees measured against common Key Performance Indicators (KPIs)?

> Are all ineffective performers easily identified and managed swiftly – towards improvement, re-location or termination?

> Are documented action plans defined and monitored for all under-performing employees?

> Are ineffective people supervisors only promoted to management roles on attainment of identified team management skills?

10. Training and development

> Is there a current Training Needs Analysis in place?

> Do you have a training plan that resources and identifies how to meet training needs?

> Is the training investment identified across the organisation in the budget?

> Are individual training needs identified and recorded regularly in performance review processes?

> If training and development is outsourced, do you have a strategic alliance with the provider?

> Are internal trainers accredited?

> Do you conduct an induction program for new employees?

> Do employees have access to internal or external training to address identified training needs?

> Are changes to work practices always supported by training?

> Does the organisation conduct on-the-job training?

> Are training costs recorded?

> Are training programs evaluated by the organisation?

> Do participants evaluate training programs?
> Has the organisation undertaken a skills inventory?
> Has the organisation undertaken management training?
> Has the organisation undertaken supervision training?
> Has the organisation undertaken leadership training?

2.3   Human resources accounting

2.3.1   Internal controls

Management of any organisation requires the maintenance of an adequate accounting system that should include internal controls appropriate to the size and nature of the organisation. Internal control may be defined as the system controls established by management in order to:

> carry on the business in an efficient and orderly manner
> ensure adherence to management policies
> safeguard its assets
> prevent, detect and correct errors
> assist in maintaining accurate and reliable records.

2.3.2   Objectives of internal controls

Internal controls relating to the accounting systems are generally concerned with achieving the following objectives:

> transactions are executed in accordance with management's authorization
> all transactions are promptly recorded for the correct amount, in the appropriate accounts and in the correct accounting period
> access to assets (e.g. payroll, bank accounts) is permitted only in accordance with management's authorisation.

2.3.3   Objectives of internal controls over payroll

The objectives of internal controls in the payroll system will include consideration as to whether:

> employees are engaged only on the basis of appropriate authorisation procedures
> bona fide employees are paid only for actual work performed
> rates of pay, special payments and payroll deductions, including executive payrolls, are properly authorised
> payroll costs are accurately determined and promptly recorded in the proper accounting period
> personnel records, documents and cash are protected from theft, misuse, destruction, or misappropriation
> employees receive all benefits of employment to which they are entitled
> payroll costs are reported on a responsibility basis, preferably in comparison with standard or budget.

Adequate internal control procedures in respect of payroll preparation, recording and payment assist in ensuring that adequate records are maintained and payroll misappropriation is prevented.

2.3.4   Evaluation of internal control

The evaluation of internal control existing in any accounting system may be assisted by the use of an internal control checklist. Appendix 1 is a payroll control checklist in a format similar to that used by auditors in the course of an audit. The list is provided as a guide for identifying, reviewing, and evaluating the type of internal controls that may be implemented in respect of payroll by an organisation.

Achieving sound internal control comes from systems of authorisation and recording procedures which provides reasonable accounting control, and by segregation of functional responsibilities ensuring that people are not performing incompatible functions.

The nature of each organisation, and a small number of employees, may limit an employer's opportunity to maintain a complete system of internal control, due to the lack of segregation of duties. However, there are usually measures which can be implemented to achieve more effective internal control. In a small organisation with a limited number of employees, internal control can be significantly improved by personal contact by the proprietor and by that person's approval of many of the payroll procedures such as wage records and payroll payments.

If the segregation of duties is limited and the supervisory controls are lacking, there is a risk that errors may result in the payroll system (e.g. fraud) which may remain undetected for some period.

2.3.5   Description of the payroll system

The following is a brief description of the payroll controls that might exist for a small business:

> new employees are screened before being hired
> employment of new employees is authorised by responsible officials or management
> wage and personnel policies are in writing
> current and complete personnel files are maintained
> an adequate system is used to ensure electronic recording of hours and times (e.g. time clock cards)
> all payroll computations are independently checked
> all salary and wage payments are distributed by persons other than those preparing the payrolls or controlling hiring and termination, or deposited directly into the employee's nominated bank account.

2.3.6   Appendix

Appendix 1 - Payroll – internal controls checklist

Internal controls	Yes	No	N/A	Person and/or Comments
Employees are engaged only on the basis of proper authorisation procedures. (a) Requests for new employees can only be made by the line manager or Human Resources. (b) Candidates are required to complete an employment application form. (c) The backgrounds and references of short listed candidates are checked prior to engagement. (d) Overall approval for new employees is given by the line manager and/or Human Resources, and is evidenced by a signature on the application form. (e) Terms of employment are confirmed in writing.				

Bona fide employees are paid only for actual work performed.
 	
(a) The determination of wages is based on records of hours worked, productive output or similar factual records (e.g. time clock cards, job cards or other formal attendance records):
    i) Changes in pay rates and notification of termination of employees are documented and authorised
    ii) Overtime, shift changes, leave and department changes are properly approved on a change of pay form
(b) Payment may be made by Direct Credit into a bank account in the employee's name that is provided by the employee.
(c) Employee names on the payroll are regularly checked with human resources records.				

Internal controls	Yes	No	N/A	Person and/or Comments
Rates of pay, special payments and payroll deductions (including executive payroll) are properly authorised. (a) Human resources files are maintained independently of payroll section. (b) Human resources files are current, complete and contain all relevant information. (c) Employees are required to complete relevant payroll forms. (d) The following types of payroll payments require authorisation: leave (including personal, long service), and adjustments (including overtime, commissions, bonuses).				
Payroll costs are accurately determined and promptly recorded in the proper accounting period. (a) Wage rates are periodically compared to rate authorisation (e.g. applicable award rates) (b) The payroll is authorised by a responsible official prior to distribution (c) Records of leave and employer superannuation contributions are utilised: 　i)　to allocate costs to appropriate cost centres 　ii)　to determine accruals 　iii)　in preparation of management financial accounts as well as year-end financial accounts				
Human resources records and documents - and cash - are protected from theft, misuse, destruction or misappropriation. (a) Confidential and other important records (including electronic) are stored in areas which are securely protected. (b) Access to electronic and other confidential records and critical forms is restricted to authorised personnel.				

Internal controls	Yes	No	N/A	Person and/or Comments

Employees receive all benefits of employment to which they are entitled.
 	
(a) An authorised company representative is allocated responsibility for maintaining a continuous review of applicable awards, industrial laws and employer association, union and similar publications dealing with industrial relations, so as to ensure that management is advised of requirements and new developments.
 	
(b) There is an adequate procedure in the human resources department to ensure that wage and salary adjustments arising from the following causes are promptly effected:
  i) amendments to awards
  ii) length of service
  iii) age of employees
  iv) national wage determinations
 	
(c) Proper procedures are established to review employee performance with regard to eligibility for promotion and merit pay increases.
 	
(d) There are procedures to ensure that employees are advised in a timely and appropriate manner of:
  i) entitlements to various types of leave
  ii) eligibility to choose superannuation fund manager
  iii) promotions, merit increases and other pay adjustments
  iv) eligibility to choose superannuation fund manager
  v) promotions, merit increases and other pay adjustments
  iv) eligibility for other employment benefits, if appropriate (e.g. housing subsidies, travel benefits, share purchase options etc.)
  v) meetings held with union representatives to discuss employment conditions etc. and arrangements agreed with union representatives with regards to notification of dispute and claims				

Internal controls	Yes	No	N/A	Person and/or Comments
Payroll costs are reported on a responsibility basis, preferably in comparison with standard or budget. > Actual payroll costs are compared to standard or budget in a timely manner and significant variances are investigated promptly.				

3. Job analysis

A proper match between the job and employee capability is essential if the organisation is to achieve its organisational goals. It is therefore imperative that the organisation has a thorough understanding of the demands of each role and the skills required to perform this job at the required level. Job analysis provides the foundation for developing this understanding.

3.1 Job analysis

The foundation for human resource planning is set by job analysis which is the study of job facts regarding what is done, when, where, how, why, and by whom. Job analysis also looks at existing and potential new jobs and related tasks, duties and responsibilities, relationships to other jobs, conditions under which work is performed, and personal capabilities required for satisfactory performance.

Job analysis is the objective recording of the current and actual accountabilities and requirements of a job. Job analysis is desirable in the following circumstances:

> creation of a new position in the organisation
> no previous job analysis has taken place
> job content for established positions has changed dramatically since the last job analysis
> evidence of increasing incidence of employee grievances regarding job content and/or working conditions
> changes to technology, processes or machinery
> long-serving employees have exited, necessitating a job/role review.

The purpose of job analysis is to answer these questions:

> What relationship is there between the job and the business goals; in other words, why does the job exist?
> What are the specific tasks required from the job?
> When and where is the job performed?
> What skills/competencies/qualifications/attitudes are required to perform the job?
> What physical and intellectual activities are undertaken to perform the job?
> What machinery or equipment is used to perform the job?
> What constitutes successful performance of the job?

3.2 Elements of job analysis

Job analysis provides information about the job content, job requirements and job relevance or context.

Job content – describes the duties and accountabilities of the job. Some of the duties may be at the strategic level, or broad statements, while some are very specific job tasks which detail procedural steps.

Job requirements – list the specific skills, knowledge, abilities, qualifications and experience required to perform the job at the required level.

Job relevance – describes where the job fits into the organisation, its purpose, level of resources managed (i.e. financial, people, material resources). It also refers to details about the level of supervision provided and the level of responsibility for supervision, the physical setting and demands.

3.3 Uses of job analysis

The information produced by the job analysis process can be used extensively across the HR function. In fact, it is impossible to accurately match candidates to jobs, train and evaluate performance without undertaking some form of job analysis.

Naturally, the more accurate and thorough the job analysis process, the more useful and beneficial the information will be. Specifically, job analysis is essential to the following HR functions:

a) Job (or position) description

This is a document that defines the content of the job. It clarifies the activities to be done by the incumbent by providing the job title and a written summary of the key duties, responsibilities, accountabilities (and may include competencies) of the job.

b) Person (or job) specification

A document that identifies the skills, knowledge, abilities, qualifications, experience, personal qualities and any special requirements of the person needed to perform the job.

c) Organisational structure and design

By indicating relationships between jobs and clarifying the job requirements, a broad understanding of the organisational structure can be obtained, thus promoting efficiency and minimising overlap.

d) HR planning

Job analysis is essential to the process of HR planning. It helps to identify the numbers and types of people required in the short-term and long-term. The HR or line manager can then identify whether they need to consider moving some employees and/or training employees in new skills.

e) Recruitment and selection

Job analysis assists with identifying what skills are required by an organisation. It assists the HR manager to identify who to recruit and how and where to recruit them, by establishing the job requirements that must be filled to meet organisational goals and business objectives. It also helps ensure that the HR manager does not breach Equal Employment Opportunity (EEO) guidelines by identifying key selection criteria which are inherent to the performance of the job. This means that candidates are screened based on pre-determined, objective criteria and this helps minimise potentially discriminatory decisions.

f) Performance management

Job analysis is essential to the development of performance standards. Without this information, acceptable levels of performance cannot be identified or an accurate measure of actual performance obtained. With well-defined standards of performance measurement, individual performance can also be enhanced by providing clearer guidelines about expectations and enabling the HR or line manager to coach the incumbent specifically in the areas they need to improve.

g) Training and development

The person specification defines the knowledge, skills and abilities required for successful job performance. This enables the HR manager to develop training and development objectives, design/select relevant programs, and determine whether an employee needs further training.

h) Career planning and development

The HR manager, mentor or other managers are better equipped to provide career counselling, advice and planning if they have an accurate understanding of the types and extent of jobs available in the organisation.

i) Remuneration and benefits

If the relative worth of a job can be determined, it makes the process of salary and benefits administration simpler and more equitable. Without this information, it is impossible to accurately estimate a job's worth to the organisation, or to make comparisons with similar jobs in the marketplace.

j) Employee relations

Misunderstandings about job content and responsibilities are a major source of industrial disputes between employers, employees and unions. Job analysis provides the organisation with essential information to minimise such disputes and grievances because it is armed with the information necessary to make and articulate sound decisions about jobs and responsibilities.

3.4 Areas involved in job analysis

Three basic questions must be asked: **What** is done? **Why** is it done? **How** is it done?

A job analysis that leads to a positive drafting of a job description and person specification will cover the following areas:

> a general inquiry as to where the job fits into the organisation, reporting channels and a summary description of the job itself

> a precise inquiry into the tasks and responsibilities of the job; responsibility here being defined as 'those areas of activity for which the job holder is held accountable'

> an analysis of the competencies required to effectively meet all of the job requirements

> time devoted to specific tasks

> an analysis of the management support or back-up provided (i.e. is the job closely supervised)?

> a precise inquiry as to the specific 'authority' that goes with the job. Authority in this context means being empowered to deal with, or dispose of, organisational resources without recourse to any higher authority

> identification of the special or unusual characteristics of the job (e.g. unusual hours of work)

> an inquiry into the personal requirements of the ideal person for the job as perceived by those involved, namely the job incumbent, the immediate supervisor, and/or the work group, and/or previous incumbent. Such an analysis will include the skills and abilities required, at what levels, and the knowledge and qualifications required.

> whether there are employees and employer responsibilities

> an analysis of the salary that goes with the job

> an analysis of any specific training requirements of the job.

3.5   Methods of job analysis

There are a variety of methods of job analysis, varying in complexity and effectiveness. More than one method can be combined which will draw out different information. Ultimately, the method chosen depends on the purpose of the job analysis, the sources of the information and the methods used to analyse and report the data.

The most common methods of job analysis are: observation, employee diary/log, interviews and questionnaires.

3.5.1   Observation

This involves the job analyst observing and recording the activities of the employee doing the job. The analyst records a description of the tasks and duties performed. This method is used primarily for repetitive, short job cycle, or manual jobs. Jobs that consist of primarily manual actions are suited to analysis by observation. This method is not suitable for jobs that involve analytical and cognitive work.

Observation by a job analyst can create an uncomfortable situation for the employee, which may affect their behaviour. This is exacerbated if the employee is aware that the result of the analysis is to determine the job grade and level of remuneration appropriate to the position.

It is important that the job analyst observes a representative sample of incumbents to avoid inaccurate descriptions and recommendations. It is also important that the observer communicates openly with the employee being observed in an effort to alleviate fears and anxiety that the employee may be feeling about and/or during the process.

3.5.2   Employee diary/log

Each employee maintains written records (a diary or log) of what they do in performing their jobs. The entries are made at set intervals during the day, or notes are taken each time a task is performed. When the diary or log book is current and accurate, it is a valuable source of information. Time logs are also a valuable way to help employees understand where they spend their time and what they do each day.

The diary/log method does, however, take considerable effort and time to complete accurately. In addition, some employees may lack the skills necessary to accurately define and record what they do in a concise and useful manner.

3.5.3   Interviews

Information for job analysis can be obtained by interviewing the employee and their supervisor. Interviews are especially useful for managerial or complex jobs that may be difficult to observe. Follow-up interviews with the supervisor are important to clarify and validate the information given by the employee.

Interviews can be conducted with a single employee, a group of employees or with a manager who is familiar with the job. A structured questionnaire should be used to conduct the interview and to facilitate comparisons.

The validity of the information depends on the job analyst's ability to ensure that accurate and objective information is recorded. For this reason, it is recommended that other methods be used in addition to the interview.

3.5.4   Questionnaires

Questionnaires can be both structured and unstructured. Questionnaires completed by the employee can also form the basis of the job description. The major advantage of the questionnaire method is that information can be collected on a large scale in a relatively short period. For this reason, it is the most economical and efficient method of job analysis. The major disadvantage is that some employees may take a long time to complete and return it, and the responses may not be entirely accurate.

Care should be taken to ensure employees understand the questions and provide all the information needed in the proper form.

3.6   Practical concerns of job analysis

There are several practical concerns that should be considered in assessing each of the job analysis methods, as described.

Schuler, Dowling and Smart conducted significant research work in 1991 which still serves to form a useful framework for considering the approach to job analysis. According to their research, consideration in any job analysis process should be given to:

> versatility/suitability – the method's appropriateness for analysing a variety of jobs
> standardisation – the extent to which the method yields norms that allow comparisons with different sources of job analysis data collection, and at different times
> user acceptability – the user's acceptance of the method, including the forms
> user understanding/involvement - the extent to which those who are using the method, or are affected by its results, know the purpose and value of the method, and are involved in the collection of the job analysis information
> training required – the degree of training needed by those involved in using the method
> readiness to use – extent to which the method is ready for use
> time for completion – the time required for the method to be implemented and the results of the method to be obtained
> reliability and validity – the consistency of the results obtained by the selected method in relation to the costs incurred
> purposes served – the number of purposes (as listed above) which the method will serve
> utility - the amount of overall benefit or value to be gained by using the method in relation to the overall costs.

3.7   Job description

The job description is a document that is derived from the job analysis. A job description, also referred to as a position description, sets out the responsibilities of the jobholder, what they actually do, the purpose of the job, and under what conditions it is performed. Job descriptions vary considerably in format and style. The preferred format depends on what the manager anticipates are the uses of the job description. Most job descriptions should, however, contain the following information in some form:

> purpose statement
> job identification

> job summary
> duties and responsibilities
> competencies required for the job
> weight or value of each task, to distinguish those which are considered more important or which take more time
> key performance indicators
> relationships to other roles
> reporting line
> skills, experience and knowledge
> number of direct reports
> location
> incumbent/supervisor signatures and review date.

Purposes of the job description

> clarifies the 'job' to be done by the position incumbent or prospective incumbent
> establishes clear expectations for both the employee and employer
> an essential tool for conducting performance reviews
> critical in determining remuneration and benefit levels
> distinguishes one job from another and helps to identify overlap or inconsistencies
> used in the recruitment process for writing advertisements, developing selection criteria, and interviewing and selection
> used to assess training and development needs by identifying gaps between the requirements of the job and the incumbent's skills and knowledge.

3.8   Person specification

The person specification, sometimes referred to as the job specification or job requirements, is derived from the job analysis. It identifies the skills, knowledge, abilities, qualifications, experience, personal qualities and any special requirements of the person needed to perform the job.

The main use of the person specification is to list the key selection criteria for use in recruitment and selection activities. Preparing a person specification assists in identifying the 'essential' qualities from the 'desirable' ones. It helps to identify what kind of candidate to recruit and identifies the factors on which to assess the candidate.

Together, the job description and person specification provide a clear summary of a job and its incumbent. Both documents should be reviewed regularly to ensure that they continue to accurately describe the job and the personal requirements required. This helps to maintain the integrity of the documents, and employee confidence in the process.

It is recommended that documents such as the job description and person specification be tailored to the organisation's specific needs.

If you require expert advice, a Victorian Chamber consultant can assist you.

3.9 Competencies

A competency is defined by Parry (1994) as a cluster of knowledge, attitudes and skills working together to produce outstanding performance in a given area of responsibility. The principle of developing competencies among employees is based on a greater understanding of the relationship of skills, knowledge and attitudes that contribute to a person's overall performance. Competencies are those elements a person brings to a job that are not as visible as the skills and knowledge they possess, yet they are fundamental to their performance in the job.

Competencies can include the ability to work in teams, being focused on achievement, having the ability to solve problems rapidly, having strong interpersonal skills, strategic thinking, initiative, analytical thinking and an ability to build relationships. Competencies that will help an organisation reach its strategic goals are those that add value and help predict success.

A competency approach can add value to an organisation by providing greater insight into the skills, attributes and qualities that result in excellent performance. Competencies can be used in many HRM functions, including recruitment and selection, performance management, and training and development.

Developing a relevant set of competencies requires identifying qualities, attributes and behaviors demonstrated by the excellent performers in the organisation.

Competencies can be included in the position description and/or person specification and used effectively in the recruitment and selection process.

3.10 Key Result Areas (KRAs) and Key Performance Indicators (KPIs)

Key Result Areas (KRAs) reflect primary job responsibilities, and within each of these is a set of quantifiable measures that an organisation uses to gauge or compare performance in terms of meeting their strategic and operational goals.

Key performance indicators are measures focusing on the levels of performance expected of a person in a job – these measures must be specific, realistic, measurable, achievable, time framed and clearly understood by all parties. KPIs are usually expressed in terms of outputs (i.e. quantity and/or quality) which are measured by the organisation.

A KPI should:

> reflect the job's contributions to the business objectives provided by the corporate plan and the department's business plan
> reflect the overall purpose of the position
> focus on the broad areas of results expected from the position rather than tasks required to achieve the results (i.e. usually reflect an output of a job or a finished task)
> reflect a contribution to the manager's performance plan
> be measurable.

Note: It is important to establish KPIs before the work is performed so that all those involved will understand the level of accomplishments expected.

3.11   Personal attributes

Personal attributes, under the *Employability Skills Framework*[1], describes a set of non-skill-based behaviours and attitudes that employers value as important as the employability skills and other technical or job specific skills. The *Employability Skills Framework* incorporates the following personal attributes that contribute to overall employability:

Loyalty	Reliability
Commitment	Personal presentation
Motivation	Adaptability
Honesty and integrity	Common sense
Enthusiasm	Sense of humour
Ability to deal with pressure	Balanced attitude to work and home life

The key skills identified in conjunction with the personal attributes that make up the Employability Skills Framework are:

> communication skills that contribute to productive and harmonious relations between employees and customers
> team work skills that contribute to innovative outcomes
> initiative and organising skills that contribute to long-term and short-term strategic planning
> self-management skills that contribute to employee satisfaction and growth
> learning skills that contribute to ongoing improvement and expansion in employee and organisational operations
> technology skills that contribute to effective execution of tasks.

3.12   Documentation

3.12.1   Job Analysis Form

3.12.2   Position Description Generic Templates

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1   *A major research project undertaken by the Australian Chamber of Commerce and Industry (ACCI) and Business Council of Australia – the Victorian Chamber was a major participant and is a member of ACCI.*

4. Recruitment and selection

4.1 Strategic recruitment and selection

Effective recruitment and selection is critical to an organisation's success. This success, through the management of products, programs, resources and people, depends on the ability to identify, attract and develop our human assets. Strategic recruitment and selection practices ensure an organisation attracts the skills that are essential to achieve its business objectives.

The costs associated with employee turnover and poor recruitment decisions are often quoted as being in multiples of the annual salary for the position. These are **direct costs**.

In addition, there are the **indirect costs** of lost productivity, fall in employee morale in some circumstances, and lost organisational performance when the incumbent does not perform at the required level, and these all add significantly to costs associated with recruitment. Therefore, the process of recruitment and selection requires careful attention and planning.

To ensure the organisation takes a strategic approach to the recruitment process, consideration should be given to the following issues before commencing a recruitment exercise:

1. How will the position contribute to the organisation's business goals?
2. What skills, knowledge and abilities does the incumbent need to contribute effectively to the business goals?
3. What recruitment strategy will be most effective in finding the right person for the role?
4. What skills and time does the organisation have internally to conduct a recruitment and selection process?

The essence of strategic recruitment is to align the process with the business objectives. For instance, timing of the activity is crucial to the cycle of the business plan to ensure the right people are available at the right time. In addition, each position description should be analysed in relation to other roles in the organisation, and how they fit with the business objectives.

The position description used during the recruitment process should represent a set of capabilities within the organisational structure. The appropriate skill sets will depend on the business objectives, both immediate and long- term. For instance, the skill sets related to management style will vary dramatically from organisation to organisation.

An organisation that thrives on creativity and flexibility, such as a software developer, requires facilitative managers who use persuasive - and less directional - leadership skills, than an organisation in a cost-conscious environment, which demands tighter controls.

4.2 Cost of recruitment

Employee turnover is a significant cost to an organisation, so it is important to seriously consider the implications of the entry and exit of an employee to improve the organisation's recruitment processes.

Costs can include:

> Recruitment costs:

- agency/executive search fees
- travel expenses
- advertising expenses
- labour time for recruitment employees
- administration costs (e.g. mail, processing applications).

> Hiring costs:

- solicitor/advocate fees for drafting contract of employment and/or negotiating terms and conditions
- medical tests, if applicable
- administration costs (e.g. setting up payroll, superannuation, security arrangements and other paper work associated with employment)
- provision of tools, supplies and equipment (e.g. office, uniform, vehicle, stationery).

> Employee induction costs:

- trainee and trainer labour time during induction
- travel and expenses related to induction
- cost of training tools (e.g. manuals, venue and equipment hire)
- training fees for courses delivered by external training provider
- reduced productivity levels of the inductee.

> Other costs associated with turnover:

- payout of accrued benefits to the exiting employee
- risk associated with dismissal (e.g. disruption of team performance and loyalty)
- loss of employee skills, knowledge and training
- down-time between appointments
- stress on existing employees as they take on increased workload
- training and development of new employee (e.g. buddying, coaching)
- increased salary/benefits provided to secure new employee.

4.3 Policy and procedures

Effective recruitment and selection requires a current, clearly written policy and supporting procedures. This ensures the organisation is adopting sound recruitment and selection practices, minimising any risk of breaches of legal obligations, and implementing a consistent process across the organisation.

Policy

The recruitment and selection policy should outline the organisation's position on recruitment and selection:

> State the policy aims (i.e. to recruit the most suitable candidate to the position criteria).

> Ensure that the correct processes and methods of approval are followed when hiring potential employees to work for the organisation.

> Ensure appropriate communications, records and HR controls are maintained.

> Highlight the link between the recruitment policy and other HR policies.

> Identify who is responsible for recruitment and selection (e.g. line managers, HR manager or both).

> Clarify the position on internal recruitment (i.e. communicate opportunities internally.).

> Provide a statement on Equal Employment Opportunity (EEO) and affirmative action.

> Ensure an accurate job description is available before recruitment efforts begin.

> State the recruitment and selection procedures including procedures for tasks such as reference checking.

> Provide guidelines for dealing with unsuccessful applicants.

> Provide direction on the process of offering a position and securing a new employee (i.e. letter of appointment, contracts, timing and induction).

> Ensure procedures are established and followed in order to avoid direct, indirect and systemic discrimination, which could otherwise result in a restricted range of applications for positions, or complaints of discrimination being made.

> Ensure that appropriate recruitment standards and equity are maintained throughout the organisation and to provide a resource to assist managers to carry out the recruitment of employees, thereby maximising the opportunity for successful hiring decisions.

> Ensure obligations under the privacy legislation are addressed (e.g. collection, recording, use, disclosure, storage and destruction of personal information collected on employment candidates during the recruitment and selection process), and the right of access individuals have to that personal information, at any time. It should also address the issue of reference checking and the use of referees' personal information and the information they provide during reference checking.

Procedure

The procedure document should outline the key steps required when undertaking a recruitment exercise. Like the policy, it is essential that employees follow the procedures document to ensure the right selection decision is made, and to minimise any risk to breaches of legislation such as the *Equal Opportunity Act 2010 (Vic)*.

The policy may consider providing guidelines for the following issues:

> recruitment responsibility and approval

> confidentiality

> job analysis

> provision of an employee requisition form

> advertising

> internal recruitment

> selection criteria

> anti-discrimination

> completing a job description

> accessing other employee resources (e.g. applicants on file, temporary employment agencies)

> following the administration protocols for managing and handling applications
> conducting pre-employment interviews and screenings
> conducting interviews
> undertaking reference checks
> requesting medical examinations
> notifying unsuccessful candidates
> offering the position in writing and completing a contract of employment.

4.4 Benefits of recruitment and selection policy and procedures

4.4.1 Benefits to the organisation

> Facilitates the identification and alignment of the organisation's requirements and people competencies through improved processes so that selection decisions are based on objective measurement of job-related behaviours associated with effective or superior performance.
> Provides a common template across interviewers to standardise the criteria by which candidates are evaluated and to serve as a common language for use by recruiters, interviewers and managers.
> Improves the bottom line of the organisation through reduced turnover, lower hiring costs, shorter development period to fully competent performance and higher levels of productivity and contribution.

4.4.2 Benefits to the individual

> Increased opportunity to perform well in the job due to a better job-person fit and by determining the training/development needs of the candidate at the point of hire.
> A fair and equitable system that employs EEO compatible selection practices which uphold the rights of the individual under the various equal opportunity legislations.
> Recruitment of the organisation's personnel will be based on merit in fair and open competition, without patronage, favouritism or discrimination.
> Vacancies will be filled by promoting existing employees, wherever suitable.
> External recruitment will occur only when no properly qualified internal candidate is available.

4.5 Steps in the recruitment and selection process

Recruitment refers to the process that begins with the decision to recruit an individual to fill a position and continues through to seeking and attracting a pool of applicants.

The selection process involves choosing from the pool of available candidates and usually commences when prospective applicants make first contact with the organisation, usually by way of written application. The selection process can include procedures for short-listing, interviewing, reference checking, skills, medical and psychological testing. These procedures should culminate in the selection of an individual who is most likely to perform successfully in the job.

The steps in the recruitment and selection process may vary slightly depending on the recruitment method chosen. The usual key steps are:

Step 1:   assess the recruitment need

Step 2:   review the position description and person specification

Step 3:   source internal and external applicants

Step 4:   screen and short-list applicants

Step 5:   conduct the interview

Step 6:   undertake reference (and medical) checks

Step 7:   offer the job.

4.5.1   Assess the recruitment need

Prior to commencing the recruitment and selection process, it is important that an assessment of the need to replace the outgoing incumbent be made. A number of questions should be asked to determine whether the position is replaced without any modifications, the position is no longer needed, changes in the job description are required, or the person specification is modified. This ensures that valuable time, expense and effort are not wasted and that the organisation operates as efficiently as possible.

Review the reason for the vacancy

> Why did the employee leave?
> Was the employee/organisation dissatisfied?
> Did the employee get a better offer?
> If the employee left for a better offer, in what way was it better?

Conduct an exit interview

> *Face-to-face interview at the time of the termination*

   The main disadvantage here is that the employee may feel threatened and not want to be frank and open. However, it provides an opportunity to gain information both through what the interviewee says, and by picking up subtle clues through body language and the tone of the conversation.

> *Questionnaires given to the employee on resignation*

   These are best used when the employer doesn't have the time or skills to conduct a face-to-face interview, as the response rate is often low and does not allow probing into issues further.

> *Telephone interview*

   Make a follow-up phone call, approximately one to three months after the employee has left the organisation.

Do you need the position?

Are there alternatives to re-appointing someone to the position:

> Sharing the job among the remaining employees?

> > Re-appointing the position as part-time?
> > Sub-contracting or out-sourcing the work?
> > Rearranging the hours of work?

What are the business goals of the organisation?

Consider the organisation's short-term and long-term business goals:

> > How will the position contribute to the achievement of those goals?
> > What skills and knowledge are essential to the achievement of the business goals?
> > How does the position fit with other roles? The new position should contribute skills that the organisation needs but does not currently have.

What has changed since the incumbent was appointed?

Analyse the position by asking, "What was the incumbent supposed to be doing? incumbent?"

What do you need to change?

> > Do you still need to fill the position?
> > Does the position need changing or re-organising?
> > What would you like the new job to look like?

4.5.2   Review the job description and person specification

It is important that the job description and person specification is up-to-date and relevant. Although reviews of job descriptions and person specifications should be conducted regularly, the recruitment of a replacement incumbent in a job is a perfect opportunity to assess the relevance and usefulness of the job description and person specification. (Refer *Chapter 3 Job Analysis* for detail on job descriptions and person specification.)

4.5.3   Source internal and external applicants

Internal or external recruitment

Once a decision has been made to fill a position and the job description and person specification is current, decisions need to be made as to how applicants will be sourced. The company policy in relation to internal recruitment must be checked and adhered to.

Many organisations have a policy of advertising all positions internally, either prior to or at the same time, as advertising externally. Internal recruitment policies allow opportunities for existing employees to progress through the organisation or move into other areas of interest. Such policies and practices have been shown to directly improve employee morale.

Engaging a professional recruitment or executive search agency

Recruiting employees can be an expensive process whether an external consultant is engaged or the process is undertaken internally. The situation needs to be analysed in terms of cost-benefit to the organisation.

Organisations need to consider the direct and indirect costs associated with the recruitment process; if other parts of the business suffer (e.g. reduced productivity or focus), engaging an external consultant may be more economical in the long term. Also, engaging a professional recruiter can be more cost-effective, due to their skills, training and practice, and they will have more experience in handling the problems that may arise.

Deciding whether to use an agency

Factors that may support a decision to engage an external professional recruitment agency:

> position is at middle to senior management level or significant in the organisation
> the volume of the recruitment exercise is large (e.g. large-scale recruitment for seasonal work)
> vacancy is to be kept confidential
> previous recruitment campaign has been unsuccessful
> current supply and demand levels for the required skills and experience are low
> high-profile consultancy may attract a higher calibre of candidate
> complete objectivity is required.

Choosing a recruitment or executive search agency

Consider the following:

> Does the agency have a long and positive history of recruitment in your industry/type of employment?
> Do they have a strong reputation? Check referrals.
> Is the agency familiar with your competitors?
> Do they have an office nearby?
> Does the agency's fee schedule meet your budget? How does it compare to similar agencies in the marketplace?
> Is there a probationary period during which the fee will be refunded if an employee hired through the agency does not meet requirements?
> What is their method of recruiting and working with the client (i.e. will they partner with you and provide some skills so that you may understand the recruitment process better?)

Process of selecting a firm:

> Obtain recommendations from companies that regularly use professional recruiters.
> Talk to the firms. Ask for referrals, concentrating on those that have completed similar assignments.
> Evaluate the firms. Was the feedback from the referrals positive?
> Enquire about the firm's follow-up strategy after placement. Ask for referrals to confirm the level of follow-up service received from the recruitment firm.
> What incentives does the firm receive for successfully completing an assignment?
> What is their track record for assignment completion (i.e. what is the variable range on estimated completion time?)

Contract and fees:

The search firm should provide a written proposal outlining:

> the consultant's understanding of your requirements and expectations

> the agreed fee structure, including billing of expenses

> an estimate of the time required for the search and placement

> who will handle the search (it may not be the consultant you have dealt with to-date)

> the process of selection and reference checks

> your involvement (e.g. meetings, interviews) at key stages of the assignment (e.g. when, and for how long?)

> exception reporting (e.g. if the response is not satisfactory).

Conducting the recruitment and selection process internally

Identifying key selection criteria

Before embarking on the next steps in the recruitment and selection process, it is important to determine the key selection criteria for the job. Key selection criteria are the criteria that should be used to make decisions about selecting candidates to interview and, ultimately, to whom the job will be offered.

Using key selection criteria ensures that decisions about a candidate's suitability for the job are based on the fundamental requirements of the job. This not only ensures that the best candidate for the job is selected, it also avoids decisions being made on irrelevant criteria influenced by emotions and biases. It also provides a standard and consistent method of assessing candidates and removes the need to rely on memory.

Key selection criteria is simply a list of the key skills, experience, competencies, knowledge, qualifications and achievements that a candidate must have to be successful in their application for the position.

The key selection criteria should reflect the job description and person specification.

A useful method for using the key selection criteria is to list the criteria down the left-hand side of a page and list the candidates along the top of the page and score each candidate using a suitable scale, for example:

1. Does not appear to possess
2. Appears to partially possess
3. Appears to possess
4. Appears to exceed

4.5.4   Advertising

The job can be thought of as a product. The product features are the terms and conditions of employment, and the employee is the customer. Recruitment is marketing and sales, and employee retention equates to customer service. Advertising is the key method of creating awareness of your product, the job.

This approach can make it a little easier to access a pool of candidates, but you also want to widen the market by attracting those who are not necessarily looking. You want the best available. It is also important to recognise that while you are trying to choose a new employee, candidates are also making choices about employers.

An important point about the 'right' people for your organisation is that they may not be actively seeking employment when you need them - many are in satisfying jobs, and are not actively searching for alternative employment. In many instances, this means that you are competing in a job market for potential candidates

and may be trying to attract them away from competitors. Therefore, you need to adopt a marketing strategy to attract candidates to your job and your organisation.

Writing the advertisement

The style used in the advertisement can significantly impact on the effectiveness of the advertisement in attracting appropriate candidates. Wayne Parkes, in his book "Recruiting in Australia", outlines what he terms the 'AIDA technique' – Attention, Interest, Desire and Action:

Attention

The advertisement needs to be eye-catching, attention-grabbing. This may include a catchy phrase or sentence, an interesting job title or graphics.

Interest

Including important information in the first paragraph of the advertisement is critical to capturing the interest of readers: details about the job, seniority, salary and benefits, qualifications, location, etc.

Desire

Now, you want to make a special appeal to the reader, to answer their question, "What's In It For Me (WIIFM)?" (For example, remuneration, higher status, career opportunities, employer of choice.)

Action

At this point, you invite the reader to take some action – phone, apply, inquire. Make sure you have a contact name and number. Make it easy for the person to contact you, remembering that they may only be 'window-shopping' and, importantly, ensure confidentiality.

There is certain information that should be included to make your advertisement as effective as possible. The key selection criteria should form the basis for the advertisement since these are the elements that you are seeking in the candidate, and include:

> position title
> organisation name and/or a description of the business and industry
> location
> travel requirements (if any)
> salary range and benefits - or a statement relating to whether salary is negotiable or subject to award conditions
> key responsibilities/activities of the job (refer to key selection criteria)
> skills, knowledge, qualifications and/or experience necessary
> description of the organisation's culture.

You can also create interest by including organisation features and benefits. Be clear on the benefits that the organisation provides. Be specific about why the organisation is an employer-of-choice, referring to:

> indication of training and/or personal development opportunities
> indication of any further opportunities/career path within the organisation

> opportunities for recognition and loyalty programs

> teamwork opportunities and relationships

> varied work scope

> work environment – location, facilities/amenities (transport, shops, etc.)

> security and stability

> training and development. The advertisement should also:

> relate directly to the position, also include any special features that are important to the position (e.g. travel, shift work or overtime)

> omit any reference to irrelevant personal characteristics, or irrelevant skills/qualifications (i.e. some skills can easily be acquired on the job)

> use non-discriminatory language with respect to the wording

> include the phrase: "<company name> is an Equal Opportunity Employer and supports diversity in the workplace"

> include a closing date, with a minimum of two weeks after the appearance of the advertisement

> indicate how to apply for the position.

Equal Employment Opportunity (EEO) and advertising

State and Federal legislation prohibits discrimination on the basis of a number of attributes or personal characteristics (refer *Chapter 8 Equal Opportunity, Harassment and Bullying* for more details). The basis of all anti-discrimination legislation relating to employment is the principle that all people should be treated on their ability to perform the inherent requirements of the job and not on any presumed or real attributes that an employer thinks may affect their job performance.

Equal employment opportunity (EEO) legislation applies to every step of the recruitment and selection process. Penalties and other related costs of breaching the legislation are high and potentially damaging to an employer. Being aware of EEO obligations and following a recruitment and selection process that is based on selecting the best person for the job will prevent poor and/or unlawful decisions being made.

In Victoria, discrimination on the following grounds is unlawful:

> age

> breastfeeding

> employment activity

> gender identity

> impairment

> industrial activity

> lawful sexual activity

> marital status

> parental status or status as a carer

> physical features

> political belief or activity

> pregnancy

> race

> religious belief or activity

> sex

> sexual orientation

> personal association (whether as a relative or otherwise) with a person who is identified by reference to any of the above attributes.

Guide to writing appropriate advertisements

Do not:

> use gender-specific terms - 'tradesman', 'cleaning lady', 'headmaster'

> specify gender – 'male person', 'young lady'

> specify language requirement (unless it is an inherent requirement of the job) - 'English speaking person', 'must speak fluent English'

> use words that denote specific race – 'Greek national', 'British subject', 'Australian born'

> specify religion – take special care if you are a religious organisation (an application to the Victorian Equal Opportunity and Human Rights Commission for an exemption may be necessary in such circumstances)

> give an irrelevant job specification that implies gender or particular appearance – 'attractive' for a receptionist

> state age limits unless an inherent requirement of the role

> require particular marital status - 'married person'.

Rather than using age-directed language (e.g. 'energetic', 'fit' and 'fast-paced' compared with 'mature', 'experienced' and 'expertise') in job advertisements and conversations, using phrases such as 'demonstrated capacity to…' and 'proven track record in…' will attract interest from a wider range of people, and broaden the range of applications that will be received. Legislation permits exceptions for employers to set and enforce particular policies, such as standards of dress, appearance and behaviour that are reasonable, having regard to the nature and circumstances of the employment.

To invoke the exception, an employer would have to prove that although the dress or appearance standard may discriminate on the basis of certain factors (e.g. gender, physical features, etc.), it is reasonable to do so in these particular circumstances.

'Reasonableness' is to be assessed having regard to the nature and circumstances of the employment. What is reasonable will depend on the facts of each case. Occupational health and safety considerations are a relevant component of the nature and circumstances of the employment.

Advertising the position available

a) Placement of advertisement

Think carefully about where to advertise:

i) print media – newspapers, magazines, journals; national, regional; general, financial; weekend, daily; display, regular entry; general or finance section, classifieds

ii) online (internet based) – websites (company, employment agency, job search, paid placements in online journals and subscriptions, social media such as Linked In).

Choosing carefully where, when and how to advertise is critical to attracting a pool of suitable applicants from which you can make a selection. Placement of the job advertisement relates to the type of candidate you are seeking, and where they are likely to be job searching. Consider publications that are targeted to a particular geographic and/or demographic area suited to your requirements. Consider advertising in technical or specialist publications for professional employees.

Collate a file of periodicals (newspapers, journals, and magazines) sorted by market, with information on advertising rates and submission deadlines. Keep details and records of previous advertisements: electronic and print media, numbers of enquiries and applicants; duration of the recruitment process.

For internal advertising, use the usual communication methods (email, notice boards, newsletters, etc.). Ensure the company policy is adhered to, and that all employees (including employees on various forms of leave) are included and given adequate time to respond.

b) **Classification of the position**

Which section of the newspaper will attract the best suited applicants? Should the advertisement be listed alphabetically under the job title in the classified section, or should it also be placed under alternative sections, such as in the body of the newspaper where senior professional positions are found, or undergraduates? Is the advertisement placed in the most appropriate job category?

Consider the size, style and image of the advertisement.

c) **Timing the placement of job advertisement**

Timing is important. Avoid public holidays and traditional holiday periods such as Christmas or school holidays. You need to avoid times when people have a heavy workload (mid-year), or when they are relaxing on holidays. Also, consider the day of the week – Saturday and/or weekday edition of a newspaper. (This requires less consideration if choosing to market the position on the Internet.)

Application methods

The most appropriate method/s to be used to assess each applicant's knowledge, skills, abilities, qualifications and experience against the key selection criteria must be determined before the advertisement is written and placed. There are several techniques that may be used singularly or in combination. The important point is to use the most appropriate method for your situation.

Techniques include:

> telephone screening or interviewing
> application forms
> written applications
> interviews conducted by individuals or a panel
> follow-up or second-round interviews
> reviewing samples of work
> academic tests, both written and verbal
> problem-solving exercises and skills assessment
> intelligence and personality tests
> job tests/work exercises

> group interviews and role-plays
> reference checks, both written and verbal.

The most common method of recruitment used is receipt of written applications from candidates - followed by interview/s and reference checks. The advertisement for the job should advise applicants of the selection methods that will be used during the recruitment process.

4.5.5   Screen and short-list applicants

Most initial contact regarding the position you have advertised will be by email and/or phone, in writing or in person. Your next task is to deal with the phone enquiries and the resumes that you will receive in the mail or via email.

You will need:

> copies of the updated job description
> key selection criteria
> application forms
> telephone enquiry record sheets
> time allocated to deal with the applications.

Telephone screening

Telephone screening is an extremely effective tool where a large number of applications are expected. You may be unable to interview all those who apply, so you may need a method of initial short-listing. This method can save you time, because you can tell potential applicants where they stand in relation to meeting the job requirements and whether an application is required. Telephone screening is the most appropriate for lower level jobs. Remember to clearly advise applicants whom to contact to discuss the position in the advertisement.

Most phone inquiries will probably be received within 48 hours of the appearance of the advertisement – be ready for these calls. This is important because accessing your organisation is just as important to potential applicants as it is to customers.

Keep a written record of the key information from the phone interview. Use a pro-forma telephone-screening questionnaire. The same EEO principles apply to telephone screening as to face-to-face interviews (refer *Section 4.5.6 Conduct the interview*).

The telephone screening process should reveal one of the following:

> The applicant is not able to do the job – let them know they are not the right person, but that you would like to keep them in mind for the future (this person may not be right for this job today, but they might be right for a future position).

> You are not quite sure – ask the applicant to submit an application, highlighting their strengths. Let them know you will be talking to others, and that you are not sure if they will make the short-list.

> The applicant sounds very promising – you may want to schedule them early in the interviews.

Application forms

Completed application forms can be used instead of, or in addition to, resumes. They can be a one-page outline of basic details, a four-page biographical summary, or a combination of these two styles. The short application form may function in the same way as the initial screening phone inquiry.

The type of application form and the amount of detail required often depends on the seniority of the position (refer documentation at the end of this section for sample application form).

Application forms must comply with EEO legislation, as outlined under the previous section.

Resumes

Resumes and applications will arrive by different means including mail and email, and in different forms – mail resumes and applications may be desktop published and bound, some in display folders and others simply stapled. Other resumes and applications will be received electronically. The applicant's aim should be to make you notice their resume (i.e. the resume must be appropriate and relevant in both presentation and content).

Resumes usually contain three elements:

1. Fact	-	employment history, qualifications
2. Opinions	-	'an excellent communicator' depends on their definition of 'excellent'
3. Inferences	-	'involved in change management' is vague, and infers an ability to manage change.

Review resumes

Part of the job of reviewing resumes is to identify fact, opinions and inferences.

1. Scan application letter, summarise these points on a pro-forma attached to the front of the resumes.
2. Using the key selection criteria, sort the resumes into three groups:

   > appear suitable
   > may be suitable
   > unsuitable.

3. Mark directly on A. and B. resumes:

   > aspects you need more information about
   > claims that the applicant makes about their experience that are vague
   > gaps in employment (i.e. is there an unexplained break in employment?)
   > experience and knowledge that you would like the candidate to expand on.

4. As you scan the resume, there are three important questions that you need to mark:

   Meaning? – to probe claims of achievement
   Definition? – to seek explanation of vague terms or jargon
   Details? – to have claims quantified (e.g. date ranges, cost reductions).

Note: Allow at least 15 minutes before each interview to review the resume again. This will refresh your memory, and enable you to conduct the interview without having to continuously refer to the resume.

Select candidates for interview

Once you have sorted your candidate resumes into the three categories:

1. Write to the unsuccessful candidates immediately, informing them that their application was unsuccessful (refer documentation at the end of this section for sample letter).
2. Write acknowledgement letters to the other two groups, informing them that you will be contacting them soon regarding their applications.
3. Arrange interviews with suitable candidates (A) as soon as possible - you do not have to wait until applications close.
4. Review the middle group (B), and decide whether you want to interview any of them. If you are unable to decide, phone the candidate to gain more information. You may want to arrange a 'window' interview (i.e. a brief first meeting to form an initial impression).
5. Select a short-list for further interviewing and assessment, and inform unsuccessful applicants.
6. Re-read resumes of short-listed applicants, and arrange interviews.

Note: It should take no longer than 10 days between advertising the position and interviewing people in depth. Early contact with the candidate by an email, acknowledgement letter or phone call is critical. Being slow to respond may mean that you lose the candidate.

Notify unsuccessful applicants

Once acceptance of the offer of employment has been received from the successful applicant, you should notify remaining unsuccessful applicants.

4.5.6   Conduct the interview

The main objective of the interview is to gather as much relevant information as possible about the applicants.

This information can be used to determine whether they have the skills, experience and knowledge to do the job, and also whether they will fit with your organisation and the team with which they will be working. The aim of the interview is to match the key selection criteria developed for this position, with the skills, knowledge and experience of the candidate.

An interview needs to follow a format, yet be flexible enough to allow for the particular experiences and style of each applicant. As an interviewer, you should evaluate the same general criteria for each applicant and ask the same set of core questions.

An interview that follows a general standard outline will produce more reliable and valid information for selection than an unstructured interview. It will allow for valid comparisons between applicants, and minimises the risk of laws and regulations that govern the selection process being broken or overlooked.

When conducting an interview, you need to:

> seek information on all important criteria needed for successful job performance
> cover all critical competencies required to perform the role

> ask behaviour-based questions to elicit what a candidate has actually done in a particular circumstance, or what they would do if faced with a particular circumstance

> avoid asking 'leading' questions

> avoid asking theoretical or philosophical questions

> evaluate candidates against position criteria

> ask further probing questions to clarify actual behavioural style of candidate.

Effective interview questions

Questions should be formulated to reveal and provide specific information concerning skills, knowledge and abilities required for a new employee to be successful in the job.

Develop an interview question guide to use for all candidates for the job. This ensures you are consistent with each candidate, giving each the same opportunity, and allows you to use well-prepared questions that you may otherwise forget or not pose as effectively.

Questions are a powerful tool, and they can be used to:

> elicit information

> direct the course of a discussion

> establish and maintain control

> check information or test understanding

> give information (disguised statement)

> control the emotional climate.

Poor questioning techniques, however, can deprive an interviewer of the only opportunity they have to obtain the necessary information to make an accurate selection decision.

When preparing your questions, remember to:

> concentrate on the most recent and relevant work experience, or education.

> avoid asking theoretical questions.

> aim to discover what the applicant has done in a particular situation - NOT what they would like to have done, nor what someone else did, nor what they should have done.

Open questions

This type of question is designed to avoid single-word or very brief answers. Open questions allow a wide range of possible responses from the person answering the question. They also place the initiative with the applicant to frame and express relevant answers to your questions.

Examples:

> Tell us about one of your projects that provided you with satisfaction. What were the results?

> What was your role?

> What did you do in your last job that contributed towards teamwork? Give an example of a time when you had to reach a decision very quickly.

> Tell me about your last job.

> > How did your job description change while you held the position?
> > What is important to you in a job?
> > What do you feel would be your biggest contribution to our organisation? Department?
> > What are your strengths and how do they relate to our organisation?

Closed questions

These questions are phrased in a way that encourages answers of very few words and narrows the range of responses available to the person answering the question. At the extreme, they allow for only a 'Yes' or a 'No' answer. These are useful to pin down a candidate's response. If a candidate avoids giving a Yes or No answer to a closed question, this may be a sign that the applicant wants to evade the question and, therefore, should be probed further.

Sample closed questions:

> > Do you have a current driver's licence?
> > How long did it take to get the group to agree to that course of action?
> > Are you able to work overtime whenever necessary?
> > Does driving in inclement weather bother you?

Behavioural interviewing

Behavioural interviewing requires you to develop interview questions that seek to determine previous actual behaviour in situations that are very similar to those likely to be experienced in the position to be filled.

Using past behaviour to predict future success

When assigning work, supervisors/managers usually give it to the employee who was successful in solving a similar problem or completing a similar task in the past. They use past behaviour to predict future behaviour.

It is the same in recruitment: once an interviewer knows what a candidate has done in practice, then behaviour, skills and decision-making can be more accurately predicted in similar situations, in the future.

> > Using behaviour-based questions and responses eliminates misunderstanding and misinterpretation of the candidate's past experiences.
> > Using behaviour-based responses to workplace scenarios prevents personal impressions from affecting evaluation.
> > Using behaviour to assess competence minimises opportunities for the candidate to avoid answering, or to exaggerate.
> > When planning a behavioural assessment interview, you need to:

> - know exactly what criteria are to be evaluated through using a recently updated position description
> - define each general criterion so that it is clearly understood by all those involved in evaluating a candidate
> - plan questions to ask, in order to obtain evidence of behaviour in relation to given criteria.

The best way to predict future behaviour is to obtain evidence of past behaviour in relation to specific criteria that are regarded as critical to competence on the job.

Guidelines to avoid potentially discriminatory questions, both oral and in written form:

Race or colour

The interviewer may not ask questions pertaining to an individual's skin colour or complexion except in limited circumstances such as where the company can claim an exemption under legislation. For example if active attempts are being made to recruit employees of aboriginal or Torres Strait Islander descent.

Religion

Enquiries are not permitted regarding a person's religious beliefs. Also, avoid using the term 'Christian Name' on an application form; instead, ask for First, Middle and Last (or Family) names.

National origin

Enquiries are not permitted about a person's lineage, ancestry, descent, parentage, nationality.

Sex

A pre-employment enquiry as to gender on an application form should be avoided.

Marital status

An interviewer may not ask, "Are you married?", "Where does your spouse work?", "How old are your children, if any?"

Age

An interviewer may not ask the applicant's date of birth, or age unless it is directly relevant to the role e.g. working at a licensed venue.

Disability

The interviewer may ask a question such as, "Do you have any impairment, physical or intellectual, that would interfere with your ability to perform the inherent requirements of the job?" Then, possible accommodations can be discussed, if required. The interviewer may not ask "Do you have a disability or impairment?"

Birthplace

The interviewer may not ask an individual's birthplace because this may suggest racial discrimination – it may also cause the candidate some discomfort.

Photograph

The employer may not request that the applicant affix a photograph to the employment application form at any time before hiring.

Citizenship

The interviewer may ask, "Are you legally entitled to work in Australia?"

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Language

The interviewer may ask, "What languages do you read/write/speak fluently?" But, it is recommended this only be done where it is a required or desirable attribute for the role.

Relatives

The interviewer may ask the names of any of the applicant's relatives who are already employed by the organisation, however, be very cautious with this area - it is unlawful to discriminate against an individual for reasons of personal association.

Organisations

The interviewer may ask questions such as, "Are you a member of any clubs, organisations or the like which might have relevance to the position that you have applied for?" The interviewer may not ask the applicant to list all clubs, societies and lodges to which they belong.

Criminal conviction

It is unlawful to discriminate against an individual on the grounds of irrelevant criminal conviction. There are some exceptions to this law, particularly relating to the care of children, the aged and disabled. The interviewer may not ask questions such as, "Have you ever been arrested?"

An applicant cannot be refused employment because of their criminal history, unless it is deemed to compromise the individual's ability to perform the job.

Your own attributes and attitudes - We all have personal prejudices and preferences. It is natural to be more accepting of, or more familiar with, someone who is similar to ourselves. This means that the interviewer/s must remain objective and not make emotional decisions, which are not necessarily in the organisation's best interests.

It is important to recognise our own prejudices and tendencies and be aware of them when we are employing others, so that we make good decisions based on what the organisation needs.

As an interviewer, you need to ask:

> Are my expectations too high?
> What attributes on the list of personal attributes are essential?
> Am I threatened by someone who is brighter than I am?
> Have I set minimum selection criteria?
> Am I imposing my values on this person?
> Am I going for a safe choice or for the best available on the day?
> Am I eliminating someone who looks 'too good'?

This awareness is important in the recruitment process because it sets the foundation for recruiting the best person for the job.

Creating the right environment

The main aim in creating the most suitable interview environment is to make the candidate feel as comfortable as possible (e.g. seating arrangement, welcome at Reception).

Time

Make sure you allow enough time for your interview. You will need between 45 minutes and two hours to adequately interview your short-listed candidates, depending on the complexity of the position. If you are conducting a series of interviews in a single day, allow enough time between interviews for overflow, summarising, taking notes, and recovering (recommend at least 15 minutes).

Arrival

Make sure the candidate knows how to get to your organisation, and ensure that the receptionist is aware that you are conducting the interview. If possible, have someone greet candidates when they arrive.

Privacy

Do not conduct interviews in restaurants, or other public places. Make sure the room is completely private, and that you will not be interrupted.

No interruptions

Have the phone diverted, and let relevant personnel know that you will not be available for a certain period of time.

Comfort

Avoid conducting the interview from behind your desk if this placement sets up a barrier between you and the candidate. Come around to the candidate's side, and angle chairs inward towards each other (avoid placing chairs directly opposite each another). If there is a panel conducting the interview, a 'round table' configuration is best.

Opening the interview

When opening the interview, the aim is to establish rapport and make the candidate feel as comfortable and relaxed as possible. This way, the candidate will be more open during the interview – an anxious individual will not give as much information.

> Introduce yourself – plus, members of the interview panel, and their role - to the candidate.
> Offer the candidate a glass of water.
> Explain the structure of the interview and the expected duration, so that the candidate knows what to expect.
> Explain that you will be taking notes throughout the interview.
> Allow the candidate to talk, while you listen carefully without interrupting.

Closing the interview

> Give the candidate the opportunity to ask any questions they may still have.
> Advise the candidate of the next step in the process (whether there may be a second interview and when you are likely to let them know of your decision).
> Explain to the candidate that reference checks will be made, and seek additional referees, if required.
> Thank the candidate for their time and interest in the role and escort them to Reception to exit.

4.5.7   Make a decision

How do you know which candidate is best suited to the position vacancy? There is no absolute way to tell in advance; however the chances of hiring the best person will be increased if the following steps are taken:

> Be clear about the skills, knowledge, experience and aptitudes required by a candidate in order to perform the job well.
> Immediately after the interview, write down the candidate's strengths and gaps.
> Follow-up the candidate's prior work experience and, with their permission, call previous employers to establish work records and progress.
> Put together the data collected in the above three points, and make a decision.

Remember, do not select 'the best of a bad bunch' – search again. A poor decision can be very costly in terms of time, money and morale.

Retention

The source of retention problems is somewhere within the function of leadership – at every level. Normal turnover would occur due to a variety of factors, including serious illness, relocation of partner to another city, and retirement. However, abnormal turnover due to decreasing competence and/or interest, low performance, or ineffective recruitment or selection processes, is costly, impacts on operations and morale, and negatively affects achievement of business objectives.

Managerial responsibility (i.e. leadership) and accountability lies in each of the following stages being carefully planned and monitored:

1. finding the right people
2. showing them what to do and how to do it
3. ensuring these people achieve desired objectives
4. maintaining their focus and direction according to plan.

Maintaining the interest, competency and motivation of employees requires an acknowledgement of their value to the organisation (skills, knowledge and experience), and a genuine interest in developing their potential (training and development) and job satisfaction (motivation factors).

Motivation factors

> Affiliation – demonstrated through sympathy and interest in others, and people getting together (e.g. meetings)
> Recognition – for achievements and improvements; publicly and privately

> Achievement – encourage competition and working to objectives; provide progressive feedback on their performance
> Self-actualisation - sense of personal growth and continual learning

4.5.8   Undertake reference (and medical) checks

Reference checks

The purpose of reference checking is to validate your selection decision. Reference checks should be conducted prior to making a job offer.

It is important to investigate past work performance of candidates who appear to satisfy the requirements of the position. This includes contacting former employers to confirm the candidate's work record and to get their appraisal of the candidate's performance. Use key selection criteria and interview questions to form the basis of the reference check. This will ensure you focus on the important factors in making your decision, and gather the most relevant information from referees.

It is also important to contact job-related references not necessarily provided in the first instance by the preferred candidate. For example, during the interview you may be able to identify some other sources from which you could seek a reference. Be sure to verify the educational accomplishments submitted by the preferred candidate.

A reference check can take up to 20 minutes and should be done by telephone. Telephone reference checks are mostly concerned with confirming factual information, and probing areas of character and specific ways that the candidate matches or fails to match areas that are likely to have an impact on work performance.

It is not appropriate to check references without the applicant's consent (refer *Documentation* at the end of this section for sample Reference Check form).

Medical examinations

Some organisations will require a medical examination before an appointment is made for some positions. Where the position requires such an examination, this is to be stated at the interview. Pre-employment medical tests can be an integral part of the employment selection process. Medical tests are a useful indication of the suitability or otherwise of potential employees in jobs that require specific physical or mental capabilities. Where required, the organisation will arrange a pre-employment medical, prior to final decision

In order for employees or potential employees to perform the duties required by their position, employers have an obligation to provide a workplace that appropriately assesses risks and removes unsafe work practices.

 To minimise the risk of injury and potential liability, an employer has the right to determine whether an employee is able to safely perform the requirements of the position and, therefore, pre-employment and workplace tests may be required, for example:

> psychological testing
> physical fitness testing
> drug and alcohol testing
> hearing and visual testing.

These tests benefit employers and employees alike as they help to minimise the risk of employees injuring themselves or others, and reduce the instance of liability for employers.

Pre-employment tests must **only** be used in circumstances where they are justified:

> Does the medical test relate **specifically** to the particular duties and responsibilities of the job?
>
> Have the specific physical and mental attributes required for the job been accurately identified?
>
> Are the attributes that the employer requires for the job reasonable in all circumstances?
>
> Have avenues been considered for accommodating people without these attributes?
>
> Can facilities or services required by applicants with disabilities be provided, if the provision does not cause unjustifiable hardship to the employer?
>
> Is assessment of a person's ability to perform the inherent requirements of the job made, after these facilities or services have been provided?
>
> The test must only assess current ability of the applicant and does not attempt to predict any future deterioration or predisposition to illness.

Confidentiality is very important in relation to medical testing and the organisation must ensure responsible handling of all information.

Overall, the organisation must make sure medical testing is relevant to the requirements of particular positions and should only assess those aspects of medical fitness that are considered relevant to the job. Unnecessary or mismanaged medical testing will significantly increase the risk of liability and potential litigation. The purpose, the context and the subsequent management of this very personal information must be as transparent as possible to employees and potential employees. The Victorian Chamber recommends seeking advice before implementing medical checks.

4.6   Privacy

4.6.1   Privacy legislation

In Victoria, there are potentially three key pieces of legislation that will apply to employers:

> *Privacy Act 1988 (Cth)* as amended by the *Privacy Amendment (Enhancing Privacy Protection) Act 2012 (Cth)*
>
> *Information Privacy Act 2000 (Vic)*
>
> *Health Records Act 2000 (Vic)*

Within these pieces of legislation are Privacy Principles (Australian Privacy Principles, Information Privacy Principles and Health Privacy Principles, respectively) which set out the obligations of organisations whenever collecting, using, disclosing, storing and destroying personal and/or health information. The privacy principles also outline the right of access that individuals have to their personal and/or health information, and organisational obligations for providing individuals with such access, if requested. Including personal/health information collected during recruitment and selection process.

Each of these pieces of legislation can potentially impact on an organisation's recruitment and selection process, depending on which piece(s) of legislation are applicable.

4.6.2 Collection of personal and/or health information

Whenever an organisation receives an employment application and/or resume on an individual, irrespective of whether it was solicited or unsolicited, personal – and possibly health – information has been collected. Under the privacy legislations, at the time an organisation collects personal and/or health information, or as soon as possible thereafter, the organisation has a responsibility to inform the individual of the following information:

> name and contact details of the organisation

> the purpose of collection

> the fact that the individual is able to gain access to any personal and/or health information the organisation holds about them

> the organisations or types of organisations to whom that kind of personal and/or health information is disclosed

> any law that requires the information to be collected

> the main consequences, if any, for the individual, if all or part of any required information is not provided.

The first practical opportunity to provide this information to job applicants may be when:

> acknowledgement of receipt of the application is communicated (if that is a practice of the organisation)

> when applicants who are unsuccessful in securing an interview are informed accordingly

> when applicants who secure an interview arrive at the organisation's premises

> where applicants need to complete an employment application form, it may be convenient to include information of the personal/health information collection process on the form.

Other ways information regarding an employment applicant may be collected:

> information provided by the applicant, during the interview (i.e. that is recorded or held, in any form)

> the recording of opinions, in any form, regarding the applicant, by the interviewer/s

> referee checks

> psychological and psychometric testing (Victorian Health Services Commissioner considers this information to be health information)

> emotional intelligence assessments (these, also, would be considered health information)

> skills assessments.

If personal and/or health information is collected from a third party, the organisation has a responsibility to inform the individual that they have collected such information, but do not have to provide details of the information.

Nonetheless, individuals have a right of access, and may request access to personal and/or health information about them which has been collected from a third party. It is also important for organisations to ensure that personal and/or health information is collected by lawful and fair means, and not in an unreasonably intrusive way.

4.6.3   Use of personal and/or health information

'Use' is defined in this context as the use of personal and/or health information within an organisation. Organisations should only use the personal and/or health information collected from job applicants and third parties for the purpose for which it was collected (i.e. to consider and assess applicants for suitability of employment with their organisation).

4.6.4   Disclosure of personal and/or health information

'Disclosure' is the disclosure of personal and/or health information outside an organisation. If an organisation needs to disclose personal and/or health information regarding an individual as part of the recruitment and selection process, they should do so only if they have the consent of the individual or if the individual would have a reasonable expectation that their information needs to be disclosed, and to whom, as part of the recruitment and selection process.

The reasonable expectation of an individual can be increased by ensuring that they are informed of any disclosures that usually occur as part of the recruitment and selection process when providing the individual with the information at the time of information collection (refer *4.6.2 Collection of Personal and/or Health Information*).

4.6.5   Quality and security of personal and health information

An organisation must take reasonable steps to ensure that whenever they collect, use or disclose personal and/or health information as part of the recruitment and selection process that the information is accurate, complete and up-to-date.

Organisations must take reasonable steps to protect personal and/or health information from misuse and loss, and unauthorised access, modification or disclosure. This includes ensuring only employees within an organisation that have a 'need to know' have access to the personal and/or health information of employment candidates.

Once an employment candidate's personal and health information is no longer required, (i.e. unsuccessful applicants), it is to be destroyed by secure means. The decision that such information is no longer required is generally made by the organisation. It may be when the successful candidates have been identified; it may be when the successful candidate commences employment; it may be when the successful candidate has completed a period of probationary employment; or it may be any other time an organisation considers relevant. An organisation should also consider that an individual's personal and/or health information is no longer required if the individual requests that their application and resume be destroyed.

4.6.6   Access to personal and/or health information

A key element of the privacy legislations is the right of access individuals have to their personal and health information. This includes information collected and recorded from third parties, and any recorded opinions regarding employment candidates, regardless of who expressed such opinions.

Therefore, a responsibility exists for organisations to take reasonable steps to ensure that any information collected from third parties or opinions which are recorded, irrespective of who expresses the opinion, are not defamatory, nor discriminatory. Failure to do so has the potential to result in defamation action or discrimination complaints being made against an organisation, for which they could be found liable if they have not taken reasonable precautions.

The potential for action has increased significantly since the introduction of privacy legislation through the right of access that individuals now have to their personal and/or health information.

4.6.7   Reference checks

Organisations should take reasonable steps to ensure that prior to contacting referees, those referees have consented to the use of their personal information (i.e. who they are, where they work, their position and their contact details). To do otherwise may constitute a breach of privacy legislation. A way in which this could be achieved is for organisations to have employment candidates confirm that they have contacted their nominated referees and that those referees have consented to acting as referees.

It may also be appropriate to inform candidates that the only information sought from referees will be information considered relevant to their current or past employment and/or information relevant to the position for which they have applied. This will help in reducing the risk of defamation or discrimination action being taken against an organisation.

4.6.8   Employee records

Employee records are exempt under Commonwealth privacy legislation - this applies to personal information about an individual which is relevant to their employment, and also applies to the records of past employees.

However, under the *Health Records Act* and the *Information Privacy Act*, these employee records are not exempted. Therefore, any employee health information that a public or private sector organisation holds must be managed in accordance with Health Privacy Principles, and any personal information that a Victorian public sector organisation holds on employees is to be managed in accordance with the Information Privacy Principles.

For successful employment candidates, their personal information becomes an employee record once an employment relationship has been formed. In effect, this means once an offer of employment has been made and accepted (verbally, in writing or otherwise).

4.6.9   Recruitment agencies

Organisations that use recruitment agencies to assist in undertaking their recruitment and selection process should take reasonable steps to ensure that the recruitment agency they engage is also able to fulfil their privacy obligations to employment candidates. Potentially, organisations that engage recruitment agencies could be found to have liability if the recruitment agency they engage was responsible for a breach of an individual's privacy relative to that individual's application for employment with the organisation.

4.6.10   Reasonable steps

Measures an organisation could take to ensure they have taken reasonable steps to prevent a breach of an individual's privacy from occurring include:

> documented policy and procedures that deal with privacy
> provide individuals with the information (refer *4.6.2 Collection of Personal and/or Health Information*) whenever their personal and/or health information is collected, including when it is collected from third parties
> only disclosing personal and/or health information when it is necessary to do so as part of the recruitment and selection process

> > provide facilities for the secure storage of personal and health information, and the secure destruction of that information (including paper-based and electronic records), as required
> > provide training and development of all employees who, in any way, handle personal and/or health information in the course of their duties
> > provide individuals with right of access to their personal and/or health information, if requested.

4.7 Offering the job

Verbal offers

A verbal offer of employment can be made to the successful applicant to check their continued interest in the position. Once you have found the right candidate, it is important that your interest in employing them is conveyed as soon as possible. Sometimes good candidates can be considering several employment offers, so it is wise not to delay your selection decision.

It is critical, however, that you are in a position for the applicant to accept the offer before making the offer. If an employer makes an offer and a candidate accepts that offer, there is deemed to be a legally binding contract formed. Once this has occurred, the candidate can expect to commence employment with the employer at some point in the future. Retraction of an accepted offer is technically a termination of the employment contract that may result in legal recourse by the candidate.

Letter of offer/appointment

Once a salary level and an agreed start date are confirmed, a letter of offer or appointment can be prepared.

The written offer of employment sets out the position's key terms and conditions. It is strongly recommended that a written contract of employment or employment agreement, particularly for employees not covered by a modern award or enterprise agreement, is attached to the letter of offer/appointment (refer Documentation at the end of this section for a sample letter of offer and contract). Employers must be careful to investigate their legal obligations before drafting a letter of appointment and contract (refer *Chapter 10 Human resource management and the law*).

The letter of offer/appointment is one of the most important documents an employer issues. Together with the employee's acceptance, it forms the basis of the contract of employment. Although there is nothing in law to state a job offer must be made in writing, it is advisable to do so for individuals not covered by a modern award or enterprise agreement. This helps minimise future disputes.

> *There are minimum terms and conditions of employment contained in the Fair Work Act 2009 (Cth), which pertain to Victorian employees (refer Chapter 10 Human resource management and the law).*

The letter of offer/appointment should contain specific terms as discussed and agreed at interview, as well as any other key terms of employment. When drafting the letter of offer/appointment and contract of employment, it is important to state them clearly and concisely, minimising ambiguity in areas that may be open to interpretation. It is recommended that expert advice be sought when drafting a contract of employment and the Victorian Chamber can provide assistance in this area.

The letter should also contain a provision for the candidate to formally accept the terms of employment such as a request to sign the document, returning a signed original to you. Two signed copies may be provided by the organisation in order to provide a copy for the candidate.

Notifying unsuccessful applicants following interview/s

When an offer has been made and accepted, all other applicants interviewed should be notified. It is advisable to wait until an offer has been formally accepted before notifying unsuccessful applicants - the successful applicant may not accept the offer. You would then be in a position to offer the position

to another suitable applicant. It is important to note, however, that a subsequent offer should only be made to an applicant who fully meets your selection criteria. It can be a costly decision to employ someone who does not fully meet your needs.

4.8   Probationary/Qualifying period

A probationary period of three or six months provides the employee and line manager with time and opportunity to determine whether there is an appropriate and adequate match of skills and behaviour to the job and to the work environment.

The employee should be advised of the probationary period in advance of commencing employment and it preferably should form part of the letter of offer/appointment. Probation is not normally extended, but may be extended, by agreement between the employer and employee, for example in certain circumstances if the employee has been absent for a significant period of time during the initial probationary period or if the contract provides for this.

With the support of Human Resources, the employee and line manager will follow company guidelines regarding reasonable expectations, support, and opportunities for giving and receiving feedback which will be reviewed and monitored throughout the probationary period. Expected goals and standards (and completion dates) must be established for the employee to have an opportunity to remedy these work deficiencies and improve through coaching and counselling from the line manager.

Periodic (informal) reviews may be done during the probationary period with due consideration to the impact upon the wellbeing of the employee. A final (formal) review must be undertaken prior to the probationary period expiry date, providing fair and easily understood feedback.

In circumstances where the line manager considers that elements of the employee's work performance are unsatisfactory, specific details of performance deficiencies must be documented by the line manager, signed by both the line manager and the employee, and filed securely and confidentially with related human resources records.

Note: The probationary period is a common law concept allowing the employer and employee to assess the employee's fit for the role.

This is separate to a 'qualifying period', which refers to the ability for a person to 'qualify' for coverage under unfair dismissal legislation.

Currently an employee must have worked for an organisation for six to 12 months to be able to access a claim under unfair dismissal, depending on the organisation's size (see also 11.4 Unfair Dismissal). Many employers are currently choosing to replace the 'probation period' terminology in contracts with a six month 'qualifying period'.

4.9   Documentation

> A proper match between the job and employee capability is essential if the organisation is to achieve its organisational goals. It is therefore imperative that the organisation has a thorough understanding of the demands of each role and the skills required to perform this job at the required level. Job analysis provides the foundation for developing this understanding.

5. Workforce Demographics

5.1   Introduction Documentation

The Australian Government released its Intergenerational Report in 2010, which was based on data from the *Mid- Year Economic and Fiscal Outlook 2009–10* adjusted for the methodological changes to the System of National Accounts (SNA) from SNA93 to SNA08 by the Australian Bureau of Statistics in December 2009. This Report, like the 2002 and 2007 Intergenerational Reports, highlights the key facts surrounding the ageing of Australia's population and the implications for Australia of the 'Baby Boomer' generation moving into retirement.

The proportion of working age people is projected to fall, with only 2.7 people of working age to support each Australian aged 65 years and over by 2050 (compared to five working aged people per aged person today and 7.5 in 1970).

The key features of Australia's ageing population are:

> As at June 2009, the median age of the Australian population was 37 years; an increase of 7.6 years in the past 28 years.
> 13.3 per cent of Australia's population is aged 65+.
> 24.3 per cent of the population is aged 55+, an increase of 2.3 per cent in just eight years.
> The average intended age of retirement is around 62 years, up from 58.6 in 1996.
> Life expectancy at the average effective retirement age is now 23 years for men and 26 years for women, about five or six years longer than it was some 30 years ago.

The implication for employers is that the makeup of the Australian workforce is already undergoing dramatic change, with the rapid ageing of the population that was forecast in the last two Intergenerational Reports already occurring.

The most dramatic change that is already noticeable is the rate of inflows of younger people has already started to fall. The labour force participation rate for people aged 15 years and over is projected to fall to less than 61 per cent by 2049–50, compared with 65 per cent today.

Second, existing employees are getting older, and there has been a tendency for many of them to retire as young as 55 years of age and for employers to target recruitment strategies at younger and traditional prime-age segments of the labour market. *(Workforce Tomorrow: Changing Labour Markets, DEWR, 2005)*. The result is employers are competing for a shrinking segment of the workforce.

It is projected that labour market growth in the period 2002–2015 will be 15 per cent for workers aged under 45 and 85 per cent for workers aged over 45. As at 2001, nearly one third of all workers in all occupations were aged 45+ with some industries or occupations already reflecting the ageing workforce, with the average age of employees 50+. *(Workforce Tomorrow: Changing Labour Markets, DEWR, 2005)*.

The Intergenerational Report recommends that, in order to address these issues, policy settings and labour force initiatives need to focus on lifting productivity, increasing our population and lifting workforce participation.

Government policy has responded through reform of the national training system and initiatives which address entry level training through the Australian Apprenticeship system, with a particular focus on lifting the skills of existing workers.

Social policy has seen the introduction of the 'baby bonus payment' to mothers, the paid parental leave scheme for new parents and, as of 1 January 2013, certain dads and partners will also be entitled to Dad and Partner Pay when they have or adopt a child.

Migration policy has also been adjusted with the introduction of flexible arrangements for temporary visas to meet immediate industry skilled labour requirements to combat skill shortages.

A number of Australian and Victorian Government programs have been designed to support people with a disability, carer parents, mature job seekers and long term unemployed to obtain work. The creation of job opportunities for these clients will be crucial in lifting workforce participation to meet the skill needs of business. It is in this context that employers will need to consider more flexible human resource practices as set out below.

5.1.1   Changing workforce demographics and implication

Over the next 30 years, as the workforce ages and many workers retire, and with fewer young workers to replace them, there will be a shortage of workers available to Australian businesses.

Without sufficient skilled workers, many businesses will have difficulty maintaining current levels of productivity and expanding to meet the increasing demands of both Australian and export markets.

Employers that set their sights on recruiting, retraining and retaining older workers will make significant progress toward ensuring the future viability of their business. Three key questions need to be asked: Who is currently in our organisation (retention)? Who do we want to attract to our organisation (recruitment)? What motivates them (attraction and retention)?

As labour shortages increase, employers will need to be innovative to attract and retain the shrinking supply of available talent. The workforce of the future will be more diverse, consisting of more parents, more people with disabilities, more people wanting to work part-time and older workers. New strategies are required, such as:

>   creating and maintaining a more diverse workforce
>   retaining workers, especially mature-age workers
>   mentoring and coaching new employees
>   increasing training for existing employees
>   improving 'life balance' for different types of employees (i.e. those with children, carers, mature-age)
>   flexible work practices.

5.1.2   Positive aspects of the ageing workforce

State-wide labour shortages mirror national trends and the relative decline in labour supply has already commenced and will accelerate sharply over the next 10 years (IGR 2010). A number of factors are forcing businesses to analyse their workforce, and plan for the following changes:

Table 5.1

Economic realities	Workforce changes
Record employment rate	Available workers growing older
Record participation rate	Fewer younger workers entering market
Demand for higher levels of knowledge and skill shortages increasing	Longer life expectancy
Shrinking resource pool	Workers retiring earlier
Threats to business profitability and economic growth	Having fewer babies

All businesses face an increasing proportion of older people in their workforce. Consequently, business owners and managers who try to understand the needs of experienced workers will benefit from forward planning to recruit, train, integrate and retain mature-age workers, and thereby, be better able to cope with the significant changes to the labour supply. There is an opportunity to extend the working life of workers aged 45 years and over.

Benefits to be gained by employing and retaining 45+ workers

> retaining older workers for longer adds to workplace stability
> access to a wider pool of talent
> increased return on investment in training employees
> assists organisations to maintain experience and knowledge
> employee profile reflects ageing customer base.

Functional advantages to be gained by employing and retaining 45+ workers

> already skilled and experienced
> helps create a more diverse and productive workplace
> assists business to become more flexible and responsive to change
> increased capacity to coaching, mentoring, sharing knowledge and experience.

5.1.3   Diversity of generations, gender and ethnicity

The workforce of the future will be more diverse and, with the effects of population ageing and as labour shortages increase, employers need to adjust their recruitment and retention practices.

Clear communication and managing the culture of an organisation can present challenges when employing and maintaining a workforce with diversity in age groups, gender and ethnicity.

Strategies to support diversity in the workplace:

Recruitment – Attract strong candidates who are prepared to meet organisational goals and priorities and to work in the organisation's environment through using a variety of job search locations, accepting recommendations of potential candidates from employees and closely following EEO guidelines.

Hiring – Review internal human resources policies, processes and operations in order to streamline hiring and identification of good candidates and to promptly make job offers.

Supportive work environment – Provide employees with the direction and tools needed to perform the organisation's activities to the best of their ability, including leadership and diversity training for line managers, quality work-life considerations, offering a safe and productive environment, and fostering a sense of belonging and community spirit.

Learning and development – Training and development opportunities contribute to employees choosing to stay with the organisation.

Rewards and recognition – All employees like their efforts to be acknowledged. Employers can ensure that merit and results are used to differentiate rewards and recognition between employees.

5.2   Flexible workforce practice and best practice

5.2.1   Flexible work practices

Flexible work practices balance needs of the organisation and employees, accommodate workers' changing aspirations and reflect employees' individual circumstances including outside of work.

5.2.2   Flexible working relationships and environment

The change in workforce profile will have a significant impact on the work environment and working relationships. Each generation has different life experiences. These differing influences can lead to differences in work styles that need careful management.

Work environment

Doing work – Once, people spoke of 'getting a job', with the implication they would stay in that job for a long period of time. Today, people make active choices about the organisation they want to work in, and the type and structure of work they want to do (similar to a contractor).

Technology – Not only has technology (mobile phones, video conferencing, internet access, intranet communication and computers) altered 'how' work is done, it has also significantly affected 'when' work is done. This has meant that there is now a greater opportunity to blend work and personal life.

Commitment – In the past, loyalty to the organisation was rewarded with job security and, sometimes, a steady career progression. Today, with less job security, workers have a commitment to do the work they have been employed to do, and a commitment to self (i.e. achievement of personal and work objectives).

Productivity through influence – The traditional work style of hierarchical authority, and workers who followed instructions, is being replaced by a cooperative work style that requires leaders (who are not necessarily managers) to identify, utilise and monitor skills, to effectively communicate the purpose and objectives of a decision or instruction, and to demonstrate achievement.

Work relationships

Even though employers cannot guarantee job security, they can develop new and healthier relationships with employees through:

> - provision of skills enhancement and training to all employees
> - empowering employees to take control of their own career
> - offering flexibility in work patterns to experienced and/or mature-age employees
> - providing a supportive environment.

5.2.3   Different generations working together

Diversity is a critical element of the profile of today's society – gender diversity, cultural diversity and different learning styles. The nature of the labour market and work environment has been affected by changes in the patterns of male and female participation in the labour force, growth in part-time employment, technological advancement and generational diversity.

There are now four distinct generations working together within the workplace:

Generation	Born
1. Generation Z	2000 or later
2. Generation Y	1981 - 1999
3. Generation X	1964 - 1980
4. Baby Boomers	1946 - 1963
5. Silent Generation	Having fewer babies

There are not only differences in the values and communication styles of each generation, but there are also differences within each generation.

Each organisation needs to understand the impact of combining these values and styles, and plan strategies to manage productivity and the overall work environment.

Some of the differences that may exist between the generations include:

Response to Authority	Values
Attention to detail	Generational conflict
Career challenges	International experience

Response to Authority	Values
Learning topics, learning environments and learning behaviours	Coaching methods
Attitudes towards management, the organisation, work, other generations, etc.	Communication method preferences: email, telephones, mobile phones, face-to-face

There are also similarities among the generations – for example, everyone wants to learn and to have on-the-job development (regardless of age); not all younger people want to learn on computers.

Employers must understand that while each generation has had different career expectations, work ethics and management styles, it is critical to the on-going success of their businesses that they take action to accommodate these differences in the areas of communication, monitoring and management styles and methods. In particular, those born between 1980-1994 (Generation Y) value variety and challenges rather than tasks that are repetitive, being coached and mentored rather than being managed; they need participation and interaction.

The engagement, focus and productivity of all employees will be enhanced through understanding and accommodating diversity (including, generational differences) in the workforce.

5.2.4   Best practice

For an organisation to perform well, the critical elements of resources and customers must be well utilised and well served, respectively. A measure of an organisation's performance is the quality and quantity of work performance and resource utilisation; this productivity can be measured at an individual, group and organisational level.

Productivity can be monitored and evaluated through performance effectiveness and performance efficiency. However, in the current changing workplace environment, there are other critical factors that need to be included in the organisation's objective to achieve product and service quality and customer satisfaction (*Management*, Campling, Poole, Weisner & Schermerhorn, 2nd Edition 2006).

The critical factors that need to be considered by an organisation in order to find, adapt and implement outstanding practices in order to achieve and sustain high levels of performance:

> pre-eminence of technology – new opportunities continually appear and change the way organisations operate and how people work

> demise of 'command-and-control' – this management style is proving too slow, conservative and costly

> focus on speed – any organisation work is expected to be well done and timely

> embrace networking – internally and externally

> belief in empowerment – demand for high-involvement and participation, with contributions of knowledge, experience and commitment of all members

> emphasis on teamwork – organisations are becoming more horizontal in focus and need to pool talent for creative problem solving

> new workforce expectations – less tolerance for hierarchy, more informality and more attention to performance merit than to status and seniority

> concern for work-life balance – organisations must pay more attention to balancing the often-conflicting demands of work and personal affairs of workers.

Advice can be provided by Victorian Chamber consultants regarding relevant best practice strategies to benefit your business.

5.3   Building a skilled workforce

5.3.1   Skills analysis

Maximising the potential of each employee is vital to achieving productivity growth for your business. This is even more critical when the effects of skill and labour shortages will make it more difficult for employers to recruit employees to maintain and increase the productivity of their business.

To maximise the potential of each employee it is important that their current skills and knowledge are assessed and compared to the skill requirements of their role and future requirements of the business as a whole. Skill gaps identified should form the basis of professional development planning.

A skills analysis is the audit of each individual employee's technical skills, 'soft' skills and knowledge. The audit should be conducted by an HR Manager or the employee's direct line manager.

Review this information with the relevant line manager and the review process will highlight individual and team strengths and training opportunities, and alignment (or otherwise) with the business plan and objectives. A skills audit can be:

> **Formal** – utilising the performance appraisal process
> **Informal** – having a conversation with each employee, at the end of probation, and subsequently every six months.

Once a skills analysis has been conducted for all employees, it will be possible to assess the full capabilities of the business's workforce and allow for the planning of training on both an organisational-wide and individual employee basis. By studying the attitudes, values and expectations of new generations (Generation X and Generation Y – refer to *5.2.3 Different generations working together*), better ways can be found to train and develop (and retain) all employees.

5.3.2   Recruitment and retention

With a tight labour market and the ageing of the population, combined with current skill shortages, it is critical that companies review current recruitment, selection and retention processes to maximise opportunities to attract, select and retain employees that fit into the corporate culture, are motivated to contribute and perform, and may stay with the organisation for more than a year or two.

a) Recruitment

Recruitment is the process of attracting people to apply for jobs, hiring the most appropriate candidates based on merit and results, and inducting successful candidates to company policies and procedures and the work environment (refer *Chapters 3 and 4* for an outline of the recruitment process).

Recruitment, therefore, involves elements of training, and may involve promotion, transfer or other changes in responsibilities and/or tasks from within the organisation, or the appointment of someone from outside the organisation.

Regular assessment and review of future skill needs enables consideration of alternative recruitment methods, including offering apprenticeships or traineeships. (Refer *9.6.5 Apprenticeships and traineeships.*)

b) Retention

As it becomes increasingly difficult to maintain productivity and projected growth in this climate of skill and labour shortage, businesses must focus on strategies to attract and retain employees. Strategies include improving work and life balance for employees, maximising the social elements of work, providing purpose and meaning in work, providing development opportunities, addressing ageism in the workplace and offering flexible work practices.

Retention of existing employees is critical for business to maintain current productivity levels and to retain the valuable intellectual knowledge that employees accrue over their employment. The time, cost and scarcity of recruiting skilled workers means employers need to ensure they actively consider strategies that will result in the retention of their valued employees.

It is important for employers to consider the future work plans of their older workers and, in particular, their plans for retirement. Phased retirement, flexible working hours, re-designing jobs and responsibilities are strategies that could be used to improve the retention of older workers and their valuable knowledge and skills.

Retention objectives

> **Reduce employee turnover** – Keep good employees through applying strategies such as rewarding competent employees, promoting the value of experience, identifying high achievers, individual career planning, and offering flexible work structures and roles.

> **Increase return on recruitment and training investment** – The longer employees stay with the business, the greater the return to the business.

> **Increase access to knowledge, skills and experience** – Utilise long-term employees to coach and mentor newer employees.

> **Improve business culture** – Create a work environment where people are happy to come to work.

Employers must offer a flexible work environment, and attractive work conditions and incentives (including remuneration) to retain valuable employees and minimise costly (and, at times, unnecessary) turnover. (Refer *5.6.1 Appendix, Flexible Work Practices.*)

5.3.3   Training and motivating the changing workforce

Training and motivation are critical components to maintaining employee engagement. Employees (including managers) reduce and/or withdraw their support and contribution when they feel stressed for too long, overworked or undervalued, or assigned jobs that provide little opportunity for growth and development.

Reasons why employees may continue to work include:

> **Income** – to support a desired standard of living, meet financial commitments, or contribute to or supplement superannuation and retirement savings.

> **Self-esteem** – to utilise experience and knowledge, and gain acknowledgement for making a useful contribution.

> **Environment** – to interact with colleagues, utilise up-to-date technology and practices.

> **Work-life balance** – to maintain an active and healthy lifestyle, pursuing other activities (e.g. family, leisure).

> **Training** – to build skill levels, achieve professional goals and create new opportunities.

The achievement of professional and personal goals and recognition of an individual's efforts are often rated higher than remuneration as factors that motivate the employment decision of individuals. Therefore, effective professional development planning is an important component to ensure the engagement and motivation of employees.

Offering ongoing training to allow for advancement or role change within an organisation can offer new opportunities for existing employees, and can also be an effective means of meeting the future skill needs of the business. Accredited training (that is, nationally recognised qualifications) can be provided through accessing Australian Apprenticeships (apprenticeships and traineeships).

Existing and new employees who already have skills they have gained from previous jobs and life experience and commence an Australian Apprenticeship can apply to their training provider to have those skills recognised and credited towards relevant units of their enrolled qualification.

The Australian Government offers financial incentives and support to employers of Australian Apprentices, and to employees who meet eligibility criteria and are registered under an Australian Apprenticeships training contract.

Experienced workers may, at some point, seek a more flexible role in order to experience less stress, less responsibility and reduced working hours. This will provide opportunities for younger workers to be coached or undergo a training and development program, and even open up a career path.

It is important that businesses become 'learning organisations' where opportunities are created to engage all employees in goal setting, contributing to their own development plans, reading a variety of relevant publications, and even undertaking web-based learning.

Critical attention must be given to the training and development of all employees, and this includes: redesigning jobs and making them more flexible, coaching less experienced employees, and educating and training leaders within the organisation.

5.3.4 Planning for competitive advantage

Prepare your business to accommodate the labour supply change and the shrinking workforce with:

> **A change of attitude** – Businesses and managers need to be more open-minded, flexible and strategic in their approach to recruitment and their expectations of job seeker skills. Encouraging older workers to remain in the workforce for longer and improving retention strategies will benefit the business, the work team and individual employees.

> **A balance of experience, motivation and inspiration** – Experienced employees can role model and coach new workers, while new workers bring enthusiasm and fresh ideas to the work environment. Achieving this will not only provide a system of managing new workers and ensuring they gain from the skills, knowledge and experiences of long term employees, it will also mean that knowledge is retained within the business when older experienced workers retire. It will also lead to better workplace

communication and, when combined with effective retention strategies, will result in a stable workforce.

> **Skills analysis** – Conducting a skills analysis of your business will identify the strengths and weaknesses in the skills and knowledge of your employees. It will also identify clear opportunities for improving the skills and knowledge of workers through training and, therefore, raise the productivity capacity of the business. By effectively harnessing the productive capacity of your employees, the business will be able to achieve greater efficiencies and in turn gain a competitive advantage.

> **Managing needs and expectations** – All workers have needs and expectations within the workplace and in their personal lives. Employers that are able to manage those needs and expectations through flexible work practices will have a greater chance of retaining valued employees. The needs of workers with young families will be different from those who are older, and may be looking to change their working arrangements. Where the business can allow, employers should consider offering flexibility to workers to manage their individual needs.

With labour continuing to be one of the most constrained resources, businesses will need a strong emphasis on building the skills for existing workers through training and professional development, diverse recruitment strategies with an ability to attract and recruit job seekers from a diversity of backgrounds and circumstances, effective retention strategies, and a flexible workplace environment.

By applying these strategies, businesses will benefit from reduced recruitment and training costs, access to a wider pool of talent, increased return on investment in employees, retention of corporate knowledge and a productive and engaged workforce.

5.4   Victorian Chamber Policy and Advocacy Unit

5.4.1   Role of the Policy Unit

The Policy and Advocacy Unit works with the State and Federal governments to raise employer and community awareness of the impact of an ageing workforce, the availability of labour and the resultant skill shortages that face industry.

These issues are addressed through education and training opportunities for employees to have, and maintain, the level of experience and productivity that is required for their employer to succeed. Education and/or training can beflexible, depending on organisational expectations, role requirements and individual needs, and options may include: formal or informal learning environment, face-to-face delivery or on-the-job training, accredited or non-accredited courses, modules and skills training, and large or small group or one-on-one training.

It is important to ensure that people who are of working age and capable are provided with training to gain the necessary skills to find and maintain suitable, rewarding employment.

5.5   Victorian Chamber Services

5.5.1   Victorian Chamber Business Services

The Victorian Chamber provides expertise in areas such as workplace relations, occupational health and safety, workers' compensation, equal opportunity, human resources, termination, employee negotiations, and in the issues of workplace bullying, discrimination and harassment.

The Victorian Chamber also provides a number of services supporting international trade, business leadership and management, and networking.

Since August 2005, the Victorian Chamber has joined with the Department of Immigration and Citizenship (DIAC) to help employers understand the visa options and processes for sponsoring overseas workers to fill skill gaps. In 2005, the Department announced a targeted increase in the skill stream of the migration program by 20,000 migrants to 97,000 to help employers meet their skilled labour needs through various employer sponsored programs.

In conjunction with the large range of briefings and training programs on offer, the Victorian Chamber also provides a consulting service to promote and explain the various migration procedures (e.g. visa options and procedures), which are available to employers (including those in rural and regional areas) who are seeking to employ skilled overseas persons when they have not been able to find skilled workers locally. Contact the Victorian Chamber (tel: 03 8662 5333; info@victorianchamber.com.au) for information and assistance with all your business requirements.

5.5.2   Apprenticeship Support Australia

Apprenticeships Support Australia is contracted by the Federal Department of Education, Employment and Workplace Relations to deliver Australian Apprenticeships Support Services throughout Victoria. This is a free service. (Refer to *9.6.5 Apprenticeships and traineeships*.)

VAS operates from 17 sites across Victoria, and provides advice on selecting the right qualification for your Australian Apprentice, completing and registering a training contract, claiming financial incentives and other support, and selecting your Registered Training Organisation.

5.6   Appendix

5.6.1   Flexible work practices

Many business owners and managers are becoming increasingly aware that Australia's population is rapidly ageing and is having a significant impact on their recruitment outcomes. Some employers may, however, not have had the opportunity to evaluate the impact of an ageing workforce on their business nor identified strategies or succession plans to address this issue.

Workplaces will increasingly need to provide a working environment and workplace practices that accommodate and balance business needs with individual employees' aspirations and personal circumstances. Employers who can offer some flexible work practices are more likely to attract and retain skilled and valuable employees.

Workplaces that acknowledge the demands of older workers and offer them the flexibility to work longer should they wish, will recruit the best. Some flexible work practices will suit some places and not others, and small to medium enterprises (SMEs) may not be able to incorporate all the strategies into their business. The right strategy for your organisation will depend on the size and nature of your industry and business.

The following information will help you find the right flexible work practices for your business, by providing practical examples that you can match to your workplace.

What are flexible work practices?

Flexible work practices are non-traditional work arrangements that allow employees to remain productive employees and still meet the employers' work needs.

Employer benefits

> reduces or avoids unnecessary recruitment costs
> avoids squandering the talents of older people
> positive effects on employee health
> promotes diversity and fairness throughout the workplace
> holds on to experienced older workers
> leads to higher morale
> enhances corporate memory.

Employee benefits

> feeling valued at work
> feeling of control through flexibility
> suits individual health circumstances
> meets individual family circumstances
> meets financial circumstances
> allows work life balance (more choice over work and leisure balance)
> greater sense of responsibility and ownership
> better relations with management.

Overcomes

> lack of career development/career options for older workers
> limited training opportunities
> unsatisfactory experiences at work – negative attitudes
> low job satisfaction
> lack of control over work time
> deterioration in physical/psychological health. Examples
> flexible working hours
> part-time work
> job sharing
> flexible working year
> working from home
> part year employment
> seasonal work
> career breaks
> purchased leave
> phased retirement.

Flexible working hours

Allows employees to work an agreed number of hours spread over a set period of time to manage their work/non-work commitments.

Examples:

> core hours with carry over or extra hours bank
> flexi time/time off in lieu
> accrued time/time off in lieu
> staggering starting/finishing times
> four-day week/nine-day fortnight
> longer hours per day/fewer days per week.

Part-time work

Where employees work fewer hours than full-time employees:

> Allows the employer to arrange jobs according to demands of business (peak or slow business days), etc.
> Allows employees to work days that suit their individual commitments, while retaining the same benefits of full- time employment but on a pro-rata basis.

Examples:

> four-day working week
> nine-day fortnight
> five-day 10.00am-3.00pm
> regular core hours but not during school holidays.

Part-time work arrangements

> minimises wages but still meets peak business demand
> increases retention of experienced/skilled employees
> provides flexible working arrangements for older workers to prolong their working life
> allows employers the opportunity to extend hours of business
> reduces recruitment/turnover/absenteeism costs
> minimises turnover rates in monotonous, repetitive physical jobs
> assists employees with conflicting out of work commitments.

Job sharing

An arrangement in which one full-time job is shared between two employees, each working part-time on a permanent basis. Job sharing may be a practical way of attracting and retaining experience and skilled workers who do not wish to or cannot continue to work full-time.

Examples:

> employee 1 working 9.00am – 1.00pm
> employee 2 working 1.00pm – 5.00pm.

Job sharing benefits may include

> reduced turnover of employees from jobs that are demanding, monotonous or repetitive
> provide flexibility in covering each job sharing partner during personal/annual leave
> allow employers to extend hours of operation without incurring overtime costs
> covering reception duties continuously during business hours (e.g. no employee lunch break to cover)
> bring wider range of skills to one position
> opportunities for job sharers to support and learn from each other
> offers wider recruitment options.

Flexible working year

These are arrangements where employees work less than the standard year of 48 weeks with four weeks' annual leave. They generally require the employee to utilise leave without pay in some form to cover the extra weeks of leave taken.

Employee benefits may include

> employees who can afford to forgo some of their annual income are able to better manage their family, other personal responsibilities or interests
> manage care of older family members or care of a family member with a disability
> balance the demands of work and study.
> attracting and retaining skilled employees who cannot work a full year
> reducing turnover and hence saving on recruitment and training costs
> increasing employee commitment and motivation because of their satisfaction in being able to better balance work, family responsibilities or other interests
> improved health and safety of employees at work due to removal of the stress of unsatisfactory care arrangements made when they are not able to take leave
> better planning of r peak and quiet times
> salary savings if the employee taking additional leave does not need to be replaced (this may be the case if leave is taken at quiet times of the year for the business).

Examples:

Employees work for 44 weeks of the year, have four weeks' annual leave and then take an additional four weeks' leave without pay, rather than working 48 weeks a year and having four weeks' annual leave.

The income for 48 weeks is, in effect, averaged and paid over the full 52 weeks of the year.

Working from home

Home-based work is the practice of employees working at home rather than at the employer's normal place of business. The terms 'teleworking' and 'telecommuting' are also sometimes used for this practice. Home-based work may be a regular arrangement, where employees work some or all of their hours at home on an ongoing basis. Alternatively, home-based work may be an occasional arrangement used when circumstances require it. For example, in the case of illness of a family member of an employee, or when an employee needs an uninterrupted work environment to finish a job requiring close concentration.

Benefits may include:

> increased productivity of employees (e.g. greater ability to concentrate due to less noise and fewer interruptions; less time spent socialising and no office 'politics')
> retention of valued employees who might otherwise leave the organisation
> savings on office space and associated costs
> balancing the demands of being a working parent by reducing commuting time
> help for employees with responsibilities for care of older family members, partner care or care of a family member with a disability.

Part year employment/seasonal work

Part-year or seasonal employment allows employees to work an agreed number of days / weeks / months over the year.

> allows employers to meet peak business demands according to needs
> allows employees to work part of the year that suits their particular lifestyle.

Examples:

> working school holidays only to relieve other employees
> working in 'lead up' to Christmas as extra employees.

Benefits may include

> minimise wages but still meet peak business demand
> increase retention of experienced/skilled workers
> provide flexible working arrangements for older workers to prolong their working lives.

Career breaks/purchased leave

Allows employees to negotiate with their employer to take extended leave without pay for an agreed period of weeks/months at an agreed time.

Examples:

> allows employees to undertake travel plans instead of waiting until they retire
> 10 weeks' leave per year to cover school holidays
> additional period of leave to enable them to share the care of a dependent family member over the year
> employees 'pay' for this extra leave by taking a proportionate reduction in their regular salary throughout the year.

Phased retirement

By implementing flexible 'phased work to retirement transition', it is possible to equitably service the needs of both employees and employers. Phased retirement helps businesses to prepare for the loss of an employee's skills. It allows employees to alter the balance of their working and personal lives and prepare for full retirement.

For employers, gradual retirement could be a means of reducing capacity without losing the people concerned or the qualities, know-how and expertise they bring to the business. It can also provide a means of passing on skills and experience from older to younger workers.

For employees, gradual retirement could be a useful way of preparing to cope with the difference between working full-time and full retirement.

Benefits may include

> overcomes the feeling of marking time and 'keeping the chair warm' until retirement
> accommodates individual patterns of work to suit changing personal circumstances
> often has positive effects on health and wellbeing
> allows older workers to continue to contribute their experience and talents
> turns a threat into an opportunity.

Introducing flexible work practices in your business

If any flexible work practice solutions solve your particular business problems make sure you:

> Consult and discuss with your employees any proposed changes, particularly with those employees that might be directly affected by any new arrangements being offered or considered.
> Explain to all employees how the new arrangements might work and why they are being introduced.
> Ensure any new flexible work practices comply with work agreements, relevant industrial relations, occupational health and safety and anti-discrimination laws.

6.   Performance Management

6.1   Performance management

Performance management is an ongoing process of identifying, evaluating and developing the work performance of employees so that organisational goals and objectives are more effectively achieved, while at the same time benefiting employees in terms of recognition, receiving feedback, catering for work needs and offering career guidance.

6.2   Value of performance management

In Australia, performance management has struggled with the issues of relevancy and usefulness in assisting organisations to achieve bottom-line results. Like the human resources function overall, performance management systems (PMSs) have not been in a position to demonstrate value through quantifiable measures. In a world where most other business procedures are measurable, the human resource manager is therefore faced with a difficult challenge which is to convince senior management that investing time and resources in an effective PMS will help the organisation get the best out of its people, which will translate into an improved bottom line.

Studies into the value of the human resource function have started to reveal that there is tangible evidence that programs such as performance management will improve the overall productivity and performance of organisations. One such example is a research study into performance management and business outcomes completed by Hewitt Associates in conjunction with the University of Chicago which has provided substantial evidence that performance management programs are essential to business performance. McDonald and Smith (1995) in their article, 'A Proven Connection: Performance Management and Business Results', detail the analysis which revealed that of the 437 organisations which participated in the study, 205 had developed performance management systems and also demonstrated:

> higher profits, better cash flows, stronger stock market performance and higher stock value
> significant gains in financial performance and productivity
> higher sales growth per employee
> lower real growth in numbers of employees.

According to the authors, "the research proves that managing human resources provides a payoff in bottom-line financial performance." Organisations that are benefiting from effective PMSs have embraced the concept that achieving greater alignment between employees and the business's objectives is the key to any change strategy and subsequent improvement in performance. This alignment is achieved through a combination of effective employee selection, assessment and reward.

Therefore, there can be little doubt that designing and implementing an effective PMS is a key human resource function and one for which all key managers in an organisation bear responsibility.

Aligning employee performance with business objectives

Performance management can play the key role in the process of aligning employee performance with the business objectives. Performance management can be an excellent tool for alignment because, if implemented effectively, it will:

1. Communicate the goals and business objectives to all employees, from senior management to front-line employees.
2. Articulate how each employee role fits with, and contributes to, the corporate level goals.
3. Assist employees to contribute to their future with the organisation and how they believe they may improve their performance to achieve the business goals.
4. Maintain the focus on the 'bigger picture' by drawing reference to the business plans through periodic reviews.

6.3   Competency-based PMS

Competency-based PMS are plentiful within Australia. They are the preferred method because they focus on the competencies required for effective performance on the job, with specific measurable results. According to the Hay Group (1996), competencies 'add value and help predict success'. This focus is based on the realisation that businesses need more than good products or services - they need to be able to deliver the best quality, with speed and reliability. There is ever-increasing emphasis, therefore, on the type of people required, how they should be managed effectively and how they should do their jobs to ensure the product/service delivery is competitive across all measures.

For example, there is not just a need for highly-qualified and specialised skills in competitive business, employees may also need to be independent thinkers, but capable of working as part of a team. In general, they need to take on more responsibility than ever before. It is for this reason that performance management must articulate and monitor those competencies accurately to ensure the 'right type' of people are being selected and developed for the business.

Identifying the relevant competencies, and measuring and assessing them, is not simple. Large organisations spend significant resources undertaking these tasks. A key to developing a range of competencies for your business is researching the behaviours that differentiate average and superior performance. Once the characteristics of superior performance are defined (the set of competencies), they provide a standard against which all the jobholders can be assessed and developed.

6.4   Characteristics of an effective PMS

> Links to the organisation mission and business objectives.
> Operates separately to the disciplinary procedure.
> Builds people's strengths.
> Links to the training and development functions.
> Incorporates individual performance and development plans, including career objectives.
> A priority with senior management, and this is communicated throughout the organisation.
> Uses a performance review as part of the system, but this is not the main focus.
> Uses self-appraisal in conjunction with appraisal by a manager/reviewer.
> Establishes agreed objectives for individual achievement.
> Uses simple, easy-to-use documentation.
> Establishes feedback and follow-up meetings between formal reviews.
> Viewed by the organisation as an important mechanism for change management and communication between management and employees.

> May include 'upward appraisal', review of management performance by employees.

> An equal, two-way process between managers and employees.

> Involves regular, informal follow-up meetings between formal reviews.

> Viewed by the organisation as an important mechanism for change management and communication between management and employees.

> Total commitment from senior management.

> Viewed as a vital management tool, assisting in day-to-day management functions.

> Incorporates a system of reward (refer Chapter 7 Remuneration and Reward Management).

> Built on the five principles of effectiveness, constructiveness, respect, self-improvement, and contribution.

6.5 Key elements of a performance management system (PMS)

6.5.1 Link to business plan

A critical element in any PMS is its link to the organisation's business plan. This requires clear understanding of the following:

> the organisation's mission, vision and/or business plan

> organisational and departmental goals and objectives

> current job descriptions for all positions.

It helps to establish a sense of shared common objectives through making the connection between individual performance and the performance of the organisation as a whole. Shared objectives help bind people together in their efforts. When individuals recognise that they need each other to be successful, they are more likely to work cooperatively to achieve this outcome.

The performance objectives of an individual within an organisation must be linked to the overall objectives of the business. Apart from the obvious need there is to ensure that people are not focusing energy on areas that will not help the business succeed, if there is no clear link to business objectives, the objective may not be perceived as adding value or being worthwhile. The majority of people in an organisation need to feel that they are making a valuable contribution to the business – to the shared objective.

6.5.2 Individual performance plan

The planning phase is designed to draw information together, from the sources outlined above, to develop the individual's performance plan. This step involves defining the standards and objectives to be achieved.

For the employee, individual performance plans should establish where they fit in the organisation and how they contribute to the achievement of the business goals. Performance against the individual plan is then used to monitor and assess work performance over the year. More than one meeting between the employee and manager may be needed to agree and finalise the performance plan.

6.5.3 Development plan

The development plan describes the activities the employee needs to undertake: to help them achieve their objectives, to expand their current role or to help them move to another role. This enables the manager and

employee to identify specific training and development needs that are consistent with the organisation's needs, and the employee's career aspirations. Personal development can be as important as skill development in ensuring job satisfaction, contribution and commitment – employee development need not be limited to job requirements.

6.5.4   Monitoring

Continuous monitoring and feedback is imperative to effective performance management. Monitoring provides both the manager and employee with an opportunity to seek feedback about how the individual is performing. Essential to this process is identification of barriers to performance, which may otherwise go unaddressed until the formal review. Along the way, the employee should be provided with an opportunity to gain advice and coaching in order to improve their performance. This is preferable to waiting until the formal review, where a critical appraisal may come as a surprise and leave little opportunity for improvement.

6.5.5   Formal review

Formal reviews occur at pre-determined intervals throughout the performance management cycle. Some organisations undertake three-monthly reviews, others six-monthly, or annually.

Self-assessment

The employee should review their own performance using a self-assessment form. Points to include are:

> feedback from customers/suppliers/others
> notable successes
> opportunities for improvement
> other issues relating to the performance plan.

This gives employees an opportunity to think about their performance and future plans, and to plan for the interview.

Manager's assessment

The manager completes the assessment using the information collected throughout the year, notes and records of incidents or noteworthy events (both positive and negative).

The performance review discussion

The employee and manager should compare and discuss their respective perceptions of the results. During the review, the manager and employee should discuss the:

> employee's success in achieving the standards defined against the areas of responsibility outlined in the performance review form
> employee's success in achieving the agreed improvement targets
> overall rating of performance for the review period.

6.5.6   360-degree performance appraisals

Traditionally, performance review processes at many organisations have involved an employee receiving feedback from one source, the manager. More and more organisations are using 360-degree appraisals which involve gathering feedback from a variety of sources. These sources might include subordinates, colleagues, customers and the manager. The purpose is to give a view of the employee's performance from a range of perspectives. This information is used to identify strengths, and development needs.

Importance of 360-degree feedback

Effective leadership is critical to organisations, particularly in the current challenging environment. 360-degree feedback is a useful method of discussing leadership and performance in a management role, identifying strengths, and development needs.

For managers, 360-degree feedback will provide insights into their management and leadership role and enable them to build on the skills and attributes they possess. It will better equip them to manage in today's environment and identify the skills necessary to develop in their careers.

To some extent, managers may already use a 360-degree process to obtain feedback about their employees. However, this has generally been informal. If not already in existence, organisations may wish to consider putting in place processes, which involve employees determining how to get feedback, looking at the results with their manager and using this reflection to improve performance and identify development needs.

The purpose of the feedback is to assist each individual to understand their strengths and weaknesses, and to contribute insights into aspects of their work requiring professional development.

360-degree feedback can also save managers time in that they can spend less time and energy providing feedback as more people participate in the process. Co-worker perception is important and the process helps people understand how other employees view their work.

The process helps team members understand about working together more effectively. (Often, team members know more than the supervisor about how fellow team members are performing.) 360-degree feedback makes team members more accountable to each other through the information that they provide on another team member's performance. A well-planned process can improve communication and team development.

Benefits of 360-degree feedback

To the individual:

> perception is reality, and this process helps individuals to understand how others perceive them
> development needs are revealed
> feedback is essential for learning
> better manage own performance and career
> increased self-esteem (e.g. helpfulness towards customers and vendors may not be rewarded or acknowledged by other types of appraisal).

To the team:

> increases communication between team members
> supports teamwork by involving team members in the development process.

To the organisation:

> better career development for employees
> facilitates promotion from within
> improves customer service by having customers contribute to evaluation
> drives training
> brings out every aspect of an employee's life
> co-operation with others outside the individual's department
> enables those who have conflicts with their manager
> engages employee involvement and credibility.

6.6 Performance rating methods

There are various methods of rating performance and some PMSs use complex and sophisticated rating scales such as a 10-point scale. However, rating can become complicated, and the review can become too focused on the scores. Rating is only one element of the performance review process and should be kept simple and easy to use.

A five-point scale is highly effective:

1. Outstanding – greatly exceeded the standard; greatly exceeded agreed targets.
2. Better than satisfactory - exceeded the standard; exceeded agreed targets.
3. Satisfactory - met the standard; fully met agreed targets.
4. Less than satisfactory - did not meet the standard; partially met agreed targets.
5. Unsatisfactory - significantly below the standard; failed to meet targets.

6.6.1 Common rating errors

Research indicates that managers can discriminate between effective and ineffective employee performance. However, performance reviews often do not accurately reflect their perceptions. Rating errors are those distortions in evaluations commonly found in performance reviews.

It is essential managers consider the following common rating errors when reviewing and implementing a PMS to ensure their judgments are accurate and reflect the individual's performance.

Management attitude

Managers often feel resentment towards the performance management process, particularly when they feel that the system has been imposed on them. They may find it lengthy and complex to complete, or do not perceive any value in the exercise. In all likelihood, their resentment will compromise the accuracy of their performance reviews and the ultimate outcomes (i.e. managers may not help employees to effectively improve their performance or communicate how they fit with the overall business objectives).

Critical to preventing such negative attitudes is to ensure managers understand and are committed to the system. Education and awareness programs, and healthy consultation, are imperative to the design and implementation of a system. Management will support performance management if they perceive value in the process and understand how it will help them to gain more from their employees.

Halo effect

The halo effect occurs when the manager allows a single incident or behaviour to unreasonably influence their judgment, either positively or negatively. The manager gives the same rating on all factors related to an individual's behaviour, based on the rating they have attributed to one specific factor.

Central tendency

This occurs when the manager consistently uses the middle of the scale, always giving their employees an average or acceptable rating regardless of actual performance. Ratings like this can be quite de-motivating because a 'satisfactory' rating is actually perceived as negative, and significantly reduces employee commitment. Central tendency is perhaps a result of a manager wanting to 'play it safe' and not having the information they need to support a high or low rating

Leniency

Leniency is when the manager gives ratings that are higher than the employee deserves because the manager is trying to preserve a 'nice guy' image, or has a 'nobody's perfect' philosophy, or is expressing a favourable bias.

'Recency' effect

When the manager emphasises the most recent behaviour, this results in the 'recency effect' error. This occurs naturally because the most recent performance is uppermost in the manager's mind, and unless a conscientious effort is made to draw on information collected throughout the review period, the assessment will be based on a small window of information which may work in either the employee's favour or to their detriment.

Making comparisons

Some managers may draw comparisons with other employees, particularly others they have just reviewed. This is not only inappropriate but may result in creating animosity between employees, and will lead to flawed assessments. In most instances, comparisons such as this are subjective and not based on factual information. Comparisons are of no benefit to either the employee or manager and should be avoided.

Victimising

This occurs when the manager is unfair to the employee by either viewing their poor performance as being within the employee's control, or viewing their good performance as being due to some external factors such as the manager's management style.

6.7   Effective performance review discussions

The effectiveness of the performance review discussion is critically dependent on the following factors:

1. the manager's knowledge of the employee's job and performance level
2. the manager's support of the employee
3. the manager's involvement.

Each factor is essential to the success of the performance review discussion. It is important to optimise the quality of the discussion because this is one of the most important elements of the performance management process. The above elements provide some hint as to the work required by the manager and employee to ensure the discussion is both rewarding and beneficial – preparation, willingness, and support.

6.7.1   Preparation required for the performance review discussion

As for any other important meeting, the manager must be well prepared:

1. Review the employee's job description to ensure it is still accurate and that all responsibilities have been considered throughout the review period.
2. Read the employee's last performance review document to refresh the memory and to examine the areas identified as needing improvement.
3. Check the employee's actual performance against the agreed standards set.
4. Consult with other managers who may have had contact or responsibility for the employee on the job.
5. Notify the employee of the review discussion well in advance; provide them with the self-assessment documentation; highlight the areas they need to think about and pay special attention to (e.g. particular achievements, career steps).
6. List the key issues to be discussed in the session; ask the employee in advance if there are any specific issues they would like to address – this way, they feel a part of the process and not merely judged.
7. Ensure there are no interruptions, and that there is sufficient time available to complete the review discussion.

6.7.2   Willingness and support

To encourage open communication, the manager must:

> Take the review discussion seriously, and appreciate the importance of the results of the discussion.
> Listen – the manager should avoid doing all of the talking, and should not interrupt the employee.
> Allow the employee to express themselves, in their own words.
> Ask open-ended questions.
> Be open to criticism, and when providing criticism, focus on behaviour, rather than personality.
> Respect confidentiality.
> Avoid using the discussion as an opportunity to dump issues that the parties may have been storing up since the last formal review. These should have been addressed when they arose.

6.8   Reviewing the PMS

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There will continue to be the need for adjustments to the system beyond the process of refinement. Circumstances which may lead to the need for review and modification are:

> Events that change the nature of the workforce – changes in technology, skills and knowledge needed.
> Events that change the role of the organisation – mergers, changes in the nature of products or services delivered.

> > Events that change the size and structure of the organisation – restructuring with increased responsibility on middle management, downsizing with fewer people doing more.

6.9 Difficult employees and situations

It is critical to the on-going effectiveness and satisfaction of employees that line managers are able to deal with employee and their problems effectively and appropriately. Managers need to seek opportunities to discuss pressures and to resolve situations with their employees before there is a breaking point or a significant downturn in morale and performance – the aim being to make it unnecessary to initiate performance management and possibly disciplinary procedures.

It may be difficult for some managers to deal with intangibles that may not be easily defined or quantified, such as emotions, feelings, perceptions and values. It may also be a challenge dealing with difficult people and situations that involve both work and personal problems. Strategies that managers can use are:

> > understand the need for monitoring a difficult person
> > address difficult personality types
> > identify communication barriers
> > take a proactive approach toward managing difficult people
> > recognise when to dismiss a difficult person.

6.10 Documentation

6.10.1   Performance Management Guidelines

6.10.2   Performance Review (Example 1)

6.10.3   Performance Review (Example 2)

6.10.4   Performance Review (Example 3)

7. Remuneration and reward management

7.1 Reward management

The terms 'remuneration' and 'compensation' are commonly understood: it is the wages or salary paid to an employee for services provided to the employer. However, there are a number of competing definitions for 'reward management' or 'performance-related pay'. Each of these definitions hinges on relating some proportion of the remuneration of an individual, a group, unit or team of an organisation to the performance of that individual, group, unit or team. These are systems where some element of the organisation's remuneration system is based on the effort, output or overall performance of its workforce.

Essentially, the process seeks to strategically link the business's objectives with the performance management systems (PMSs) and employee remuneration and reward. The systems try to measure, manage and reward the key outcomes of an employee role, providing reward when an individual or team exceeds the performance objectives.

However, designing an effective reward system can be a complex process with a series of questions which should be considered by an organisation before embarking on the exercise. Some of these questions are:

> If the reward element of pay is a proportion of the employee total remuneration, what is the optimal proportion, and what are the current proportions?
> How do you ensure fairness and objectivity in the system?
> How do you measure performance? What is productivity?
> How are improvements measured?
> Is team or individual reward more effective?

7.2 Strategic remuneration and reward management

New ideologies, work attitudes and, most important of all, commitment to the organisation and group outcomes are essential elements to remaining competitive in today's business environment. Effective management of remuneration and reward systems is crucial to supporting the organisation to respond to these demands.

A key element of the design of a remuneration and reward system is an in-depth analysis of the motivation of individual employees, and strategic policies designed to harness these factors to maximise effort and productivity. Common to all effective systems is the understanding that traditional pay structures and methodologies do not support progressive managerial and operational structures and objectives, and are unable to maximise the necessary alignment of employee behaviours and organisational goals.

Despite increased responsibilities and changing corporate environments, many employees are still paid the same way they were 10 to 20 years ago. Organisations have adopted many of the new principles of management yet still pay annual merit increases, and determine pay levels on the basis of an employee's knowledge, length of service and number of direct reports. These measures are at best inconsistent, at worst entirely irrelevant to the design of the modern organisation.

Today's flatter, streamlined structures require an appropriately-designed remuneration and reward system that synchronises with the new era of management.

7.3   Establishing a pay structure

7.3.1   Job evaluation systems

Job evaluation forms the basis for establishing the organisation job hierarchy and associated salary structure. All systems evaluate jobs rather than employees and all require up-to-date, well-written job descriptions.

Organisations must complete some form of job evaluation to ensure their pay structure is defensible and equitable. Put simply, formal methods of evaluation are required to ensure accurate measurement of a job's worth. Four basic methods of comparison are outlined below.

Points system

This system allows jobs to be evaluated quantitatively on the basis of the factors that comprise the demands of the job (e.g. skills, effort, responsibilities and working conditions). This system requires the use of a points manual that describes the factors and the degrees to which these factors may exist within the jobs. It appears to be precise, but quite subjective decisions are involved in the relative weights given to each factor, the graduations within each factor, the choices of factor, and number. The system can be difficult and time consuming. Seeking specialist assistance to design a ranking system of this nature for your organisation is recommended.

Classification system

In this system, jobs are classified according to a series of predetermined wage classifications or grades. The Public Service job classification system is a typical example. The descriptions for each of the job classes constitute the scale against which the specifications for the various jobs are compared.

Job-ranking system

This system ranks jobs on the basis of their relative worth. This is a simplistic approach that indicates the relative importance of jobs; however, it does not reflect the differences in the degree of importance that exists between jobs. Accuracy depends on the evaluator's knowledge of the jobs and on their degree of objectivity. While measuring relative worth, job ranking does not measure the magnitude of difference between jobs.

Job grading system

A refinement on job ranking is job grading. The first step is to use a number of job-related factors (e.g. education, experience and responsibilities) to determine classes or grades of jobs. Generic or 'benchmark' job descriptions are then established for each grade or class. To establish the relative worth of an individual job, it is compared with the benchmark description for each of the grades, and then it is assigned the appropriate grade. It is essential to complete accurate job descriptions for each of the grades.

7.3.2   Key elements of a pay strategy

To establish the correct amount to pay employees, a number of elements need to be considered and met: strategic fit, the need for equity, and is it defensible, affordable, competitive and manageable?

Strategic fit

> supports the climate/culture needed for the organisation
> generates results required to meet the organisation's objectives
> reflects the way in which work is organised
> attracts and motivates the type of people needed to achieve the outcomes.

Equitable

> employees perceive that their pay is fair and equitable
> they understand and support the pay system
> absence of bias.

Defensible

> able to withstand internal and external scrutiny
> based on a consistent framework
> based on valid and credible information.

Competitive

> attracts the skills needed to meet desired outcomes, in line with market rates.

Manageable and affordable

> easy to administer
> meets legislative provisions
> based on a capacity to pay.

7.3.3   Salary surveys

The market will have some influence on pay levels. While job evaluation ensures internal equity, salary surveys determine competitiveness. Consideration of salary survey data may assist in attracting and retaining the right employees for your business. It will enable an organisation to make some comparison against competitors' salary policies and to determine trends in a given industry with regard to reward systems. Some organisations subscribe to a few large surveys to collect data on most or all of the positions in their organisation. Surveys cover different occupational groups in different industries. Essentially, salary surveys provide the raw material for translating job size into dollars, or job pricing. Researching a clerical position and a management function will clearly require different sets of data. For a management position, it is important to consider the results of national surveys to gain more thorough and informative results - analysing more than one source to ensure the validity of the data.

Consider the following aspects when reviewing salary surveys:

> sample size
> uniformity in terminology
> cost/timing
> bias/subjectivity.

Using a professional body that specialises in designing and carrying out salary surveys is critical to gaining accurate information.

7.4   Reward management systems

A number of systems exist under the heading of reward management and performance related pay: merit pay plans, incentive schemes, discretionary bonuses, profit sharing, gain sharing, share plans, competency-based pay and broad- banding.

7.4.1   Merit pay plans

Commonly, under such plans, three points are fixed on a pay scale for a given job: a minimum rate, a mid-point and a maximum rate. Theoretically, employees proceed through the scale (or through a scale with more points) based on a set of pre-determined criteria. Also included under the banner of merit pay plans are programs that score employees out of a certain figure (most commonly 10) and translate this into an earnings differential or an earnings bonus.

A drawback of a plan such as this is that the performance payment gained in one year can become a fixed component of pay in a subsequent year, when performance might be unsatisfactory. Thus, such systems can increase the employee's salary while increasingly becoming divorced from employee behaviour.

7.4.2   Merit bonus plans

These are similar to merit pay plans, except that when an employee reaches the mid-point scale all subsequent payments are of a one-off nature only and are, theoretically, put at risk by poor (or merely satisfactory) performance in subsequent years.

7.4.3   Incentive schemes

Incentive schemes seek to lift employee performance by providing a defined schedule of rewards linked to the achievement of certain pre-determined performance targets. They seek to provide very direct messages to employees that if they achieve certain levels of performance they will receive a certain level of remuneration, or a pre-defined benefit. Such schemes at the lower end include piece-rate plans. Employees receive a direct bonus, or direct payment, based on throughput, such as the number of units produced per day.

Other examples are those for sales and managerial employees. Sales employees often receive direct and predetermined bonuses (or percentages of actual sales) for achieving pre-set targets. Similarly, managerial employees often receive direct benefits for reaching certain budget or production targets.

The advantage of such schemes is that, of necessity, they involve measurements and pre-defined goals, so they provide the organisation with essential control and clarity for the employee. One disadvantage that has been identified in such schemes is that most do not actually place any component of employee salary at risk, operating merely as add-ons to existing fixed base rates. Thus, the incentives in such schemes are often positive only, leaving employees in a position where the failure to achieve goals set does not in itself result in any adverse outcome.

7.4.4   Discretionary bonuses

These bonuses are determined and awarded after desired performances have been achieved and as such make no guarantee that future work or effort will be rewarded in the same way. Such bonuses are usually provided in instances where the organisation has decided to share a portion of the profits/savings with the employees after a particularly good period of performance, or they take the form of a standard annual or end-of-year bonus.

The significant disadvantage of such plans is that they are discretionary and have an inability to focus on individual performance. They also do little to encourage repetition of good performance because, without pre-determined targets, employees do not often understand what they actually did to earn the bonus in the first instance, and are therefore less likely to repeat the performance.

7.4.5   Profit sharing

Profit sharing seeks to align employees to the employer's interests by a sharing of the organisation's profits for a set period, such as a year. This approach encourages a more collaborative and participative style in the workplace. Such schemes seek to align employee effort with the business objectives. The benefit of profit-sharing schemes is that they try to define performance in financial terms, which is tangible and easier to measure. They are not as open to subjectivity or employee misinterpretation, and they can be constructed to be fully funded within future budgets.

Nevertheless, these schemes have prompted some cautions. Profit relates to a number of factors, many of which are completely outside the hands of individual employees. Such schemes often struggle to maintain the transparency of the decision-making necessary to maintain employee confidence. Employees often feel that they have little control over the reward structure and that their individual contribution is unrecognised and unimportant in the global scheme of things. This can lead to employee apathy and a profound reduction of performance motivation.

7.4.6   Gain sharing

Gain sharing is similar to profit sharing, except that the organisation, rather than sharing profit with its employees, accords to them a proportion of a specific area of cost saving. Such schemes have commonly been based on large- scale employee involvement in solving problems of productivity, labour, supply, overheads or quality. Savings are generally distributed according to a pre-determined formula.

An example of such a scheme would be one where an organisation offered to distribute to employees a percentage of any savings made by reducing waste production. While these are attractive programs, analysts have focused on the lack of employee understanding of accounting measures used to identify gains and the lack of control individual employees have over savings outcomes. This misunderstanding has the potential to impact negatively on employee motivation.

7.4.7   Share plans

Employee share plans are schemes that allow employees who meet specific criteria to acquire shares in the company. Share plans may be effective in reward and recognition programs if there is perceived benefit in becoming a shareholder in the company.

The major benefit for the company of share plans is the link between individual performance and company results. Employees who feel they have a stake in the company may be motivated to perform at higher levels than those who have the view that their hard work is creating wealth for others.

Share plans are becoming increasingly popular and come under the banner of long-term systems designed to gradually align employee interests with those of management and the business objectives.

7.4.8   Competency-based pay

Competency-based pay is determined on the basis of evaluating employees on their skill and ability levels. Employees receive pay increases when they progress to the next competency level, but may also be eligible for regular merit increases. The benefits of competency-based pay are that it encourages skills and knowledge acquisition, and draws links between individual performance and progress.

7.4.9   Broad-banding

Broad-banding establishes relatively few broad salary bands. These bands usually represent key stages in career progression within the organisation. The key benefit and objective is flexibility. Broad-banding can open up opportunities for employees by removing levels that may have acted as a barrier to expanding their role and learning new skills.

Movement within a band becomes easier and provides greater challenges and responsibilities.

The approach is particularly beneficial in the remuneration of teams because it allows greater flexibility to reward team members. It is usually combined with competency-based approaches (i.e. an employee's progress through the bands in steps based on added skills and abilities).

7.5   Factors influencing remuneration and reward

7.5.1   Organisational capacity to attract and retain

Pay systems designed to address recruitment and retention needs have gained mixed support from theorists in remuneration design and management. Traditionally, emphasis was placed on the use of competitive labour market pay rates as a way to deal with employee recruitment and retention. However, research has revealed that a growing number of organisations place increasing emphasis on performance-related pay as a mechanism to recruit and retain labour.

Research reflects that payment of maximum pay levels is not the only way to attract or retain the best employees. Individuals make decisions about jobs based on a number of factors, including: job content, organisation, location, career prospects and personal development. It is a combination of these factors, including remuneration, which influences an individual's choice.

Organisations, however, must keep abreast with market pay rates for positions within their business. Employers will have difficulty attracting labour if the rates are substantially lower than in other organisations in their industry. So, it is essential for any business to be aware of the rates of pay that competitors are paying for similar positions. Once this information is gathered, an organisation can establish a benchmark position.

Finally, employees may be prompted to leave an organisation if there are perceived inequities in pay. It is important, therefore, to ensure that reliable and consistent decisions are made with respect to salary

ranges. This can only be achieved with a carefully-planned strategy that ensures management has the right information to make pay decisions.

7.5.2   Individual needs for equity and financial security

Equity theory takes the position that most people are motivated by their need to be treated fairly. If an individual perceives the return for their input is either greater or less than it should be, they will seek to redress this imbalance by either reducing effort and input, or increasing effort.

O'Neil (1999) describes an equitable reward and recognition system as one that groups and rewards jobs of comparable size within similar ranges. He recommends that the strategy should carefully measure the size of the job, and position it against the relativity of other positions. Jobs of similar size are then graded at the same level or a similar level. There are significant benefits to be gained from a fair treatment policy which increases the organisation's capacity to:

> recruit employees in the open market without creating internal anomalies
> retain good-quality employees
> reward appropriately those who perform effectively. According to O'Neil, the principle of internal consistency requires:
> credible and defensible methods to establish the relative value of each position, thus giving a set of relativities between all jobs
> salary structure that groups jobs of similar size into common pay bands.

Many organisations have adopted a system that incorporates some form of job evaluation. However, for many, the issue of internal equity still remains a problem. The difficulties are varied; for example, in many instances, the system of pay determination is not clearly communicated to employees. Consequently, employees may have the perception that inequities in pay abound when there is disparity in pay levels for people who may, relatively, do the same work.

Other issues relate to the opportunities given to an exclusive set of employees to gain recognition and reward for excellent performance (e.g. programs such as share ownership and bonus payments) which have, in the past, been exclusive to mid to upper-level management.

7.5.3   Industrial legislation

Political and legislative developments provide both opportunities and constraints to Australian businesses. These developments impact on the design of appropriate remuneration strategies and pay-delivery systems. It is important that organisations keep abreast of both commitments and opportunities set by the legislation.

Government policies in relation to enterprise bargaining, the National Employment Standards and the role of Modern Awards in setting minimum terms and conditions of employment lead to developments/changes in industrial legislation. Legislation may impact on the flexibility of employers and employees to agree on terms and conditions that are most attractive and suitable and to prescribing remuneration levels and other terms of employment.

7.5.4   Organisation change

The recurring theme of team-based job design and the need for flexible organisation structures is prompting a critical review of remuneration and reward systems. As organisations review issues such as performance

management, they are forced to consider if the remuneration system is supporting the strategic goals. According to Cornish and Adams (1993), the criticism of job evaluation, for example, has been based on its support of a largely bureaucratic, hierarchical structure when there is now great pressure to become flexible, responsive and more streamlined.

Similarly, the criticisms directed at performance pay by Deming (1990) have focused on its reinforcement of competition between employees at a time when teamwork and cooperation are necessary for organisational survival. Theorists and practitioners are supporting management principles based on teams that are highly cohesive and flexible and yet maintain a system that rewards individual performance.

7.6   Designing a reward system

Reward systems are designed to provide return for effort over and above the employee's base salary. The return can be in some form of cash payment: a lump-sum amount, goods or benefits (from very low value to extremely high), other non-monetary gifts or, in some instances, an increase to an individual's base pay. While there is some scepticism about the effectiveness of reward systems in motivating performance, those organisations that invest in careful design, planning and execution of their system clearly benefit.

Taking a strategic approach is the key to a successful system. Issues such as management philosophy, organisation structure and, most importantly, business objectives must be considered in the early stages of design. Developing a clear understanding of the organisation involves consideration of its current values, structure, people, and its goals and vision for the future.

7.6.1   Developing a reward policy

Developing a strategic reward policy helps to prevent managers from making reactive decisions as issues arise. Furthermore, return for the remuneration dollar is greatly improved because the link to the business strategy is more defined. A modern approach to reward management considers numerous factors and involves a range of decision- makers (such as pay and reward specialists), both within and external to the organisation.

Most importantly, management must decide what it wishes to achieve with the reward system. Clearly defined outcomes will help to guide the development of a system, because without them it is impossible to measure and review a new system.

Therefore, a rewards policy should:

> outline the objectives an organisation expects to achieve from the pay and reward system
> provide a list of principles around which the system is developed
> be communicated to all employees
> provide the foundation on which the reward system is designed.

7.6.2   Reward objectives

Although the program objectives will vary from organisation to organisation, there are some common themes that tend to appear in many systems, including:

For the organisation

> assist in the achievement of financial and quality goals

> contribute to business growth and profitability
> attract and retain the quality people needed to meet the business objectives
> motivate employees to improve and sustain high performance levels
> comply with legislative requirements
> ensure optimum value for the remuneration dollar
> maintain competitive pay rates.

For the employee

> ensure fairness and equity
> provide regular performance and salary reviews
> ensure reward decisions are defensible and reliable
> effort and achievements are recognised.

7.6.3   Competency-driven rewards

The first step in developing a competency-based reward system is to identify the competencies that create value for the organisation, and then assign a value. (Refer *Chapter 3.9 Job Analysis, Competencies*.)

The next step is to identify the qualities, attributes and behaviours demonstrated by the excellent performers in the organisation. These should be completed for each job or group of related jobs. The aim is to determine the attributes these employees demonstrate when they successfully complete a task. Finally, the behavioural characteristics that predict the outstanding performance should be identified.

Once the competencies have been identified, they must be tested to clarify that they do, in fact, make a difference. Those competencies are titled 'distinguishing'. Only the distinguishing competencies should be included in the competency-based program. They are generally linked to a base salary. Employees are paid up to a target level, determined by a market rate. This level depends on the employee's understanding and performance of a job. Employees move beyond these rates by acquiring the prescribed competencies.

8.   Equal opportunity, harassment and bullying

Equal Opportunity (EO) is a significant policy issue in the management of human resources. This area of policy should influence every human resource decision from recruitment and selection through performance management to remuneration, industrial relations, termination and redundancy. EO requirements impact on every area of human resource management.

The fundamental principle of anti-discrimination laws relating to employment is that all people should be managed on their ability to perform the inherent requirements of the job and not on any presumed or real attributes an employer or other employee thinks may affect their job performance.

8.1   The legislation

Australia has a complex series of State and Federal anti-discrimination and occupational health and safety laws. State and Federal legislation establish minimum standards with respect to the elimination of discrimination, harassment and bullying in employment and the requirement to provide a safe workplace. This legislation imposes serious responsibilities on both employers and employees to prevent any incidence of discrimination, harassment and bullying.

8.1.1   Victorian legislation

The cornerstone of Victorian anti-discrimination legislation is the *Equal Opportunity Act 2010 (Vic)*, which arguably demands the most stringent accountability and responsibility in comparison to other state legislation of this type.

The substantive provisions of the Act commenced on 1 August 2011. The Act introduces new obligations that will impact national and Victorian employers, including a new duty to eliminate discrimination, sexual harassment and victimisation. It also heralds a new era in complaint handling by the Victorian Equal Opportunity and Human Rights Commission (Commission). It gives the Commission powers to investigate systemic discrimination, sexual harassment and victimisation even without a complaint and to issue compliance notices to employers.

The Act represents a significant shift in the approach taken to equal opportunity law in Victoria, and may foreshadow a change in focus of laws in this area from other states and territories in the future.

The traditional focus of the Commission was on the investigation and resolution of individual complaints of unlawful behaviour. Under the new Act, the Commission's role is refined to one of education and resolution of individual complaints, with its investigative and inquiry role reserved for issues affecting a broader group of people in an effort to deal with systematic discrimination.

The objectives of the *Equal Opportunity Act 2010 (Vic)* are to:

>   eliminate discrimination, sexual harassment and victimisation, to the greatest possible extent;
>   further promote and protect the right to equality set out in the Charter of Human Rights and Responsibilities;
>   encourage the identification and elimination of systemic causes of discrimination, sexual harassment and victimisation
>   promote and facilitate the progressive realisation of equality, as far as reasonably practicable, by recognising that:

- discrimination can cause social and economic disadvantage and that access to opportunities is not equitably distributed throughout society;
- equal application of a rule to different groups can have unequal results or outcomes;
- the achievement of substantive equality may require the making of reasonable adjustments and reasonable accommodation and the taking of special measures.

Other legislation which is relevant in this area of human resource management is the *Occupational Health and Safety Act 2004 (Vic)*, particularly when considering the issue of bullying in the workplace (outlined later in this chapter), and the *Racial and Religious Tolerance Act 2001 (Vic)*, which prohibits the vilification or inciting of hatred against an individual or a group of individuals on the basis of their race or religious belief.

8.1.2 Federal legislation

Victorians are also covered by the following Federal Acts:

> *Age Discrimination Act 2004*
> *Disability Discrimination Act 1992*
> *Workplace Gender Equality Act 2012 (previously named the Equal Opportunity for Women in the Workplace Act 1999)*
> *Fair Work Act 2009*
> *Human Rights and Equal Opportunity Commission Act 1986*
> *Racial Discrimination Act 1975*
> *Sex Discrimination Act 1984*
> *Affirmative Actions (Equal Employment Opportunity for Women) Act 1986.*

It is imperative that employers understand the implications of both State and Federal anti-discrimination legislation to ensure individuals are treated fairly and equitably. This chapter provides an outline of such legislation and the subsequent implications for the human resource professionals.

8.1.3 The Victorian Equal Opportunity and Human Rights Commission

Complaints of discrimination, harassment or bullying (under both State legislation) are dealt with in Victoria by the Victorian Equal Opportunity and Human Rights Commission. It provides an impartial, confidential and free complaint resolution service to promote equal opportunity and eliminate unlawful discrimination.

The Commission has the ability to investigate and conciliate complaints that come within the jurisdiction of the *Equal Opportunity Act 2010 (Vic)*. The Federal Human Rights and Equal Opportunity Commission has the ability to investigate and conciliate complaints under Federal legislation.

8.1.4 The Fair Work Commission

From 1 January 2014, workers, who believe that they are being bullied, have the right to apply to the Fair Work Commission (FWC) for an order to stop the bullying. The definition of workers includes employee, contractor, contractor's employee, apprentice, trainee, volunteer or labour hire employee. Under this provision, FWC must start the process of the application within 14 days if they are satisfied that bullying has occurred. The FWC has the discretion to be able to select the appropriate way to handle the matter which includes but is not limited to offering voluntary mediations, conducting public hearings or referring the matter to a workplace health and safety regulator.

If the FWC finds that bullying has occurred in the workplace and there is a risk that it will continue to occur a Commissioner can make an order to stop bullying in the following ways:

> relocation of individuals

> order an individual or group to stop bullying

> providing support to the applicant

> changing or enforcing an company's bullying policy

However no order for payment or pecuniary amount can be issued by the FWC.

Although the order made by the FWC cannot be a financial payment, if the order is not followed it would be a statutory offence of a civil remedy which will attract a monetary penalty. An alleged breach must be reported within 6 years by the Fair Work inspector, relevant parties or an industrial association.

8.2   Discrimination

The operation of Federal and State legislation in Victoria prohibits discrimination on the basis of certain attributes or personal characteristics.

8.2.1   Grounds of discrimination

In Victoria, discrimination on the following grounds is unlawful:

> age

> breastfeeding

> employment activity

> gender identity

> impairment

> industrial activity/inactivity

> lawful sexual activity

> marital status

> parental status or status as a carer

> physical features

> political belief or activity

> pregnancy

> race

> religious belief or activity

> sex

> sexual orientation

> personal association (whether as a relative or otherwise) with a person who is identified by reference to any of the above attributes.

8.2.2   Discrimination

Discrimination can be defined in two ways – direct and indirect discrimination.

Direct discrimination occurs when a person treats, or proposes to treat, a person with one of the attributes or personal characteristics unfavourably because of that attribute.

Indirect discrimination occurs when a person imposes, or proposes to impose, a requirement, condition or practice that has, or is likely to have, the effect of disadvantaging persons with an attribute and that is not reasonable. For example, if an employer requires all employees to work full time from 9-5.30pm regardless of their role despite being able to accommodate part time workers.

8.2.3 Intent/Motive is irrelevant to discrimination

In determining whether or not a person discriminates, the person's intent/motive is irrelevant.

8.2.4 Areas of prohibited discrimination

For discrimination to be considered unlawful, the discrimination must occur in an area covered by the legislation. The areas of discrimination that apply in Victoria are:

> > employment and employment-related
> > education
> > provision of goods and services
> > disposal of land
> > accommodation
> > clubs and club membership
> > sport
> > local government.

Most employees are covered in the 'employment and employment-related' and 'provision of goods and services' areas in their dealings with others during the course of their work. The new legislation also now extends to job applicants. In effect, this takes into account not only immediate working relationships with managers, supervisors and co- workers, but also covers providing goods and services to, and receiving them from, members of the public.

8.2.5 Grounds of discrimination

The grounds of discrimination covered by the legislation that apply in Victoria are designed to protect people from being disadvantaged on grounds that do not impact on their ability to perform in a position. It basically codifies the rights of individuals to be treated on their merits and on their demonstrated abilities and experience. The legislation aims to prevent employers making decisions in employment that do not relate to the inherent requirements of the job.

Some people may argue that this places great obligations and restraints on employers. However, if employers approach all aspects of human resource management with a view to ensuring they have the best people in the most suitable positions and are giving them every opportunity to do their best, there are only benefits to be had by all.

The following grounds of discrimination apply in Victoria, and an explanation of each is provided.

Age

It is unlawful to discriminate on the basis of age. This means that an employer must not make employment-related decisions based on the age of a person. This applies to all aspects of human resource management including recruitment and selection, promotion, training and development opportunities, retirement, and termination of employment.

For example, an employer must not choose to give a promotion to one person over another based on the fact that one person is younger and the employer assumes that they will be with the organisation for a longer period of time. Such decisions must be made based on the individual's ability to perform in the position and

not influenced by the employer's assumptions as to whether the person will be best for the position based on their age.

Breastfeeding

It is unlawful to discriminate on the basis of breastfeeding. Where an employer does not allow an employee to take breaks other than scheduled lunch and tea breaks, a breastfeeding woman may not be able to express milk when necessary in order to breastfeed her baby. If the rule is not based on the inherent requirements of the job, or because alternative arrangements cannot be made, this may be indirect breastfeeding discrimination.

Impairment / disability

While the legislation refers to 'impairment', the term 'disability' is also used in relation to this attribute. It is unlawful to discriminate against a person because of their disability in all areas of activity covered by the Act.

The Act defines impairment as:

(a) total or partial loss of a bodily function (e.g. hearing loss, incontinence)
(b) the presence in the body of organisms that may cause disease (e.g. hepatitis or HIV/AIDS virus)
(c) total or partial loss of a part of the body (e.g. loss of fingers or an arm)
(d) malfunction of a part of the body, including:
    i. mental or psychological disease or disorder (e.g. depression)
    ii. condition or disorder that results in a person learning more slowly than people who do not have that condition or disorder (e.g. Downs Syndrome)
(e) malformation or disfigurement of a part of the body.

It also includes an impairment that may exist in the future (including because of a genetic predisposition to that impairment) and, to avoid doubt, behaviour that is a symptom or manifestation of an impairment. Employers must be sure to make decisions that are based on an individual's ability to meet the inherent requirements of the job and avoid making assumptions about the impact of the impairment.

Gender identity

It is unlawful to discriminate against a person on the basis of gender identity. Gender identity means self-identification as a person of a relevant gender. Identification may be expressed by style of dress, medical intervention or by other means, including change of name. For example, a transsexual must not be treated unfavourably in recruitment on the basis that they are a transsexual. The person must be evaluated on their ability to meet the inherent requirements of the job. A decision not to employ the person because they are a transsexual may be discriminatory.

Industrial activity/inactivity

The Act makes it unlawful to discriminate on the basis of industrial activity/inactivity or industrial association. Industrial activity means:

> Being or not being a member of, or joining or not joining or refusing to join, an industrial organisation.
> Participating in, not participating in or refusing to participate in a lawful activity organised or promoted by an industrial organisation.

Industrial association is defined to mean:

> A group of employees or employers, formed formally or informally to represent or advance the views, claims or interests of the employees or employers in a particular industry, trade, profession, business or employment, not including an industrial organisation.

Industrial organisation is defined as:

> An organisation of employees (e.g. a trade union)
> An organisation of employers (e.g. Victorian Chamber of Commerce and Industry)
> Any other organisation established for the purposes of people who carry on a particular industry, trade, profession, business or employment – registered or recognised under a State or Commonwealth enactment.

Lawful sexual activity

Under the Act, it is unlawful to discriminate on the basis of a person's lawful sexual activity. The Act defines lawful sexual activity as engaging in, not engaging in or refusing to engage in a lawful sexual activity.

Marital status

It is unlawful to discriminate against a person on the basis of their marital status. This includes disadvantaging a person because they are married, single, divorced, separated, de facto or widowed. As such, assumptions made about a person that affect a decision relating to their employment may be viewed as discrimination.

The legislation now uses the term domestic partner, in lieu of de facto as it also applies to same sex couples.

Parental status or status as a carer

It is unlawful to discriminate against another person because of their status as a parent or carer.

The section of the Act dealing with parenthood is aimed at preventing employers from making assumptions about a variety of factors, including: a person's commitment, ability to work required hours, and days of work. This attribute also includes being discriminated on the basis of not being a parent (e.g. in relation to applying for job).

The Act defines carer as a person on whom another is wholly or substantially dependent for ongoing care and attention, other than a person who provides that care on a wholly or substantially commercial basis. Carers are not confined to family members. Dependent people may include babies and children, the elderly and people with impairments.

Employers must be careful to ensure that policies and practices are not indirectly discriminatory against people who are carers. For example, a policy or practice that training and development programs are always held outside work hours (whether paid or unpaid) may prevent people with responsibilities as parents or carers from attending and therefore be indirectly discriminating against them.

Physical features

It is unlawful to discriminate on the basis of a person's physical features in an area of activity covered by the Act. Physical features mean a person's height, weight, size or other bodily characteristic beyond a person's control. The definition is not intended to include things such as body piercing or tattoos, over which a

person does have control. Therefore, if a person can meet the inherent requirements of a job, their physical appearance must not impact on the decision.

Political belief and/or activity

It is unlawful to discriminate on the basis of political beliefs or activities. Political belief or activity means:

> holding or not holding a lawful political belief or view

> engaging in, not engaging in or refusing to engage in a lawful political activity.

Pregnancy

It is unlawful to discriminate on the basis of pregnancy. However, it is lawful to discriminate on the basis of pregnancy if it is reasonably necessary to protect the health and safety of the pregnant person, or others, be they a pregnant employee, the unborn child or a member of the public. It is also discriminatory to disadvantage a person based on a presumption of pregnancy (i.e. assuming that a woman is likely to become pregnant given er personal circumstances).

Religious belief and/or activity

The Act makes it unlawful to discriminate on the basis of religious belief or activity. Religious belief or activity means holding or not holding a religious belief or view, engaging in, not engaging in or refusing to engage in a lawful religious activity. Employers should be aware of the religious requirements of some people and ensure that policies and/or practices of the organisation do not directly or indirectly discriminate against a person because of their religious beliefs.

Race

Under the Act, it is unlawful to discriminate on the basis of race. Race is defined broadly and includes:

> colour, descent or ancestry, nationality or national origin, ethnicity or ethnic origin.

Sex

It is unlawful to discriminate on the basis of sex. This applies equally to men and women. This can have wider implications than may be first thought. For example, a policy concerning dress or uniform may discriminate against one sex. If the policy prohibited the wearing of earrings by males but allowed women to wear earrings, this may be discriminatory.

Sexual orientation

It is unlawful to discriminate on the basis of sexual orientation. Sexual orientation is defined in the legislation as homosexuality (including lesbianism), bisexuality and heterosexuality. This also extends to transgendered people. For example, should an employee decide not to engage a person because of their transgender status, this would be considered discrimination.

Employment activity

An employer is prohibited from directly or indirectly discriminating against an employee where the employee:

> > makes a 'reasonable request' to an employer for information about his or her employment entitlements, or
> > communicates a concern to an employer that the employee's entitlements have not been, are not being or will not be provided to the employee.

Personal association (whether as a relative or otherwise) with a person who is identified by reference to any of the above attributes

Discrimination is unlawful if a person is treated unfairly because of their actual or assumed personal association with someone who has, or is assumed to have, one of the attributes covered by the legislation. For example, a person may be disadvantaged in employment (e.g. failure to receive a deserved promotion) based on the fact that the person is married to a political activist whose views do not accord with those of an employer. This action may be discriminatory on the ground of personal association.

Irrelevant criminal conviction

The *Australian Human Rights Commission Act 1986 (Cth)* prohibits discrimination based on an employee having a criminal conviction that is not relevant, and would not prevent, the employee from performing the inherent requirements of their role.

8.3   Human resources management applications

Discrimination issues apply to all areas of the employment relationship, however, most arise in the following areas: Recruitment and Selection, Terms and Conditions of Employment, Performance Management, Disciplinary Action and Termination of Employment.

8.3.1   Recruitment and selection

Many equal opportunity problems arise in the context of recruitment and internal selection processes. One of the most important ways to avoid claims in this area is to focus on the inherent requirements of the job (i.e. the tasks that the job genuinely involves and the attributes that are required).

It is imperative that organisations have effective equal opportunity policies, procedures and objectives to not only avoid a potential breach of anti-discrimination legislation, but also to ensure the right candidate for the job is appointed. Application forms should only request information that is relevant to the particular job and necessary for selection.

Further, they should be reviewed regularly to make sure they comply with any changes to the legislation.

The *Equal Opportunity Act 2010 (Vic)* prohibits employers from requesting job applicants and employees to supply information, either orally or in writing, which could be used for discriminatory purposes unless that information is required for a purpose that would not breach the Act. Well-developed policies and procedures provide guidelines for line managers. For instance, the procedures should alert managers to questions to avoid in the recruitment process because they may be discriminatory. In addition, the documentation may be needed to defend an allegation of discrimination.

Should a discrimination complaint relate to a selection or promotion, the employer must be able to demonstrate the objective nature of the selection process. In this context, discrimination can be said to have occurred only if the complainant did not get the job because of one of the grounds under which discrimination is unlawful.

8.3.2   Terms and conditions of employment

There should be no distinction in the application of the terms and conditions of employment for reasons unrelated to the job. In this context, conditions of employment include remuneration, access to training and career development programs, and access to overtime.

For example, age discrimination is unlawful. Compulsory retirement on the basis of age became unlawful on 1 January 1997. It would, therefore, be discriminatory to preclude a 62-year-old employee from an employee development program on the presumption that, because they would retire at 65, it would not be a wise investment due to the employee having only a short-term future with the organisation.

Indirect discrimination issues can also arise in this area, such as employees with a disability having restricted access to career development opportunities.

8.3.3   Performance management, disciplinary action and termination of employment

Anti-discrimination legislation applies to performance management, disciplinary action and termination of employment, including redundancy practices and decisions. While many organisations are more aware of potential discrimination in this area, many continue to breach the law through discriminatory policies and practices. To reduce the risk of discrimination claims:

> Performance management and disciplinary action should be applied consistently across an organisation and employees should not be targeted due to an attribute.'
> When terminating an employee's employment, the employer should ensure that it is not for an unlawful reason which includes discrimination.
> A redundancy policy should be based, as far as possible, on criteria that are directly relevant to the employment circumstances. For example, skills required for the future operations of the organisation measured against employees' existing skills.

In terms of redundancy, a common mistake in this area is a tendency to select employees for redundancy based on the 'last on, first off' rule. This rule was introduced many years ago as a fair and objective method of selecting people for redundancy. However, in practice, this rule may be discriminatory in its effect.

An example of where this approach to redundancy was found to be discriminatory was in the case where an organisation had only recently begun to employ women in certain jobs. Therefore, the majority of people made redundant using the 'last on, first off' rule were women.

The practice, therefore, was found to be indirectly discriminating against women.

8.4   Harassment and bullying

8.4.1   Harassment

Although most harassment claims tend to be of a sexual nature, it is essential to recognise other types of harassment. Harassment may occur in relation to any of the attributes protected by the legislation (refer *8.2.1 Grounds of discrimination*). Racial harassment, disability harassment and industrial harassment are equally unlawful and can culminate in formal complaints and legal action.

Harassment is a form of discrimination and is any behaviour which is unwanted or unwelcome that makes a person feel offended, humiliated and/or intimidated. It can create a hostile, intimidating or offensive work environment, which can result in illness, injury or loss of employment.

Examples of harassment include:

> distribution or display of offensive material (posters, pictures, cartoons, etc.) based on disability, race, gender, sexuality, etc.
> mocking remarks or derogatory comments making reference to the characteristics of a person with a disability
> intimidation or verbal abuse oriented at a person's race
> repeated irrelevant reference to a person's pregnancy
> jokes based on a person's age
> actions that increase a person's negative sense of disability
> isolation or segregation of people with a different sexuality
> derogatory jokes on the basis of religious beliefs.

8.4.2   Sexual harassment

Sexual harassment is 'unwelcome conduct of a sexual nature' which might be an unwelcome sexual advance or an explicit request for sexual favours. It may also include a wide range of verbal, visual or physical behaviour by which a reasonable person, having regard to all the circumstances, would have anticipated that the person harassed would be offended, humiliated or intimidated.

Conduct of a sexual nature is defined in the Equal Opportunity Act to include:

> subjecting a person to an act of physical intimacy
> making any remark or statement with sexual connotations to a person or about a person in their presence, whether orally or in writing. This may include remarks or statements which are transmitted by phone, fax, video conference or e-mail
> making any gesture, action or comment of a sexual nature in a person's presence.

8.4.3   Bullying

WorkSafe has produced a Guidance Note for the *Prevention of Bullying and Violence at Work*, which includes the following definition:

'Workplace bullying is repeated, unreasonable behaviour directed toward an employee, or group of employees, that creates a risk to health and safety'.

Within this definition:

> 'Unreasonable behaviour' means behaviour that a reasonable person, having regard to all the circumstances, would expect to victimise, humiliate, undermine or threaten.
> 'Behaviour' includes actions of individuals or a group, and may involve using a system of work as a means of victimising, humiliating, undermining or threatening.
> 'Risk to health and safety' includes risk to the mental or physical health of an employee.

The following types of behaviour, where repeated or occurring as part of a pattern of behaviour, could be considered bullying:

> verbal abuse

> excluding or isolating employees

> psychological harassment

> intimidation

> assigning meaningless tasks unrelated to the job

> giving employees impossible assignments

> deliberately changing work rosters to inconvenience particular employees

> deliberately withholding information that is vital for effective work performance. This list is not exhaustive as other types of behaviour may also constitute bullying.

Note: An employee may also be a manager or supervisor.

Managerial Actions – the Guidance Note is not intended to diminish an employer's managerial prerogative to direct and control how work is done in their organisation, other than in terms of ensuring, so far as is practicable, the health and safety of employees.

The Guidance Note is not intended to cover poor or bad management practices on their own, because they are not considered bullying. The issue is really about how that managerial prerogative is exercised – is it exercised in a reasonable or unreasonable way?

The Guidance Note does not cover situations where an employee has a grievance about legitimate and reasonable actions taken by an employer when performance management processes, disciplinary action or the allocation of work in compliance with systems is involved. Again, it is the way in which these managerial prerogatives are exercised.

The Guidance Note does not treat business processes, such as the implementation of organisational change or downsizing, as incidents of bullying. However, they may contribute to producing an environment where bullying is more likely to occur.

8.4.4   Victimisation

Victimisation is treating or threatening to treat a person detrimentally because they:

> consider making a complaint or have made a complaint

> act as a witness

> support a claimant. Victimisation is unlawful.

8.4.5   Employer responsibilities

Employers are responsible for providing a workplace free from harassment and bullying. This requires that they:

> issue a clear statement or policy indicating that the organisation will not tolerate unlawful harassment or bullying

> conduct an awareness program to ensure all employees understand what constitutes unlawful harassment and bullying and their rights and responsibilities

> develop an internal grievance procedure and complaint management process that gives employees with concerns an opportunity to discuss their concerns and a possible resolution.

Vicarious liability

Both State and Federal Equal Opportunity legislation contain vicarious liability for employers for any acts of their employees which breach the legislation.

'Vicarious liability' is a legal concept in which the law holds an employer responsible for their employees' misconduct even though the employer is free from personal blame, or fault. However, the legislation provides a defence to this liability if employers have taken 'reasonable steps' or precautions to ensure that unlawful acts do not occur.

8.4.6   Minimise risk - 'reasonable steps'

In the event of a claim of harassment or bullying, the Commission may examine the precautions (if any) that have been taken by your organisation to prevent harassment and bullying. While there is no way to prevent allegations, the following steps will help to protect you against costly litigation.

You should:

1. Develop a policy and procedures document and implement the policy.
2. Communicate the policy and procedures to your employees on a regular basis, emphasising the complaints resolution process
3. Provide training for managers and supervisors to help them identify and manage unlawful behaviour in the workplace.
4. Conduct awareness sessions to inform employees about appropriate behaviour, and their rights and responsibilities.
5. Ensure all employees have acknowledged and understood their obligations.
6. Follow-up with employees to ensure they understand the types of behaviour that are unacceptable and constitute unlawful harassment or bullying.
7. Establish an effective internal grievance procedure and a complaints resolution process that deals with complaints effectively and confidentially and includes the education of managers and supervisors in how to deal with complaints.
8. Monitor types and numbers of complaints to identify areas that need improving.

The Victorian Chamber has specialist consultants who can help you deliver a training and/or information program to minimise the risks to your organisation.

8.4.7   Internal grievance and complaints resolution

An essential step to prevent instances of harassment and bullying is the development and implementation of a formal process to handle complaints. It is vital that an organisation establishes a well understood procedure for counselling, investigating and resolving complaints. There are several features of a good procedure which are universal and include:

> speed
> sensitivity
> confidentiality

> > consistent application
> > professionalism
> > procedural fairness.

The Investigation Officer and Contact Officer and/or managers and supervisors should be trained to carry out their functions in the organisation's complaint resolution process so that they are able to resolve issues quickly and effectively.

Internal complaint resolution model for employees

Some complaints can be resolved by working with the complainant to assist him/her to say "No" to the alleged harassment or bullying. This is often possible when the alleged harasser or bully is oblivious to the impact of their behaviour towards the complainant.

However, not all cases are so straightforward. It may, therefore, be appropriate to conduct an internal investigation. A complaint form should be used when conducting the investigation to ensure the information is retained on file until such time that an outcome is determined. This process also ensures that all the information needed to make a decision is collected for review.

Note: If the allegations are not substantiated, then details of the complaint should not be left on the respondent's personnel record. They should be destroyed.

The purpose of an investigation is to obtain the following information:

> > Name of the complainant.
> > The complainant's work location.
> > Name of the alleged harasser (or respondent).
> > Workplace of the alleged harasser or bully.
> > Relationship, if any, between the complainant and the alleged harasser or bully (both personal and professional).
> > Specific incidents of harassment or bullying.
> > If there has been a delay between the incident/s and the complaint. If so, why?
> > If there are any witnesses to the incident/s. If so, who are they?
> > The views of the witnesses.
> > If the alleged harasser or bully has been confronted with the allegations. If so, what was their response?
> > The nature of the resolution sought by the complainant

Internal complaint resolution model – flow chart

Tell the offender to stop – say "No"

⬇

Offensive behaviour stops

⬇   ⬇

YES   NO

⬇

Seek support and advice from
Contact officer

⬇

Guidance to stop offensive behaviour

OR

Lodge formal complaint form with
Investigation Officer

⬇

Investigation Officer interviews
complainant, alleged harasser and
witnesses, if necessary.

⬇

Investigation officer determines if
complaints are substantiated

⬇

Feedback provided to both parties

⬇

Harasser disciplined or other action
taken, if necessary

Role of Contact Officer

> Provide support, coaching
  and advice to complainant

> Assists complainant to
  stop offensive behaviour
  informally, or assists to
  document complaint

> Briefs Investigation Officer.
  Attends interview with
  complainant at their request

> Provides emotional support
  to complainant

> Provides feedback on
  investigation outcomes by
  Investigation Officer

> Follows-up with
  complainant to prevent
  victimisation/recurrence

Both parties have a number of rights and responsibilities. It is important to understand and respect the rights of the parties throughout the process.

Complainant's rights	Respondent's rights
> the right to have the complaint investigated and, if necessary, conciliated > the right to have support/representation, if requested > the right to express views and opinions without intimidation from others > the right to discontinue a complaint, noting that the employer may still have responsibilities to investigate matters known to them that may constitute risk to the employer or other employees > the right to have the situation remedied > the right to privacy > the right not to be discriminated against.	> the right to natural justice > the right to respond to the allegation/s > the right not to be discriminated against > the right not to be dismissed unfairly, harshly or unreasonably > the right to privacy > the right to have support/representation, if requested > the right not to be defamed > the right not to be the subject of unfounded or malicious complaints.

Once all of the information is gathered, the internal investigation officer needs to determine whether the complaint can be substantiated, on the balance of probabilities. If the complaint is substantiated, appropriate discipline needs to be applied.

Irrespective of the findings of the investigation officer, the decision needs to be communicated to the relevant parties, together with an appropriate explanation.

8.4.8   Key points of law

> Victims of harassment or bullying are not obliged to inform the alleged harasser or bully that their behaviour is unacceptable.
> The intent of the harasser or bully is irrelevant.
> The victim's feelings in relation to the behaviour are important.
> In Victoria, a co-worker can be named a sole respondent in cases of alleged sexual harassment.
> There is no upper limit in terms of maximum compensation that can be awarded to the victim.
> Sexual harassment is unlawful in common workplaces regardless of a person's status as employer or employee and irrespective of whether they work for the same employer or not. In this context, 'common workplace' is defined as any place a person attends for the purpose of carrying out any functions in relation to their employment, occupation, trade or profession, regardless of whether it is their principal place of business or employment.

8.5   Formal complaint resolution process

Stages of the discrimination and sexual harassment complaint resolution process provided by the Victorian Equal Opportunity and Human Rights Commission:

> Inquiry
> Lodgement
> Conciliation
> VCAT
> Supreme Court

8.5.1   Inquiry

If an individual feels that they have been discriminated against, sexually harassed, victimised or vilified, they (or someone they know) can make a complaint to the Commission. The Commission will try and help resolve the complaint, although they will not advocate on behalf of the complainant. They may however contact the person or organisation that the complaint has been made against in order to resolve the issue. In some cases the Commission may decide they cannot deal with a complaint; if this happens they will contact the complainant to explain why.

Note: Complainant is the person who believes they have been discriminated against in a manner which breached the Act.

If the person alleging discrimination is unable to make a complaint personally - for instance, because of a disability – they may authorise someone else to make the complaint on their behalf. If the person is a child, the child may make a complaint on their own behalf. Alternatively, a parent of the child or a person authorised by the child or parent may make the complaint.

8.5.2   Lodgement

A complaint can be lodged in any language and, if necessary, the Commission can assist an individual to draft a complaint. Below are the relevant contact details for the Commission:

Complaints

Tel: 1300 891 848
TTU: 1300 289 921
Email: complaints@veohrc.vic.gov.au

Enquiry Line

9am–5pm Monday to Friday
Tel: 1300 292 153 or (03) 9032 3583
TTY: 1300 289 621
Email: enquiries@veohrc.vic.gov.au

General

Phone:	1300 891 848
Fax:	1300 891 858
Email:	information@veohrc.vic.gov.au
Hearing impaired (TTY):	1300 289 621
Interpreters:	1300 152 494
Charter notifications fax:	1300 286 834

Location - Level 3, 204 Lygon Street, Carlton VIC 3053

8.5.3   Conciliation

Complaints to the Commission are resolved through a conciliation process. The purpose of conciliation is to give the parties an opportunity to discuss all of the issues relating to the complaint and reach a resolution through negotiation.

The Conciliator will not act as an advocate for the parties. The Conciliator's main objective is to ensure equal access to the process. He/she will not determine the merit or strength of a complaint nor advise on proposed settlements.

If conciliation fails, the complainant then has 60 days to ask that the Commission refer the matter to the Victorian Civil and Administrative Tribunal for hearing and determination.

8.5.4   Hearing by the Victorian Civil and Administrative Tribunal (VCAT)

The Tribunal is independent and separate from the Commission. Unlike the Commission, the Tribunal's processes are public and may involve a hearing where witnesses may be called and cross-examined. Only a small proportion of complaints go to the Tribunal - most are dealt with at the Commission level. Legal representation is strongly recommended at Tribunal hearings.

8.5.5   Appeals to the Supreme Court

Any party to proceedings before the Tribunal may appeal to the Supreme Court on a question of law, from an order of the Tribunal to those proceedings.

8.6   Equal employment opportunity for women

In May 1984, the Federal Government released a Green Paper titled, Affirmative Action for Women. The paper defined 'affirmative action' as:

> *"…systematic means, determined by the employer in consultation with senior management, employees, and unions, of achieving equal employment opportunity (EEO) for women. Affirmative action is compatible with appointment and promotion on the basis of the principle of merit, skills and qualifications. It does not mean women will be given preference over better-qualified men. It does mean men may expect to face stiffer competition for jobs. This is not discrimination."*

Despite strong protests from employer groups, Federal Parliament passed the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986 (Cth)* on 22 August 1986. While employer groups supported the intent of this legislation, they argued that there should be a voluntary approach to affirmative action. Roundtable consultations with employers have been held throughout Australia since that time. The results

contributed to the most significant changes to the legislation since its inception; these changes were passed by the Senate on 9 December 1999.

8.6.1   Equal Opportunity for Women in the Workplace Act 1999

On 1 January 1999, the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986 (Cth)* became the *Equal Opportunity for Women in the Workplace Act 1999 (Cth)*, and the Affirmative Action Agency became the Equal Opportunity for Women in the Workplace Agency. Other aspects of the legislation were amended, in particular the reporting requirements for employers (refer *8.6.6 Reporting Requirements*).

8.6.2   Equal opportunity (EO) for women

The intent of EO for Women legislation is to enable positive initiatives to achieve equality, focusing on particular problem areas. The 1999 Act specifically targets employment practices as they relate to women. It requires employers to develop and implement workplace programs and to provide an annual report (refer *8.6.6 Reporting Requirements*) to the EO for Women in the Workplace Agency ('the Agency'). It does not require employers to take any action which is incompatible with the principle that employment matters should be dealt with on the basis of merit. A key objective of the Act is to encourage consultation between employers and their employees in respect to issues affecting EO for women in the workplace.

8.6.3   Workplace Gender Equality Act 2012

The Equal Opportunity for Women in the Workplace act was renamed to the Workplace Gender Equality Act in 2012. The new, strengthened legislation aims to improve and promote equality for both women and men in the workplace.

The **Workplace Gender Equality Act 2012** requires non-public sector employers with 100 or more staff (relevant employers) to submit a report to the Workplace Gender Equality Agency between 1 April and 31 May each year for the preceding 12 month period (1 April – 31 March reporting period) (Workplace Gender Equality Act 2012).

8.6.4   Employers covered by the Act

The WGEA requires all non-public sector employers with over 100 employees to submit annual reports to the Workplace Gender Equality Agency. If an employer that has more than 100 employee's falls below 100, that employer will still be required to submit annual reports until the number of employees fall below 80. Employers that have continually had less than 100 employees are not required to submit annual reports.

8.6.5   Administration of the legislation

The Agency is set up to help employers ensure EO for women in their workplace and to administer the Act's legal requirements. The Agency is available to advise and assist employers in the development of a workplace program, to issue guidelines to assist employers to achieve the purposes of the Act, to monitor reports, and undertake research and public discussion in relation to equality for women in the workplace.

The Workplace Gender Equality Agency is located at:
Level 7, 111 Pacific Highway
North Sydney NSW 2060
Tel: (02) 9448 8500

8.6.6   Reporting requirements

General

Workplace gender composition of both workforce and governing bodies of the employer (including board of directors and committees of management):

> Remuneration of male and female employees

> Availability and usage of flexible working arrangements (including employee family/caring responsibilities)

> Consultation with employees on workplace gender equality issues

> Any other matters specified by the Minister for the Status of Women (Minister)

The precise information that must be lodged is specified by the Minister prior to the start of each reporting period. Thirty-one reportable matters have been specified for the 2013–2014 reporting period. A further eight reportable matters were specified for the 2014–2015 reporting period however the federal government as at the 26 March 2014 have delayed these further eight matters until the 2015-2016 reporting period.

A minimum standard from 1 October 2014 will be in operation for relevant employers with more than 500 employees whereby they must have a policy or strategy in at least one of the following areas:

> gender composition of the workforce

> equal remuneration between men and women

> availability and utility of employment terms, conditions and practices relating to flexible working arrangements for employees and to working arrangements supporting employees with family or caring responsibilities; or

> sex-based harassment and discrimination.

This report must be signed by the Chief Executive Officer. Reports can be submitted online through the Workplace Gender Equality Agency website.

8.6.7   Non-compliance

The Act contains sanctions for failing to submit a report or further information, if requested.

The Agency may name the employer in its annual report to the Minister. This report is tabled in Federal Parliament. The Agency must give the employer not less than 28 days' notice of its intention to name the employer. It must also provide reasons for the naming.

In addition, the Federal Government has a policy that makes Commonwealth contracts for goods and services and specified industry assistance available only to employers that comply with the requirements of the Act.

8.7   Documentation

8.7.1   Equal Opportunity – Discrimination, Harassment and Bullying

8.7.2   Harassment Complaint Notification

9.   Training and development

There is a continual need for people in the workforce to be skilled and up-skilled to improve their on-the-job performance and productivity. A combination of the following factors influence the demand for people with the requisite skills and personal attributes to support the organisation's objectives: developing technologies, the need for specialised skills, productivity improvement, skill and labour shortages, market competitiveness, and stricter occupational health and safety requirements.

Training and development, therefore, makes a substantial contribution to the achievement of the organisation's business goals, and needs to be seen as an integral component of business strategy. An employer trains so that employees are competent to perform the operational tasks that are required to achieve business objectives as well as to contribute to the organisation's succession processes.

Training is seen as a process of learning and it can significantly influence the organisation's culture. Competency is the application of what is learned in the workplace. Development is more than job-specific skills and focuses on the growth of individuals and teams (e.g. team building, leadership, time management, career planning). Training and development are management tools that can be utilised to relieve or solve specific individual and group issues, and implement organisational change.

Training strategies

1. Proactive – designed to meet the organisation's long-term objectives.
2. Responsive – usually needs driven and prompted by specific issues or problems.
3. Enhancement of employee motivation, commitment and retention – provides career pathways and choices, improves job security and increases job satisfaction.

9.1   Strategic training and development

Creation of a training and development plan for the organisation provides a strategic approach to learning and development and a framework to identify skill needs, both current and for the future, and the learning needs of individuals. The aim is to develop and maintain a workforce that has the skills and knowledge to undertake the tasks required, and a workforce that is eager to learn new skills in order to be able to meet future challenges.

While success of an organisation's training policy relates directly to how appropriate it is, how well accepted it is by line managers, and how relevant the specific training programs are to the business' needs, it must be recognised that training still takes place even if it is not formally embraced by the organisation: individuals undertake training of their own volition, informal training by employees and line managers, and through the repetition of certain tasks.

Targeted training is critical to ensure that the business remains competitive and profitable, and has a future. Training can be cost-effective and therefore profitable to an organisation through understanding, evaluating and accounting for the relationship between cost and return.

Benefits may be evident in: morale, productivity (less wastage, higher output), output quality, individual confidence, and safety.

Training should begin with the organisation's induction program. Induction aims at ensuring each new employee has the basic information needed to settle into their job and has an awareness of the organisation's policies and procedures. When the new employee has the skills necessary to perform the job to the required

standard – that is, this level of competence is reached - further training and development is provided in additional skills which complement performance and may facilitate advancement to more responsibility and possibly a higher-level position.

9.2 Invest in training

Employers are concerned with assisting employees to acquire the knowledge and skills necessary to perform assigned tasks and to prepare them for future activities; therefore, training and development must result in changed behaviour. There is a direct correlation between the effectiveness of employees and organisational performance.

Training and development should, therefore, have two basic purposes:

1. produce work to required standards of quality, quantity, cost and time
2. develop employees for medium-to long-term needs.

It is crucial that each training activity has identified objectives. If the purpose is stated vaguely, any subsequent result or improvement and its relative evaluation will be equally unclear.

Training and development activities are important in all organisations because:

> new employees have to be trained in their jobs
> existing employees need to acquire additional skills and knowledge
> changes also require new learning (e.g. those brought about by new technology, organisational, social and legal change).

9.3 Scope of training and development

9.3.1 Induction

Employee induction or orientation is a form of training and development. Induction programs are the systematic process of introducing new employees to an organisation, including their job and co-workers. Joining a new organisation is a significant step for any new employee, regardless of the level at which they enter. They need to learn about the organisation, including formal protocols, how to get things done and, most importantly, the organisation's business goals and how their role contributes to those goals.

The more effective the induction program, the sooner new employees will achieve productivity and satisfaction in their new roles. Research reveals that comprehensive induction programs improve new employees' productivity levels by reducing anxiety and by fostering positive attitudes, a sense of belonging and commitment at the start of the employment relationship. According to Stone (1995), most labour turnover occurs in the first six months of employment, mostly at operator levels. An induction program that focuses on the issues faced by employees in the early months of employment will reduce turnover and improve productivity, which are good reasons to invest in induction programs.

Content of induction programs

Ideally, an organisation has an employee handbook or manual covering all employee policies and procedures. The manual provides the basis for developing a comprehensive checklist of all essential elements of the induction program . Examples of what the program should cover are:

> The organisation's history, mission and business objectives.

> Human resource policies and procedures (e.g. dress and appearance requirements, OHS, conduct, leave, or anti- discrimination and harassment).

> Housekeeping and administration (e.g. parking, completing time sheets, superannuation and leave forms).

> Employee position details (e.g. position description, salary and benefits, and relationship)

> Performance management processes (e.g. timing, expectations, setting goals and details of any form of performance-based pay).

9.3.2   Advanced training (beyond immediate job level)

As covered earlier, human resource planning involves an organisation ensuring they have the right people with the right skills in the right place, at the right time. Part of that process is to correct skill and knowledge gaps as they are identified - they may be immediate skill gaps or anticipated.

If an organisation is to remain competitive, it needs to develop and improve employee abilities. Many organisations rely on gaining the required skills from other organisations by poaching new employees. This is a risky approach, and will more than likely result in paying a significant sum for new employees who may not have the specific skills and experience required by your organisation.

Some employees will have excellent skills and knowledge but will need non-job-related training such as time management, professional speaking and project management. Specific training and development programs targeting these higher-level needs will provide more resourceful and adaptable employees.

Finally, employees are moving from job to job more than ever before. Employees do not expect long term job security. Instead, they seek ongoing development from each role to ensure they remain competitive in the job market and, therefore, can obtain new opportunities. Employers will have difficulty in attracting skilled employees if they cannot demonstrate a commitment to ongoing training and development.

9.3.3   Legislative compliance

Organisations are subject to various legal requirements with respect to training, through either legislation or awards. The onus is also on the employer to prove, in any disciplinary or termination proceedings related to work performance, that the employee was given reasonable opportunity to satisfy work requirements and had been trained adequately and appropriately. Such training may be related to base-level performance or areas of an employee role which are over and above the usual job requirements.

9.3.4   Supervision/management training

Many employees have excellent job-related skills but lack management competencies. A common problem in Australian business is a poor level of management skill. Individuals are often promoted to management positions based on their ability to perform their job. It is often assumed that they will have the essential leadership and management skills; and similarly, the small business owner may wear all the 'hats' of people management, as well as the day-to-day operation of the business. Such managers and supervisors quickly find that they 'do' rather than 'delegate' because they have difficulty in getting things done through others.

There is a myriad of competencies required to perform at both the supervisor and manager level. Tasks such as budgeting, project management, leadership, performance management, discipline and termination are fraught with difficulty if the manager lacks the skills and knowledge to undertake them. Poor competence will result in significant loss of productivity and morale among employees, thus compounding the problem.

Research reveals that organisations that invest in ongoing development of their managers – through formal training, short courses, mentoring and new experiences – are more productive and are better positioned to compete in the global economy. While international competitiveness is not directly relevant to many small businesses, they can achieve significant productivity gains through management excellence, and yet it is an area often neglected because of time and money constraints. Adopting a systematic approach to training and development will help the small business to identify what form of training and development will contribute the most benefit.

9.3.5   Succession and replacement planning

The internal supply of labour is very important to the ongoing success and stability of any business. It is possible to optimise the organisation experience and knowledge of a current employee, especially for key roles and critical roles.

Planning well in advance to fill these roles internally is critical to minimising risk to the effectiveness of the organisation, and a number of factors need to be considered including: anticipated changes in organisation structure and size, job vacancies and/or unallocated tasks/responsibilities that result from movement of employees to other roles and any coaching, education, training, and mentoring of employees who may be directly (or indirectly) affected by the succession and replacement process.

A merit based system – using a combination of previous and current experience, personal characteristics, and line manager reports - needs to be used to determine the relative merit of the employee against the selection criteria of a particular role. This process (which is also used for external recruitment involving job applications, interviews and reference checking) has been established to ensure the best possible choice is made, and that there is no discrimination on grounds that are unrelated to the requirements of the position.

The two types of internal supply planning are *replacement planning and succession planning*.

Replacement planning

Looking at the short term (perhaps one year ahead), jobs are identified where the incumbent will or may leave, or the employee needs to be replaced due to inadequate performance or some other reason. These jobs are potential vacancies and, therefore, individuals who are capable of replacing the present incumbent are identified and assessed as to their state of readiness as a possible replacement. (One individual may be a candidate for a number of jobs.)

Succession planning

This type of planning may be done three or more years in advance. Flexibility in planning is required due to the longer term, and in order that these plans are a reality, potential successors must be prepared for target jobs. This will involve appropriate education, training and other relevant experiences that will prepare candidates for jobs.

9.4   Training needs analysis (TNA)

In many instances, the need for training and development may be identified as a result of a problem that exists in the organisation (e.g. a fault, a symptom or a gap). Some common production problems are:

> excessive wear and tear on equipment
> too much waste or work to be rectified

> quality standards not met
> high absenteeism
> difficulties caused by changes in methods, procedures or equipment
> deliveries of supplies delayed by lack of co-operation
> poor delegation of responsibilities
> correct procedure not carried out
> faulty housekeeping
> poor safety record
> lack of knowledge of rules and regulations
> unsatisfactory communication of information
> unsatisfactory customer relations
> poor product merchandising
> poor product knowledge
> high turnover
> complaints from customers/employees
> targets not met
> conflict among employees.

However, after recognising that a problem exists, it may only be a symptom, so it is important to trace the problem/s back to related causes or influences. Often, training and development, or a lack of it, may contribute to a problem, along with other causes that can be identified.

Therefore, a first step is to determine what the problem really is, as opposed to what it appears to be. Following is a list of 'clues' that may serve as indicators of a training need:

Indicator	Performance
1. Output	Low/Falling
2. Scrap and wastage	High/Rising
3. Standards of performance	Low/Falling
4. Time to perform tasks	Long/Rising
5. Time to learn how to perform tasks	Long/Rising
6. Use of machinery and equipment	Low/Falling
7. Accident rate	High/Rising
8. Labour turnover	High/Rising
9. Absenteeism	High/Rising
10. Delays	Excessive/Increasing

It cannot be stressed too heavily that it would be a great mistake to assume training and development is a 'cure-all'. The existence of a symptom does not necessarily mean training and development alone can solve the problem. As an example, the output levels of a particular section of an organisation may be much lower than had been planned. Some possible reasons for this may be:

> incorrect target-setting (technological system)
> lack of operator competency (human system)
> unsuitable equipment (technological system)
> inappropriate methods (technological system)
> working environment (technological system).

Some possible weaknesses may include:

> lack of corporate plans and objectives
> managers unsure of their responsibilities
> managers unsure of the responsibilities of colleagues
> lack of budgeting
> lack of control systems (e.g. cost control, inventory control)
> ignorance of organisation communication channels.

9.5 Systematic approach to training and development

Significant benefits from training and development activities can be achieved only if some form of analysis is undertaken first. This is necessary regardless of the size of the business. There are three phases to a systematic training and development program:
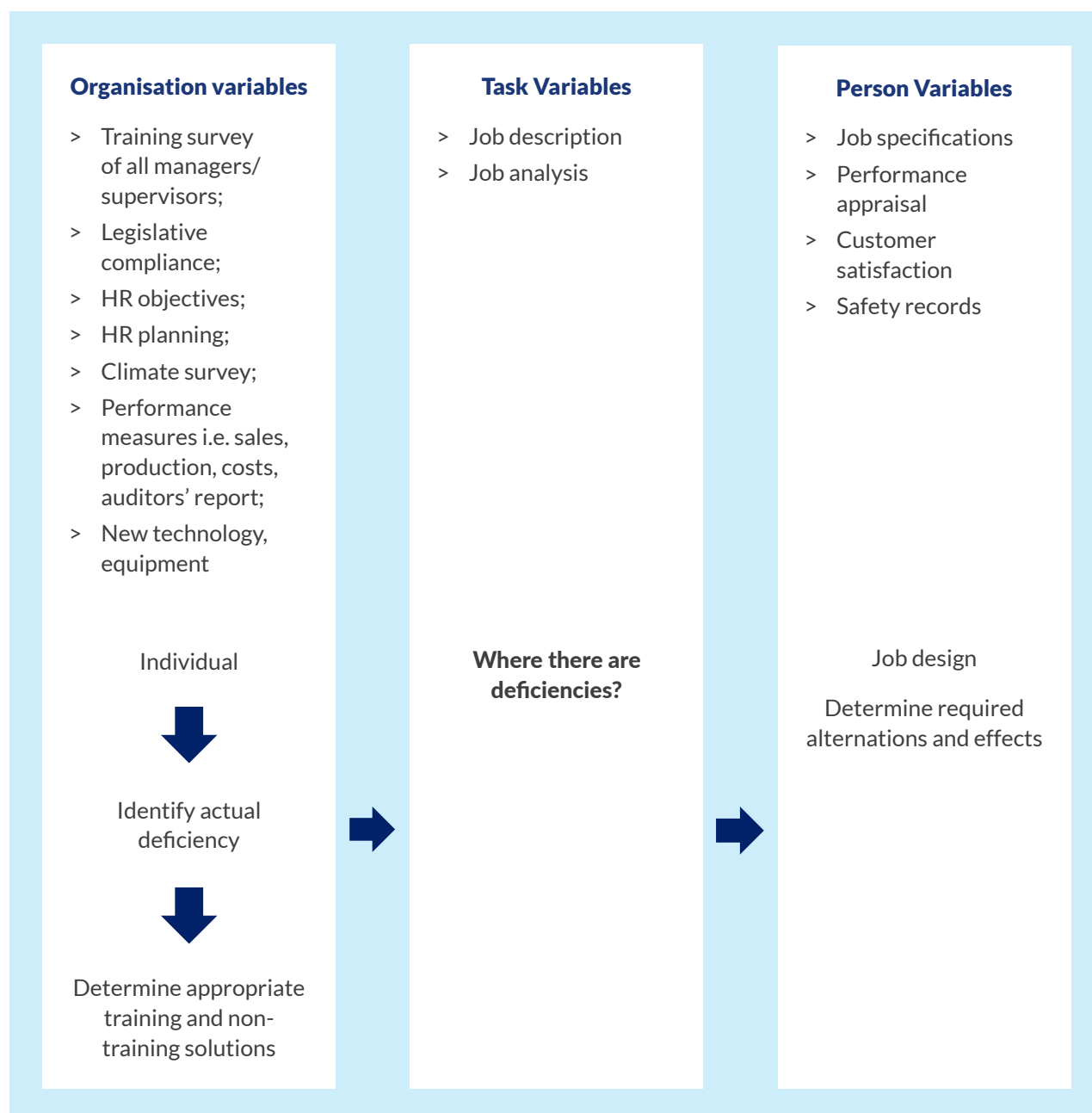
1. **Assessment phase** – including training needs analysis.
2. **Action phase** – developing a training plan.
3. **Evaluation phase** – analysing if and how the training and development activity has contributed to expected outcomes.

9.5.1 Assessment phase (training needs analysis)

Effectiveness of training is enhanced when training activities are preceded by comprehensive analysis. This enables management to discover how training and development can contribute to the organisation's objectives. Analysis involves determining the training needs and translating them into training objectives. This phase provides direction and purpose for the training activity, and facilitates the final phase of evaluating its effectiveness.

This phase is one of the most important to any training activity, and one which, unfortunately, is often neglected. Many organisations identify a performance problem and conclude that training is the solution, often in the form of a short course. As outlined earlier, poor performance can be related to a number of issues other than individual skill and ability. Another common mistake is to jump into a course because 'other organisations are doing it, so it must be good'.

The following needs analysis model is designed to provide a systematic approach to training and development. Regardless of the size of your organisation, this model is relevant to determining whether training should be undertaken and, if so, in what form. Review the following:

Victorian Chamber of Commerce and Industry

Organisation variables	Task Variables	Person Variables
> Training survey of all managers/supervisors;	> Job description	> Job specifications
> Legislative compliance;	> Job analysis	> Performance appraisal
> HR objectives;		> Customer satisfaction
> HR planning;		> Safety records
> Climate survey;		
> Performance measures i.e. sales, production, costs, auditors' report;		
> New technology, equipment		

Individual	Where there are deficiencies?	Job design
⬇		Determine required alternations and effects
Identify actual deficiency	➡	➡
⬇		
Determine appropriate training and non-training solutions		

Organisation variables take into account the business needs and objectives, giving consideration to human resource planning (refer *Chapter 2 Human resources management – planning and review*), performance measures and the anticipated needs, such as new technology and equipment. As described earlier, a systematic approach to training and development needs to look at the 'big picture', analysing where resources are best spent to maximise the return for the training dollar.

The next step is to review the **task variables**, which are detailed in the job description and job analysis. The job description (refer *Chapter 3 Job Analysis*) specifies the responsibilities of the jobholder, under what conditions the job is performed and the standards of performance required. You may find that the job description needs

amending as a result of the training needs analysis. For instance, some tasks may have become irrelevant or may have changed as a result of new organisational direction, new products or technology.

The final step is to review the **person variables**. The job specification identifies the skills, knowledge, abilities, qualifications, experience, personal qualities and any special requirements that the person needs to perform the job. This is a logical area to identify training needs when compared to the incumbent's performance appraisal. Other useful tools are customer surveys and safety records, to identify or uncover a performance problem. Finally, consideration of the above will identify where the deficiencies are, and determine if they are individual or related to job design. If the issue is job design, undertake a job analysis to make appropriate adjustments.

If the problem is individual, in some instances you will find that the person does not have the motivation or capacity to improve to the required standard. Procedural fairness requires that you provide the individual with opportunity to improve through training and development. It is essential to carefully document any training offered at this stage to protect the organisation against a possible grievance if termination of employment becomes the final outcome.

Information gathering for training needs analysis

In most instances, there will be documents that you can refer to for the information required to conduct the training needs analysis (e.g. business plan, job description, performance appraisals, climate survey report, and customer satisfaction report). However, consideration of the following will supplement your information:

Industry

> effectiveness and efficiency of resource usage in the industry
> role of each industry sector and interactions among industry sectors
> equipment capability
> workforce morale
> industrial relations climate
> economic climate
> regulation of the industry
> training arrangements for the industry.

Organisational

> function of each section of the organisation
> labour recruitment difficulties
> equipment capability
> workforce morale
> work organisation
> industrial relations climate
> adequacy of training effort
> management style.

Person

> Function – what is the person's function in the organisation?
> Morale – does the person enjoy their job?
> Work environment – how much influence does the person have in the workplace layout?
> Relations with supervisor/s and others.

Objectives of the first phase of 'assessment'

1. Identify training needs and priorities:
   a. employees/jobs/areas that require planned training because of current weaknesses or to cater for anticipated business needs
   b. number of employees that require training
   c. priorities and critical areas where training will result in a significant and timely return (benefit) and resources or constraints that may affect these decisions.

2. Examine the job area selected as priority. Is training indeed necessary, or can the system, either in part or as a whole, be profitably changed to alleviate the necessity without training?

3. Analyse the job/area by reviewing:
   a. job description/s
   b. job specification/s
   c. any other analysis of the skills, knowledge, abilities, attitudes and competencies that may affect the type and focus of training and development programs and techniques.

4. Specify, select and evaluate employees to be trained. This will be your target population.
   a. Which of the specified skills, knowledge, abilities and competencies do the target population already possess? When compared to the job specification, this will give the 'training gap' or training specification.
   b. Will you have to recruit, as well as retrain, present employees?
   c. Establish the training objectives (i.e. what the trainees must be able to do and to what standard, after the training).

9.5.2 Action phase

The next step is to determine how you are going to achieve the learning objectives identified by the training needs analysis. It is imperative to select the right format, location and timing. This form of preparation is just as important as the training program itself. Operational realities will determine how the training may be undertaken because organisation's need to maintain productivity, even when employees are required elsewhere for extended periods.

The training objectives identified in the previous step should be divided into specific **skill objectives and improvement objectives**.

1. Skill objectives

> Specify the exact behaviour the participant will be able to produce as a result of the training (e.g. if the goal is related to customer service, the skill objective may be for the participant to complete all transactions accurately, and in a courteous and timely manner).

> Identify the conditions under which the behaviour will be produced (e.g. the customer service attendant will be able to correctly complete transactions in peak periods and high traffic areas, such as the main terminal on weekends).

2. **Improvement objectives** should be stated and, where possible, quantified. This process enables the organisation to more accurately assess its return from the training investment, and may include:

> extent to which errors will be reduced

> improvements in efficiency (e.g. time saving and volume increases)

> level of autonomy at which the trained employee will be capable of working effectively without the need to consult with a supervisor or a more senior employee.

All **training objectives** should be achievable and clearly specified. In addition, they should be related to the business objectives and the individual's position objectives. Once the training objectives (skill and improvement) have been clearly identified, **a training program and plan** should be drafted.

The **training program** is designed around the training objectives and should give consideration to delivery styles such as simulation, on-the-job experience, action learning and competency-based training. The **training plan** is then completed, with consideration of the following issues:

> sequence of the learning

> method of delivery

> individual/s responsible for training delivery

> statement of corporate goals and objectives that impact on the training plan

> assessment of anticipated changes to the workforce and their implication for training

> assessment of required human resources

> identification of additional personnel required and associated implications

> specific training plan to be developed at the organisational, departmental or individual level

> specification of the skills, knowledge and competencies which need to be addressed. Depending on the level of detail required, the plan should specify:

> time frame

> priorities

> individuals

> type/s of training required

> identification of possible training programs available

> costings

> identification of personnel responsible for implementation

> evaluation process

9.5.3   Evaluation phase

Investment in training and development activities must be justified, and the organisation requires evidence that the training has contributed to improved performance, adding measurable value. It is therefore crucial that an organisation effectively evaluates both external and internal training programs to determine whether there has been a positive impact in the workplace.

The validity of evaluation depends on setting objectives. Evaluation involves comparing the intended outcome with measurements of actual results, examining and explaining any variances. Donald Kirkpatrick, a training expert, has identified four criteria that can be used to evaluate the effectiveness of training: reactions, learning, job behaviour and results.

1. Reactions

This measure is designed to measure the participant's perception and evaluation of the training experience. Kirkpatrick emphasises this measure because learning is unlikely to have occurred if the participant does not have a favourable reaction. Reactions can be measured during, or at the end, of the training activity. It is based on opinions, attitudes and impressions, covering content, the trainer's delivery style and the environment.

2. Learning

Learning is measured in terms of the training objectives. This is a form of testing to evaluate how well the participants acquired the skills and knowledge delivered in the session/s.

3. Job behaviour

Changes in job behaviour will indicate the effectiveness of the training activity. All forms of job behaviour can be measured, such as changes in work relationships, communication skills and patterns of work. Changes in job behaviour can be evaluated by observation, discussion with supervisors, and outcomes in performance appraisals.

4. Results

This measures the overall corporate-level results. It involves reviews of outcomes such as changes in productivity levels, sales, errors and absenteeism costs. To measure the four criteria, your organisation needs to develop a process that identifies the how and timing of evaluation. For instance, to measure the results, you need to collect the most recent productivity figures, absenteeism levels, and costs prior to commencing the training activity. These figures need to be calculated again following the training activity, looking for any variances.

A training evaluation form should be given to participants during the training program (formative evaluation), or at the end (summative evaluation). An evaluation form will capture the participant reaction to the training.

Special or standardised tests can be developed to measure the level of learning. These can be delivered either during the program or at the end of it.

The final phase of evaluation will ensure:

1. Review of the training objectives established in phases one and two.
2. Design and implementation of processes and tools to evaluate training activities.
3. Assess participant performance against desired outcomes.
4. Provide an opportunity for giving feedback to the participants.
5. Review the overall outcomes against the training objectives.
6. Review of the training and development activity against the business goals.

9.6 Types of training

Some of the major ways to deliver training are: on-the-job instruction, skill training and instruction, action learning, and competency-based training.

9.6.1 On-the-job instruction

The most common form of training given to employees is 'on the job'. When preparing on the job training programs, the instructor should identify the skills and competencies to be acquired, the means of imparting these skills and the expected outcomes. (Refer *Section 9.7 Documentation* for a sample *Training plan-On the Job*).

On the job training uses one of the most valuable training tools - experience. This is a particularly effective method because there are no transfer problems from the learning environment to the job. The types of on the job training are coaching (the most common), mentoring, job rotation, project assignments and secondments.

9.6.2 Skill training and instruction

The key to teaching skills is to break the job down into a series of logical, sequential steps and to record these on an instruction sheet (refer *Section 9.7.4 Documentation, Skills training instruction sheet*).

Four basic steps to remember when instructing:

1. prepare
2. present
3. try out
4. put to work.

This format will ensure that:

> the training process will flow logically

> steps will not be overlooked

> a format is established that most trainees can follow.

It is important to remember that the instruction sheet must be supported by effective instruction, coaching and ongoing feedback.

To expand on the four basic steps, you can use the following process to help with your skills training:

1. Create interest. Explain why the job is important. Be at ease yourself and put the learner at ease. Gain their interest in learning the job.
2. Explain the job. Tell them briefly what the job entails. Find out their existing level of knowledge. Place them where they can see what you are doing.
3. Demonstrate the method. Use an instruction sheet as the reference. Give the information logically: show one step at a time. Stress key points and explain the purpose and reasons behind learning activities. Give only as much information as can be absorbed at one time. Encourage questions. Repeat it to reinforce your instruction.
4. Assess performance. Get the trainees to do the job themselves, observe carefully and correct mistakes as soon as they occur, and give praise when appropriate. Get them to repeat the task. This time ask them to explain, at each step, what they are doing and why. This test of understanding is the most

important stage in the learning process. Ensure that all steps are following the correct sequence. Persist until both of you know that the job can be done properly. Record the training given.

5. Review progress. Let them do the job by themselves. Encourage them to seek help if needed and tell them who to contact if they need assistance. Check back until they are fully competent.

9.6.3   Action learning

Action learning is based on learning by experience. The material for action learning is not based on texts, but real organisational problems. Trainees are formed into small groups and asked to work on a defined project taken from their own organisation. With the assistance of an advisor, each trainee undertakes research and develops a solution that can be implemented in the workplace.

Group members share experiences and support each other. Action learning attempts to create conditions similar to those which managers experience, and from which they can learn and grow.

9.6.4   Competency-based training

Competencies are the demonstrable and assessable skills that distinguish effective from ineffective job performance. Competency-based training (CBT) establishes learning objectives for each competency, with a detailed specification of the learning that is necessary to achieve these objectives, and the minimum standards that are expected for success. This achievement must be both observable and measurable.

The steps involved in CBT include:

1. Capability profiling:

   > identify the competencies needed to perform the job
   > rank the competencies by importance
   > evaluate the job holder against the competency standards
   > identify strengths and areas needing remedial attention.

2. Select training programs or other learning methods that can develop the desired skills.

3. Produce a personal training plan for each participant.

4. Assess the competency.

9.6.5   Apprenticeships and traineeships

The Victorian Chamber of Commerce and Industry powers the Victorian Division of the Apprenticeship Support Australia, which was formed in 2014 to deliver the Australian Apprenticeship Support Network, contracted by the Australian Government's Department of Education and Training. Through this program, they are able to support employers throughout Victoria who are looking to, or currently, employ apprentices.

Apprenticeships Support Australia provides advice to employers on selecting a relevant nationally recognised qualification and training option for employees, completing and registering a training contract, claiming financial incentives and other support, and selecting a Registered Training Provider. Pathways are available for numerous industries and occupations, and can be delivered on-the-job or off-the-job to meet the needs of both the employer and the employee.

1. Occupations

No two businesses are the same, and that is why Australian Apprenticeships have been designed to be flexible, while at the same time providing nationally recognised quality training developed by industry for industry.

Australian Apprenticeships cover all apprenticeships and traineeships. They combine time at work with training and can be full-time, part-time or school-based.

There is likely to be an Australian Apprenticeship to suit your business needs, as they are available in a variety of qualification levels in more than 500 occupations across Australia, in traditional trades, as well as a diverse range of emerging careers in most sectors of business and industry.

For further information regarding Australian Apprenticeships refer to: www.apprenticeshipsupport.com.au/states/victoria and/or contact the Victorian Chamber of Commerce and Industry on 03 8662 5333.

2. Assistance available for employers of Australian Apprentices

The Australian Government has introduced a number of initiatives to assist employers who take on an Australian Apprentice, particularly where the Australian Apprenticeship is in a trade experiencing a skills shortage. These initiatives provide financial incentives to eligible employers and apprentices through the Australian Apprenticeships Incentives Program.

Please note that these incentives are created by the Government to achieve specific priorities and are therefore subject to change.

Employers of an Australian Apprentice may be eligible for financial assistance through:

> Standard, additional and special incentives
> Support for Adult Australian Apprentices
> Assistance for Australian Apprentices with Disability
> Support for employing an Australian School-based Apprentice.

Standard, additional and special incentives

Employers of Australian Apprentices may be eligible to claim commencement and completion incentive payments of up to $4000 for employing an Australian Apprentice at the Certificate III to Advanced Diploma level (subject to meeting the required eligibility criteria).

There are also a range of additional incentives available to employers of an Australian Apprentice including the:

> Declared Drought area incentive
> Rural and Regional Skills Shortage incentive
> Mature Aged Worker incentive.

An employer may also be eligible for the Group Training Organisation Certificate II completion incentive where the employer is a Group Training Organisation and the Australian apprentice has successfully completed an Australian Apprenticeship at the Certificate II level.

Support for Adult Australian Apprentices payment initiative

The Support for Adult Australian Apprentices payment initiative provides financial support to Australian Apprentices **or** their employers where the Australian apprentice is aged 25 or over at the commencement of their Australian Apprenticeship on or after 1 January 2010, and is undertaking an Australian Apprenticeship at the Certificate III or IV level in an occupation experiencing a skills shortage.

Assistance for Australian Apprentices with Disability

Assistance for employers of Australian Apprentices with disability includes Disabled Australian Apprentice Wage Support and Assistance for Tutorial, Interpreter and Mentor Services.

Each form of assistance is intended to help Australian Apprentices with a disability to reach their full potential.

9.7   Documentation

9.7.1   Training and Development Policy Template

9.7.2   Induction Checklist

9.7.3   Training Plan Template

9.7.4   Skills Training - Instruction Sheet Template

9.7.5   Course Planning Checklist

9.7.6   Training Session Evaluation Template

10. Human resource management and the law

The employer-employee relationship is governed by various State and Federal legislation. Whether your business is large or small, it is necessary to have at least a basic understanding of employment law. A manager who is responsible for the recruitment, development, overall supervision of employees and termination of the employment relationship will make decisions every day that are governed by law.

In addition to satisfying matters of compliance, organisations that work within the law will reap benefits through developing a positive working partnership with their employees. Both parties will understand their rights and obligations and will work towards a more unified approach. As a result, productivity gains will become evident.

Managers should be in a position to make the right decisions quickly with respect to their employees. This is only possible if the manager has an understanding of both the business's needs and the legal responsibilities pertaining to the employment relationship.

This chapter provides an overview of:

> common law and the employment relationship
> contract of employment
> employment-related legislation.

10.1   Common law and the employment relationship

Common law is the name given to the body of 'case law' that has been established by the courts over many years. Common law imposes certain duties and obligations on the employment relationship. These obligations apply to all contracts of employment, whether or not the parties are aware of them or have agreed to them.

Both the employer and the employee have a number of common law duties imposed on them when in an employment relationship. The following table outlines those duties:

Employee	Employer
Duties and obligations to the employer:	**Duties and obligations to the employee:**
> to work in a skillful and competent manner > to obey the employer's lawful demands > to provide faithful service, which includes a prohibition on disclosing confidential information; to account for and protect the employer's property; and to give complete attention to performing the work. Further, the benefit of discoveries or inventions developed by employees during the course of their employment must be given to the employer.	> to pay wages and reasonable expenses incurred in the course of the employment > to provide work in circumstances where payment is directly tied to performance > to take reasonable care for their health and safety > to indemnify an employee for losses incurred by the employer while performing duties under the contract of employment.

10.2 Contract of employment

When an employer agrees to engage a person to perform work in exchange for monetary payment, a legal relationship begins. At the time the agreement is made, a contract of employment is formed. A contract of employment is a legally binding contract and a significant body of law exists relating to such contracts.

Discussion about the contract of employment can be confusing as people usually refer to the contract of employment as a written document. At law, however, the term 'contract of employment' refers to the legal relationship between an employer and employee, whether in writing or not.

10.2.1 Implied terms

A contract of employment exists whether or not the contract terms are in writing. Some terms apply to the contract even if the parties have not specifically discussed or agreed to them (refer *10.1 Common Law*). Those terms of a contract of employment that apply without having been verbally agreed to or put in writing are referred to as **implied terms**.

A court may imply certain terms into a contract of employment where it is considered necessary to give the contract business efficacy or to allow the contract to be effective or capable of being carried out. In simple terms, these terms 'fill the gaps' that may exist in a contract of employment. For a court to imply a term into a contract of employment, the term must be something that 'goes without saying' and does not contradict an expressed term. Implied terms may include:

> terms implied by law (including common law obligations)
> terms implied by fact (i.e. based on the circumstances of the particular employment relationship, e.g. custom and practice).

10.2.2 Express terms

Express terms of a contract of employment refer to those terms that have been expressly agreed upon (verbally or in writing). Usually, parties entering into an employment relationship will agree on a number of terms and conditions of employment. In many cases, some or all of these terms will be set out in writing in some form.

In Australia, the National Employment Standards and the Federal Modern Award system determine minimum terms and conditions for many employees. Federal Awards are comprehensive, leaving little else to be expressed in a contract. However, even where a comprehensive Modern Award or Enterprise Agreement is in place, it is important that both parties fully understand all of the terms of the contract of employment. It is recommended therefore that all employees have a written contract of employment (refer *10.2.3 below* and *Chapter 4 Recruitment and Selection*).

10.2.3 Terms and conditions of employment

Employment contracts should not be long, complicated documents. They should be written in clear, plain English so that both parties fully understand the content. In most cases, a standard base employment contract can be developed for each major category of employee (e.g. award covered/management, full-time, part-time, casual, fixed term).

An employment contract checklist and sample or outline contract is included in Chapter 4 (refer *4.9 Documentation*). This chapter sets out the minimum terms and conditions of employment for Victorian

employees. It is important to consider your individual circumstances and to get more advice, if necessary, to ensure your employment contracts are both legal and suited to your business needs.

The checklist provides an extensive list of items that may be included. Some of the terms recommended to be included in a contract of employment are listed below:

> - job title
> - probationary period
> - position description/duties
> - work location
> - remuneration and benefits
> - hours of work
> - superannuation
> - leave entitlements
> - overtime and penalties
> - confidential information
> - security
> - refer to all other human resource policies and procedures
> - termination of employment.

Once you have established the content of the employment contract, ask the employee to review it thoroughly. Ensure both parties have signed the employment contract before the employee begins work. Provide the employee with a signed copy and keep the original on the employee's personnel file.

10.3   Employment-related legislation

In Australia, Federal and State Governments have developed a wide range of legislation that relates to the employment relationship. Such legislation crosses many boundaries of the employer/employee relationship. Although it is not reasonable to expect that employers understand all of the complexities of the legislation fully, serious penalties are imposed in the event of a breach of the law. Therefore, it is important to be familiar with the general guidelines, and to seek advice where and when you have concerns. Unfortunately, there are no exceptions for small businesses, regardless of limited time and resources.

Some of the employment related legislation that employers should be familiar with include:

> - *Fair Work Act 2009 (Cth) (see below)*
> - *Equal Opportunity Act 2010 (Vic) (see also Chapter 8)*
> - *Sex Discrimination Act 1984 (Cth) (see also Chapter 8)*
> - *Racial Discrimination Act 1975 (Cth) (see also Chapter 8)*
> - *Disability Discrimination Act 1992 (Cth) (see also Chapter 8)*
> - *Occupational Health and Safety Act 2004 (Vic) (see also the Victorian Chamber OHS Manual)*
> - *Long Service Leave Act 1992 (Vic)*

10.3.1   The Fair Work Act 2009 (Cth)

In 1996, the Victorian Government referred certain aspects of its industrial relations powers to the Commonwealth so that workplace relations in Victoria are regulated by a single piece of Federal legislation, now known as the *Fair Work Act 2009 (Cth)*.

The Federal Act contains approximately 800 sections, each relating to a particular aspect of the workplace relations system, such as:

> The Fair Work Commission
> Fair Work Ombudsman
> Fair Work inspectors
> National Employment Standards (NES)
> Modern awards
> Enterprise agreements
> Interaction between NES, modern awards and enterprise agreements
> Workplace determinations
> Minimum wage
> Equal remuneration
> Transfer of business
> General protections
> Termination of employment including unfair dismissal and unlawful termination
> Industrial action
> Right of entry
> Registered organisations
> Employment records.

Awards

The first 122 modern awards commenced on 1 January 2010 coinciding with the introduction of the new national workplace relations system. Together with 10 minimum National Employment Standards (NES) and the **national minimum wage order**, the modern awards make up a safety net for employees in the new system. While modern awards commenced on 1 January 2010, many contain transitional arrangements which phase-in changes in wages, loadings and penalty rates over a five year period.

The National Employment Standards (NES) are contained in the *Fair Work Act 2009 (Cth)*. They are minimum standards applying to the employment of employees which cannot be displaced, even if an enterprise agreement includes terms that have the same (or substantially the same) effect as provisions of the NES.

The Fair Work Act empowers the Fair Work Commission to make and adjust the modern awards. An award is a formal document, enforceable at law, which details the rights, duties and conditions of employment for both employers and employees in a particular industry or occupation.

A modern award may include terms about any of the following matters:

> minimum wages (including wage rates for junior employees, employees with a disability and employee to whom training arrangements apply); and skill-based classifications and career structures; and incentive-based payments, piece rates and bonuses;

> type of employment, such as full-time employment, casual employment, regular part-time employment and shift work, and the facilitation of flexible working arrangements, particularly for employees with family responsibilities;

> arrangements for when work is performed, including hours of work, rostering, notice periods, rest breaks and variations to working hours;

> overtime rates;

> penalty rates, including for any of the following:

- employees working unsocial, irregular or unpredictable hours;

- employees working on weekends or public holidays;

- shift workers;

> annualised wage arrangements that:

- have regard to the patterns of work in an occupation, industry or enterprise; and

- provide an alternative to the separate payment of wages and other monetary entitlements; and

- include appropriate safeguards to ensure that individual employees are not disadvantaged;

> allowances, including for any of the following:

- expenses incurred in the course of employment;

- responsibilities or skills that are not taken into account in rates of pay;

- disabilities associated with the performance of particular tasks or work in particular conditions or locations;

> leave, leave loadings and arrangements for taking leave;

> superannuation;

> procedures for consultation, representation and dispute settlement.

Any allowance included in a modern award must be separately and clearly identified in the award.

The modern awards set minimum conditions for any employer who is employing people in an occupation or in an industry sector covered by the scope of a particular modern award.

National Employment Standards - Minimum terms and conditions of employment

For those employees who are not subject to modern award coverage, their minimum terms and conditions of employment are also determined by the National Employment Standards are set out in the *Fair Work Act 2009 (Cth)*. The National Employment Standards are:

1. *Maximum weekly hours of work* – 38 hours per week, plus reasonable additional hours.

2. *Requests for flexible working arrangements* – An employee will be eligible to make a request to a change in their working arrangements if they meet any of the following criteria:

- the employee is the parent, or has responsibility for the care, of a child who is of school age or younger;

- the employee is a carer (within the meaning of the *Carer Recognition Act 2010*);
- have a disability;
- 55 years old or older;
- experiencing violence from a member of the employee's family;
- providing support to a member of his or her immediate family (please see Definitions below)or member of his or her household who requires care/support because the member is experiencing violence from the member's family;

3. *Parental leave and related entitlements* – up to 12 months unpaid leave for every employee (inclusive of the entitlement to 10 'keeping in touch' days), plus a right to request an additional 12 months unpaid leave, and other forms of maternity, paternity and adoption related leave.

4. *Annual leave* – four weeks paid leave per year, plus an additional week for certain shift workers. Accrues on a pro-rata basis and is cumulative. Annual leave is to be taken by mutual agreement between the employer and the employee and must not be unreasonably refused.

5. *Personal / carer's leave* – An employee may take paid personal/carer's leave when the employee is sick or injured or when the employee needs to care for an immediate family or household member who is sick, injured or has an unexpected emergency.

   - Ten days paid personal / carer's leave, an employee's entitlement to paid personal/carer's leave accrues progressively during a year of service according to the number of ordinary hours worked and accumulate from year to year.
   - Two days unpaid carer's leave as required
   - Five days unpaid family and domestic violence leave in a 12 month period where the employee is experiencing family and domestic violence and needs to do something to deal with the impact of the family and domestic violence where they cannot do that thing outside of ordinary work hours.
   - *Compassionate leave* – 2 days per occasion, not from accrued entitlements. A permissible occasion is defined as a circumstance where 'a member of the employee's immediate family, or a member of the employee's household': contracts or develops a personal illness that poses a serious threat to his or her life, sustains a personal injury that poses a serious threat to his or her life, dies.

6. *Community service leave* - unpaid leave for voluntary emergency activities and leave for jury service, with an entitlement to be paid for up to 10 days for jury service.

7. *Long service leave (LSL)* - a transitional entitlement for employees who had certain LSL entitlements before 1 January 2010 pending the development of a uniform national long service leave standard.

8. *Public holidays* - a paid day off on a public holiday, except where reasonably requested to work.

9. *Notice of termination and redundancy pay* - up to four weeks' notice of termination (five weeks if the employee is over 45 and has at least two years of continuous service) and up to 16 weeks redundancy pay, both based on length of service.

10. *Provision of a Fair Work Information Statement* - employers must provide this statement to all new employees. It contains information about the NES, modern awards, agreement-making, the right to freedom of association, termination of employment, individual flexibility arrangements, right of entry, transfer of business, and the respective roles of the Fair Work Commission and the Fair Work Ombudsman.

These conditions comprise the National Employment Standards (NES) and apply to all employees covered by the Federal system. Employees who are covered by a modern award will continue to be entitled to their award conditions if those conditions are more generous that the Standard.

This information is intended as general advice.

If you need specific advice about employment matters such as the National Employment Standards, drafting an employment contract, rates of pay or whether employees are subject to award coverage and, if so, under which award, contact the Victorian Chamber Workplace Relations Advice Line on 03 8662 5222 to discuss your particular circumstances.

10.3.2   Enterprise agreements

Under the *Fair Work Act 2009 (Cth)*, an employer may enter into an Enterprise Agreement with some or all of their employees. Enterprise Agreements cannot be made with a single employee.

An employer is no longer able to enter into an individual statutory agreement (previously known as Australian Workplace Agreements (AWA) and Individual Transitional Employee Agreements (ITEAs)) that were approved by the Workplace Authority. However an employer can enter into a common law contract of employment that is not registered with or approved by a government agency.

Enterprise (collective) agreements are made with employees. Employees have a right to have a bargaining representative act on their behalf in the negotiations. The bargaining representative may be the employees' union or unions, the employee themselves or another representative. A union official cannot act as bargaining representative for an employee unless the union has coverage to represent that employee. Enterprise agreements made under the Federal Act are required to be lodged with the Fair Work Commission for approval.

Enterprise agreements need to be approved by the Fair Work Commission. An enterprise agreement must comply with the National Employment Standard and employees must be 'better off overall' in comparison to any relevant modern award. The Fair Work Commission will be responsible for applying the Better Off Overall Test (BOOT).

Enterprise agreements will cover 'matters pertaining to the employment relationship' generally. However, enterprise agreements cannot contain unlawful content (e.g. terms that are discriminatory, terms that are inconsistent with union right of entry laws, provisions allowing payment of bargaining service fees to unions).

Enterprise agreements must include a provision allowing individual flexibility arrangements for employees and must include a term requiring consultation where major workplace change is proposed together with a term for dispute resolution.

The individual flexibility clause is restricted to changes regarding:

> arrangements for when work is performed
> overtime rates
> penalty rates
> allowances
> leave loading.

Good faith bargaining obligations are set out in the *Fair Work Act 2009 (Cth)*, and provide that a bargaining representative must:

> attend, and participate in, meetings at reasonable times
> disclose relevant information (other than confidential or commercially sensitive information) in a timely manner
> respond to proposals made by other bargaining representatives for the agreement in a timely manner
> give genuine consideration to the proposals of other bargaining representatives for the agreement, and giving reasons for the bargaining representative's responses to those proposals
> refrain from capricious or unfair conduct that undermines freedom of association or collective bargaining
> recognise and bargain with the other bargaining representatives for the agreement.

The good faith bargaining requirements do not require a bargaining representative to:

> make concessions during bargaining for the agreement
> reach agreement on the terms that are to be included in the agreement.

If a party is not acting in good faith during negotiations for an enterprise agreement, the Fair Work Commission may be asked to make orders for compliance. However, a party will not be compelled to agree to a proposal unless there are exceptional circumstances.

The Fair Work Commission will only arbitrate a dispute if a bargaining representative has breached a bargaining order and such breach is serious and has undermined the negotiations for an enterprise agreement. The involvement of the Fair Work Commission in such cases is intended to be a "last resort" only, and there must be evidence all other reasonable alternatives have been exhausted.

Victorian Chamber consultants can advise and/or assist in the process of developing contracts of employment or enterprise agreements, and we strongly advise that you seek this additional advice before considering any agreement-making options.

10.3.3   Industrial action

Unions and employees will not be able to take lawful industrial action when negotiating an enterprise agreement unless this has been authorised by a majority of employees, voting by secret ballot. The Fair Work Commission can prevent industrial action during negotiations if it is causing significant harm to a third party. Industrial action can be stopped if it is threatening health, safety or the economy.

10.3.4   Unfair dismissals

This information is intended as a general overview of the legislation. If you need specific advice about terminating an employee please contact the Victorian Chamber Workplace Relations Advice Line on 03 8662 5222 to discuss your particular circumstances.

When considering whether a dismissal was unfair, the Fair Work Commission needs to determine whether the dismissal was harsh, unjust or unreasonable, and must take into account the points in *10.3.4 Unfair Dismissals, What is harsh, unjust or unreasonable*.

Who is eligible to make an application?

An employee is eligible to make an application for unfair dismissal if they have completed the minimum employment period of:

> one year—where the employer employs less than 15 employees (a small business employer). For the definition of a 'small business' see *10.3.4 Unfair Dismissals, Who is eligible to make an application*).

> six months—where the employer employs 15 or more employees.

In addition, if the person earns more than $148,700 per year, at least one of the following must apply:

> an award covers the person

> an enterprise agreement applies to the person.

There are certain employees who are excluded from making unfair dismissal claims. The exclusions include:

> where the dismissal was a case of *genuine redundancy*

> where the employee is not covered by an award or enterprise agreement and their annual rate of earnings exceeds the *high income threshold* ($148.700 as at 1 July 2019)

> the employee was under a contract of employment for a specified period of time, for a specified task or for the duration of a specified season

> the employee was under a training arrangement for a specified period

> certain casual employees.

Penalties imposed for inappropriate handling of dismissal / termination

Reinstatement

The Fair Work Commission may order reinstatement by:

- reappointing to the position held immediately before dismissal; or
- appointing to another position on terms and conditions no less favourable than before the dismissal.

If the position held before dismissal no longer exists, and that position or an equivalent position exists with an associated entity of the employer, then the Fair Work Commission may order appointment to that position with the associated entity on terms and conditions no less favourable than before the dismissal.

When reinstating employment, the Fair Work Commission may order that continuity employment from the date of dismissal be recognised.

In addition to reinstatement, the Fair Work Commission may order that the employer pay an amount for remuneration lost, or likely to have been lost, because of the dismissal.

Compensation

The Fair Work Commission may order payment of compensation in lieu of reinstatement. When ordering compensation the Fair Work Commission must take into account all the circumstances of the case including:

- the effect of the order on the viability of the employer's enterprise
- the length of service
- the remuneration that would have been received if there was no dismissal
- the effort to mitigate the loss suffered by the former employee
- the amount of remuneration earned by the former employee since dismissal and making the order
- the amount of income reasonably likely to be earned from making the order and receiving the compensation
- any other matter the Fair Work Commission considers relevant.

If misconduct contributed to the dismissal, the Fair Work Commission must reduce the amount of compensation by an appropriate amount on account of the misconduct. Compensation must not include a component by way of compensation for shock, distress or humiliation, or other equivalent hurt.

Compensation is to be capped at half the high income threshold which is currently $148,700 (as at 1 July 2019) or 26 weeks remuneration, whichever is the lesser amount.

Small Business Fair Dismissal Code

For the purposes of the Small Business Fair Dismissal Code, 'small business' is defined as a business with less than 15 employees.

From 1 January 2011, this is based upon a simple head count of less than 15 employees. This must include the employees of the business, and any other associated entities. The concept of 'other associated entities' is explained further below.

The definition of a small business employer is set out at section 23 of the Fair Work Act 2009. In summary, this section provides that a national system employer is a small business employer at a particular time if the employer employs fewer than 15 employees at that time.

For the purpose of calculating the number of employees employed by the employer at a particular time the employer must count:

- All employees employed by the employer at that time (including regular and systematic casual employees).
- Irregular casuals will not be included.

What is harsh, unjust or unreasonable?

In considering whether a dismissal was harsh, unjust or unreasonable, the Fair Work Commission must take into account:

> whether there was a valid reason for the dismissal related to the person's capacity or conduct (including its effect on the safety and welfare of other employees), and

> whether the person was notified of that reason, and

> whether the person was given an opportunity to respond to any reason related to the capacity or conduct of the person, and

> any unreasonable refusal by the employer to allow the person to have a support person present to assist at any discussions relating to dismissal, and

> if the dismissal related to unsatisfactory performance by the person, whether the person had been warned about that unsatisfactory performance before the dismissal, and

> the degree to which the size of the employer's enterprise would be likely to impact on the procedures followed in effecting the dismissal, and

> the degree to which the absence of dedicated human resource management specialists or expertise in the enterprise would be likely to impact on the procedures followed in effecting the dismissal, and

> any other matters that the FWC considers relevant.

There are certain employees who are excluded from making unfair dismissal claims. The exclusions include:

> where the dismissal was a case of *genuine redundancy*
> where the employee is not covered by an award or enterprise agreement and their annual rate of earnings exceeds the high income threshold
> the employee was under a contract of employment for a specified period of time, for a specified task or for the duration of a specified season which has been completed.
> the employee was under a training arrangement for a specified period
> certain casual employees.

What is a genuine redundancy?

A person's dismissal was a case of genuine redundancy if:

> the person's employer no longer required the person's job to be performed by anyone because of changes in the operational requirements of the employer's enterprise, and
> the employer has complied with any obligation in a modern award or enterprise agreement that applied to the employment to consult about the redundancy.

A person's dismissal was not a case of genuine redundancy if it would have been reasonable in all the circumstances for the person to be redeployed within:

> the employer's enterprise
> the enterprise of an associated entity of the employer.

Costs

A person involved in an unfair dismissal case before the Fair Work Commission must meet their own costs.

The Fair Work Commission may order a person to bear some or all of the costs of another person if the unfair dismissal application or response to it:

> was frivolous, vexatious or made without reasonable cause
> had no reasonable prospect of success.

In certain circumstances, the Fair Work Commission may also make a costs order against a lawyer or paid agent representing a party in an unfair dismissal case.

Privacy

In general, unfair dismissal case files and discussions in private conferences are confidential. Details will usually only be disclosed to the parties directly involved or their representatives. The Fair Work Commission is required to publish its decisions and does so by reproducing them on a section of its website.

An unfair dismissal application must be lodged **within 21 days** of the dismissal taking effect.

10.3.5   General protections disputes

This information is intended as a general overview of the legislation.

If you need specific advice about general protections please contact the Victorian Chamber Workplace Relations Advice Line on 03 8662 5222 to discuss your particular circumstances.

What are general protections?

The general protections provisions of the *Fair Work Act 2009 (Cth)* aim to protect workplace rights and freedom of association and to provide protection from workplace discrimination.

A person (such as an employer) must not take any adverse action against another person (such as an employee) because the other person has a workplace right, has exercised a workplace right, or proposes to exercise such a right.

'Workplace rights' has a very broad meaning. For example, a person has a workplace right if he or she has an entitlement under an award or agreement or a workplace law, is able to initiate a proceeding under a workplace law or is able to make a complaint or inquiry in relation to their employment.

'Adverse action' includes dismissing or refusing to employ someone, and also includes discriminating against them or otherwise injuring them in their employment (by for example demoting them). Further, a person (such as an employer) must not take adverse action against another person (such as an employee) because he or she has engaged in lawful industrial activity (such as belonging to or participating in a union). In addition, an employer must not dismiss an employee because the employee is temporarily absent from work because of illness or injury.

An employer must not take any adverse action against an employee (or prospective employee) because of his or her race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

General protections dispute applications

If a person has not been dismissed, but alleges that there has been some other contravention of the general protections provisions of the *Fair Work Act 2009 (Cth)*, they may make an application to the Fair Work Commission to deal with the dispute.

If the parties agree to participate, the Fair Work Commission must convene a private conference to deal with the dispute. The Fair Work Commission may deal with the dispute by mediation or conciliation, or by making a recommendation or expressing an opinion.

If the dispute remains unresolved, the applicant can make an application to a court to deal with the matter. If the Fair Work Commission considers that such an application would not have a reasonable prospect of success, it must advise the parties accordingly.

General protections dismissal applications

If a person believes they have been dismissed and alleges that their dismissal was in contravention of the general protections provisions of the Act, they can apply to the Fair Work Commission to deal with the dismissal.

The Fair Work Commission must convene a private conference to deal with the dismissal. The Fair Work Commission may deal with the dismissal by mediation or conciliation, or by making a recommendation or expressing an opinion.

If the dismissal remains unresolved the Fair Work Commission must issue a certificate. The applicant can then make an application to a court to deal with the matter. This must occur within 14 days of the certificate being issued.

If the Fair Work Commission considers that such an application would not have a reasonable prospect of success it must advise the parties accordingly.

A general protections dismissal application must be lodged **within 21 days** of the dismissal taking effect.

Note: A person **cannot** make a general protections dismissal application at the same time as an unfair dismissal application.

10.3.6   Unlawful termination

If an employee has been dismissed because of discrimination and they are not a national system employee they may make an unlawful termination application to the Fair Work Commission.

Employers must not terminate employees for any of the following reasons, or for reasons which include one of the following:

> a person's race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin (some exceptions apply, such as where it's based on the inherent requirements of the job)

> temporary absence from work because of illness or injury

> trade union membership or participation in trade union activities outside working hours or, with the employer's consent, during working hours

> non-membership of a trade union

> seeking office as, or acting as, a representative of employees

> being absent from work during maternity leave or other parental leave

> temporary absence from work to engage in a voluntary emergency management activity

> filing a complaint, or participating in proceedings against an employer.

An unlawful termination application must be lodged within 21 days of the dismissal taking effect.

10.4   Legislative compliance

The following section provides information regarding legislative compliance. It is designed to be a guide to the key activities that need to be managed, as prescribed by legislation, and subsequent penalties for breaches of these obligations.

The following list outlines the key human resource activities guided by specific legislation, and provides some penalties you could face if they are handled inappropriately. It is designed to provide a checklist of issues that need to be managed to minimise risk to your business.

The checklist incorporates:

Agreements/modern awards	industrial action	employment records
freedom of association	occupational health and safety	superannuation 'choice of funds'
Discrimination	access to records and right of entry	termination of employment

If an issue arises, in all likelihood you will need more information and advice. This list highlights your basic rights and responsibilities so that you can be better informed when you seek more information.

10.5   Employee relations legislative overview

10.5.1   Awards

The modern awards set minimum conditions for any employer who is employing people in an occupation or in an industry sector covered by the scope of a particular modern award. (Contact the Victorian Chamber Workplace Relations Advice Line on 03 8662 5222 for more information.)

10.5.2   Superannuation 'Choice of Fund'

Many employees have the right to choose the superannuation fund into which their employer superannuation contributions are paid. Employers need to determine which of their employees are eligible for choice of superannuation fund. Employees who are generally not eligible are:

> covered by a State industrial award or agreement
> covered by an Australian Workplace Agreement or Collective Agreement which specifies the name of a super fund
> some public servants and some members of defined benefits funds.

In summary, employers need to:

1. **Identify which employees need to be offered choice of fund**
   (see exemptions above)

2. **Provide a standard choice form to eligible employees**

   New employees should be given a standard choice form within 28 days of their starting date.

3. **Select a default fund**

   Legislation requires that employers have a default fund for employees who do not make a choice.

4. **Act on an employee's choice**

   When your employee has chosen a fund, you have two months to make contributions to that fund. If your employee does not choose a fund, contributions must be made to your selected default fund.

5. **Assess record keeping requirements**

   Legislation requires choice of fund records to be kept for a minimum of five years.

10.5.3   Workplace agreements

The rules about making enterprise agreements are contained in the *Fair Work Act 2009 (Cth)*. Employers can choose to enter into an individual common law contract of employment or an enterprise agreement with a group of employees.

1. Contract of employment

These may cover basic entitlements such as pay, allowances and leave, and may be in writing or verbal, and enforced as if they were legally-binding contracts.

Unlike enterprise agreements, this type of agreement does not replace or exclude the applicable modern award. It operates in addition to the applicable modern award.

It is preferable that any form of contract of employment is in writing and that the parties understand their rights and obligations.

2. Enterprise agreements Key features:

> terms of the agreement must pertain to the employment relationship
> must be approved by a valid majority
> the union, which may apply to be covered by the agreement, must have at least one member employed in the business
> the employer must ensure all employees have access to a copy of the proposed agreement seven days before approval is given
> must comply with the *Fair Work Act 2009 (Cth)* and pass the Better Off Overall Test (BOOT)
> cannot provide terms and conditions that fall below that National Employment Standard or the relevant modern award
> subject to any State laws dealing with occupational health and safety, workers' compensation, apprenticeships or any other prescribed law.

10.5.4   Employment records

Adequate record keeping

The organisation will benefit from developing good record keeping practices:

> meeting legislative and regulatory requirements
> protecting the rights of all employees and the interests of the organisation
> protection and support for the organisation when involved in litigation, including the better management of risks associated with the existence or lack of evidence
> support for consistency, continuity and productivity in management and administration
> documentation of activities, development and achievements.

Where to record information:

> Employee acknowledgement form - new employees need to complete a form to confirm their understanding of key organisation information. A representative of the organisation also needs to sign this form; therefore, it may be necessary to test and verify the knowledge gained by the new employee.

> Probation form - This report is designed to provide an accurate record of employees' performance over the initial period of employment and needs to be filed securely until all sections are completed with details of periodic reviews. (Refer *4.9.11 Recruitment and Selection, Documentation, Probationary Period Performance Review*.)

> Occupational Health and Safety (OHS) Checklist – An OHS checklist should be completed with each new employee.

> Training attendance - Attendance at training courses, both mandatory and optional, should be recorded in the employee's file – in particular for OHS courses.

Rules for record keeping

The rules for record keeping and payslips under the *Fair Work Act 2009 (Cth)* are:

1. An employer which is a constitutional corporation, or an employer in Victoria, must keep detailed records for each employee.

2. Records must be legible, in English, and readily accessible to a Fair Work Inspector.

3. Records must allow the Fair Work Inspector to ascertain an employee's entitlements and whether the employee is receiving them.

4. Records must be kept for seven years from the date the record is made (or altered to reflect a change).

5. Under the Fair Work Act 2009 (Cth), the following details are required to be kept:

    a. **Employment**
       - Employer name.
       - Employee name and date of birth.
       - Name of every modern award or enterprise agreement under which the employee has rights.
       - Classification of the employee under the modern award or enterprise agreement.
       - Employee work type (full-time, part-time, permanent, temporary, casual).
       - Employee commencement date.

    b. **Termination**
       - Whether the employment was terminated: by consent; by notice; summarily; or in some other manner (specifying the manner).
       - The name of the person who acted to terminate the employment

    c. **Pay records, pay slips, hours worked and leave**

Under the *Fair Work Act 2009 (Cth)* there are now compulsory requirements on employers to provide essential information on their employees' pay slips.

Employers must issue pay slips to each employee within one working day of their pay day. It is best practice for these to be written in plain and simple English. The pay slip must be issued in electronic form or hard copy. Employers must ensure that a pay slip is issued to an employee, even when they are on leave.

What information must be on the pay slip?

The employee's pay slip must include:

> the name of the employer (for example, XYZ Pty Ltd trading as XYZ Pie Shop)
> the Australian Business Number (ABN) (if any) of the employer
> the employee's name
> the date of payment
> the pay period (e.g. 24 March 2010 to 30 March 2010)
> the gross and net amount of pay
> any loadings, monetary allowances, bonuses, incentive-based payments, penalty rates or other entitlements paid that can be singled out
> if the employee is paid an hourly rate - the ordinary hourly pay rate and number of hours worked at that rate and the amount of pay at that rate
> if the employee is paid an annual rate (salary), the rate as at the last day in the pay period
> any deductions made from your employee's pay, including the amount and details of each deduction (including superannuation) including the name, or the name and number, of the fund or account the deductions are paid into
> if you are required to pay superannuation contributions for your employee's benefit, you should include:

- the amount of each superannuation contribution you will make during the pay period
- the name or the name and number of the superannuation fund you put or will put superannuation contributions into.

10.5.5   Access to records and right of entry

a) Access to records

Federal legislation provides for the inspection and copying of records, and the legislation sets out who can inspect and copy the employer's records. This includes:

> former employees, who only have the right to look at their own records
> authorised officers of the Federal Department of Workplace Relations and Small Business
> union officials, provided that they are authorised in accordance with the legislation.

b) Right of entry

A union official (which may include an employee of the union) has the right to enter premises if they hold a valid and current right of entry permit issued by the Fair Work Commission.

The permit allows the official to:

> investigate suspected breaches of the *Fair Work Act 2009 (Cth)* and other instruments
> investigate breaches relating to textile, clothing and footwear industry outworkers
> meet with employees
> exercise rights under OHS laws.

Certain rights and obligations exist in relation to the exercise of a right of entry.

Written notice (an **entry notice**) may be required to be given before entering a workplace and should be provided no less than 24 hours and no more than 14 days before the proposed visit. An exemption may be given by the Fair Work Commission under certain circumstances.

A visit to a workplace must take place during working hours. Penalties may apply for refusing, delaying or obstructing entry as well as for other breaches of the legislation.

What does an entry notice include?

An entry notice should include details of:

> the premises to be entered

> the day of entry

> the organisation the permit holder belongs to

> the section of the *Fair Work Act 2009 (Cth)* that authorises the entry

> details of the suspected breach

> a declaration by the permit holder that they represent an employee who works on the premises and:

- to whom the suspected breach relates, or

- who is affected by the suspected breach

> the provision of the organisation's rules that details the organisation's right to represent the employee.

Conduct in relation to right of entry

Permit holders must:

> abide by conditions imposed on their permit

> comply with reasonable occupational health and safety requests

> comply with reasonable requests to hold discussions in a particular room or area

> comply with reasonable requests that certain routes be taken to a room or area

> act in a proper manner and not intentionally hinder or obstruct others

> not enter any part of the premises used for residential purposes. A permit holder must not:

> be refused or delayed entry to the premises

> be refused the right to inspect and copy records or documents regarding a suspected breach

> be hindered or obstructed from exercising their rights

> give the impression that they are authorised to do things they are not, nor be reckless about giving that impression

> use information for any purposes other than the investigation.

Rights while on the premises

While on the premises, the permit holder may:

> inspect any work, process or object relevant to the suspected breach

> interview any person about the suspected breach whose interests the permit holder's organisation is entitled to represent and who agrees to be interviewed

> inspect and copy any record or document that is directly relevant to the suspected breach, that is kept on the premises or is accessible from a computer that is kept on the premises.

Documents that relate to a person who is not a member of the permit holder's organisation and that do not substantially relate to the employment of a person who is a member are not included as documents that may be inspected or copied. A permit holder may apply to the Fair Work Commission to inspect such documents or consent may be given by that person.

The permit holder may also request, by written notice, access to records and documents at a later time. The permit holder is required to produce their entry permit and a copy of their entry notice for inspection upon request or before exercising any right to inspect records or documents. Guidelines for discussions with employees:

> can hold discussions with 'eligible employees'

> 'eligible employees' are:

- those on the premises working under award/agreement binding on a union

- members, or those who are eligible to be members, of a union

> entry only during working hours

> discussions during meal or other breaks.

c) Right of entry (Victoria)

Union right of entry provisions also exist in respect of OHS due to legislative changes which came into effect in Victoria from 1 July 2005.

An 'authorised representative' may enter a workplace during business hours if they 'reasonably suspect' a contravention of the *Occupational Health and Safety Act 2004 (Vic)* or regulations has occurred or is occurring.

In order to be an authorised representative, the following requirements must be satisfied:

> the representative must be a permanent employee

> the representative must have satisfactorily completed a training course which is WorkSafe approved

> the representative must have no convictions in the previous five years

> the Entry Permit must have been issued by the Magistrates Court.

Immediately on entering a workplace, an authorised representative must take all reasonable steps to give a notice to the employer who controls the workplace. The notice must include the description of the suspected contraventions. The authorised representative must not do anything to cause work to stop unless there is a reasonable belief that there is an immediate and significant risk of serious injury or death.

Once in the workplace and solely for the purpose of inquiring into the suspected contravention described in the entry notice, the authorised representative is entitled to:

> inspect any plant, substance or any other thing at the place

> observe work

> talk to employees (with their consent)

> talk to the employer about anything relevant to the suspected contravention.

10.5.6   Freedom of association

Freedom of association is the right to choose whether or not to join an employee or employer association.

The law prohibits victimisation or discrimination on various grounds, including a person's membership or non-membership of an association, or the exercise of a person's rights under industrial laws.

The law abolishes preference in employment and compulsory unionism. The freedom of association provisions cannot be overridden.

Penalties imposed for inappropriate handling

The Federal Court may make one or more of the following orders to remedy a breach of the freedom of association provisions:

> Financial penalties
> the reinstatement of an employee or the re-engagement of an independent contractor
> payment of compensation
> an order that a person or an industry association does not carry out a threat, or not make any further threat
> interim and permanent injunctions, or other orders, to stop conduct or to remedy its effects, and any other consequential orders.

10.5.7   Anti-discrimination

Federal and State anti-discrimination law provides that an employer may be legally responsible for discrimination and harassment that occurs in the workplace or in connection with a person's employment (such as provision of goods and services) unless it can be shown that 'reasonable steps' have been taken to reduce this liability.

This responsibility is called 'vicarious liability'. The vicarious liability provisions do not preclude individuals from being held liable for their own discrimination or harassment behaviour in the workplace or in connection with their employment.

Both the employer (by not taking reasonable steps) and the employee (who is the alleged discriminator or harasser) will be held jointly liable for the behaviour (refer *8.2.5 Grounds of Discrimination*).

The *Fair Work Act 2009 (Cth)* includes a number of provisions intended to help prevent and eliminate discrimination. They relate to the objects of the Act and to awards, agreements and termination of employment. Specific provisions also deal with ensuring equal remuneration for work of equal value, and the prevention of discrimination on the basis of union membership or non-membership (refer *10.5.6 Freedom of Association*).

An employer must not discriminate against a person in determining who should be offered employment, or the terms on which they offer employment.

Advertising – Employment advertisements should not openly state, or imply, that the job is restricted to people on the basis of certain attributes protected under various legislation (some exceptions apply, such as genuine occupational requirements).

Selection criteria – Employers cannot assess candidates for the same role on different criteria. Consistent application of pre-set criteria is important.

Interview questions – It is against the law to request information that could be used to discriminate against a person. This means persons conducting interviews cannot request information either in an application form or as a question in an interview if the information could be used as a basis for discrimination.

10.5.8   Industrial action

The definition of industrial action in the *Fair Work Act 2009 (Cth)* is very broad (i.e. your employees are engaged in industrial action if they do something which restricts, limits or delays work, such as imposing bans, or work-to-rule or go-slow campaigns).

Action based on a reasonable concern about an imminent risk to health and safety is not considered to be industrial action.

The *Fair Work Act 2009 (Cth)* provides for a limited right for employees to engage in protected industrial action and employers to take response action in the negotiation of an enterprise agreement.

Protected industrial action is seen as a legitimate part of the Australian bargaining framework; however, not if pattern bargaining is taking place, or if a 'cooling off' period might assist.

Before protected action can be taken, the following must occur:

> compulsory secret ballot
> must have been a genuine attempt to reach agreement
> majority of eligible employees must vote, and majority must vote in favour.

Industrial action is protected when it meets all three of the following requirements:

1. the action must happen during a properly notified bargaining period
2. a genuine attempt to reach agreement before the industrial action is taken
3. three working days' written notice of the proposed industrial action is given.

a) Penalties imposed for inappropriate handling of industrial action

Unprotected industrial action by an employee or organisation of employees subject to an enterprise agreement is prohibited during the period of the agreement's operation. It is illegal for an employer to pay a worker during any period of industrial action.

b) Damages and injunctions

An employer may ask a State or Territory Supreme Court for damages or an injunction for a breach of common law (e.g. unlawful interference with your trade or business). It is illegal for an employer to dismiss an employee or threaten to do so for engaging in protected industrial action. However, this does not affect any right the employer might otherwise have to take employer response action including stand down or lockout of an employee.

10.5.9   Occupational health and safety

Occupational health and safety (OHS) legislation is imposed by various Acts and their relevant regulations. The laws surrounding OHS fall into three main categories:

1. prevention – through the prescription of safety standards that are enforced through systems of inspection, and ultimately by prosecution
2. compensation – which is paid to those who suffer from work-related injuries
3. rehabilitation – for sufferers of work related injuries and diseases.

The Acts provide OHS duties which must be met by employers, while the regulation outlines more specific guidelines on how to comply with the Act.

The *Occupational Health and Safety Act 2004 (Vic)* is the key Act that employers must comply with, however, there are additional Acts and supporting regulations to be aware of, including the *Crimes Act 1958 (Vic)*, *Accident Compensation Act 1985 (Vic)* and the *Dangerous Goods Act 1985 (Vic)*. Supporting Regulations are:

> Accident Compensation 2001
> Accident Compensation (Self Insurers' Contributions) 1999
> Dangerous Goods (Explosives) 2000
> Dangerous Goods (Storage and Handling) 2000
> Dangerous Goods (Transport by Rail) 1998
> Equipment (Public Safety) (Incident Notification) 2007
> Equipment (Public Safety) (General) 2007
> Road Transport (Dangerous Goods) (Licence Fees) 1998
> Road Transport Reform (Dangerous Goods) 1997.

Key duties under the Occupational Health and Safety Act 2004

> Employers must, so far as 'reasonably practicable', provide and maintain a working environment that is safe and without risk to the health of their employees and independent contractors. This duty extends to the psychological health of employees.
> Consult, so far as reasonably practicable, on issues which may affect employees' health and safety.

Penalties under the OHS Act

Offences for breaches of Section 21 - Duties of employers to employees are punishable by a maximum fine of up to $3,171,400 for a corporation and $285,426 for a natural person. Other offences may hold higher fines.

Other offences include:

> Duty not to recklessly endanger persons and workplaces.
> Discriminating against employees.
> Failure to comply with a prohibition notice.
> Intentionally obstructing an inspector.

The Occupational Health and Safety Act includes the following provisions to prevent unlawful discrimination against employees:

'An employer shall not dismiss, injure or alter a position to the detriment of the employee for the predominant reason that the employee:

a. performed a function as a health and safety representative
b. assisted an inspector or the health and safety committee
c. raised health and safety issues with management.

An employer shall not refuse employment to a prospective employee on the above grounds.'

Workplace Injury, Rehabilitation and Compensation Act 2013

The *Workplace Injury, Rehabilitation and Compensation Act 2013 (Vic)* provides the parameters of access to benefits, the level of benefits and the duties of both employees and employers when a compensation entitlement is sought or established.

Workers' compensation in Victoria provides 'no fault' insurance to workers injured in the course of their employment (i.e. a worker does not have to show fault on behalf of the employer to access benefits). A worker is entitled to compensation for any injury or disease (physical or mental) suffered in the course of their employment or which arises out of their employment – including the aggravation, exacerbation, recurrence or acceleration of any pre- existing injury or disease.

Note: Employers may request new employees complete a pre-existing injury declaration. Failure of an employee to disclose pre-existing injuries in this regard may ultimately affect any subsequent claim for workers compensation arising from a workplace injury. Employers have a duty to forward any claim received, which includes time off work, to their chosen WorkCover Agent within 10 days. Workers must co-operate with their employer in participating in any return-to-work plan offered by the employer.

The *Workplace Injury, Rehabilitation and Compensation Act 2013 (Vic)* is administered and regulated by WorkSafe. As part of our service to members, contact the Victorian Chamber Advice Line on (03) 8662 5222 for the following information and advice:

> WorkCover claims management
> Return-to-work program management
> Other business consulting services.

11. Termination of employment

Termination of the employment relationship is another element of human resource management that requires knowledge and understanding. Employers should aim to manage all terminations of employment effectively, whether instigated by the employer or the employee, to avoid legal ramifications and to end the relationship on the most positive note possible in the circumstances.

11.1   Types of termination

Termination of employment can be instigated by the employer or by the employee.

Termination by the employee

An employee may terminate the contract of employment in a number of ways. The most common are:

1. **Resignation** – The employee gives the employer notice (as required by the contract of employment, modern award or enterprise agreement) that they are ending their employment.
2. **Abandonment** – An employee effectively terminates their contract of employment when they fail to present for work as expected without explanation and reasonable efforts by the employer to contact the employee have failed.

Termination by the employer

A termination instigated by the employer is often referred to as a dismissal. The different types of dismissal are:

1. **Dismissal with notice** – Termination occurs in accordance with the terms of the contract of employment (or modern award, or enterprise agreement) by providing the employee with the required amount of notice or payment in lieu of notice.
2. **Dismissal without notice (summary dismissal)** – This is a dismissal without notice given to the employee and may be without any prior warning/s. Summary dismissal is usually the result of a serious breach of the contract of employment by the employee.
3. **Redundancy or retrenchment** – Dismissal, in these circumstances, occurs as a result of changes to the business's needs. It occurs when the employer no longer requires the particular job to be done by anyone.

11.2   Notice requirements

The period of notice required for a termination to be lawful can emerge from a number of sources. The notice periods may be prescribed by a modern award, an enterprise agreement, contract of employment, or the National Employment Standard contained in the Fair Work Act 2009 (Cth). Company policies, handbooks and letters of appointment may also be a source of the required notice periods.

11.2.1   Notice by employer

The Fair Work Act 2009 (Cth) prescribes the minimum notice requirements for all employees as follows:

Period of Continuous Service	Period of Notice
One year or less	One week
One year and up to three years	Two weeks
Three years and up to five years	Three weeks
Five years and over	Four weeks

In addition, the following conditions exist:

> Employees aged 45 years and over, with not less than two years' continuous service at the time of being given notice, are entitled to an additional week's notice.

> If the appropriate notice period is not given, the employee must receive payment in lieu of notice. Part of a notice period or a part payment may be given.

> If payment in lieu is made, the amount paid should be based on the ordinary time the employee would have been expected to work over the notice period.

11.2.2   Notice by employee

The minimum period of notice required to be given to the employer by the employee is either:

a. that prescribed by the enterprise agreement or contract of employment

b. if no period of notice is prescribed as above, a period of notice equal to the employee's usual pay period.

11.2.3   Reasonable notice

There may be some situations where an employee's stated terms and conditions do not set out a notice period and where the above table does not provide sufficient notice. In some cases, the courts will deem such relatively short notice periods inappropriate in light of ongoing development in the employment relationship. This is most common for senior professional or managerial employees.

In such situations, an employer must give an employee 'reasonable notice' under their contract of employment. Courts have implied this concept of reasonable notice into contracts of employment.

The period of notice deemed to be reasonable depends on each individual case and is determined by various factors, including:

> nature of the employment

> importance of the position

> employee's age, qualifications and experience

> length of service

> likelihood of the employee finding other suitable employment

> sacrifice that the employee made to work for the employer

> industry practice.

Employers faced with terminating the employment of managerial and professional employees should seek specialist advice. Contact the Victorian Chamber Workplace Relations Advice Line on (03) 8662 5333.

11.3   Unlawful termination

Every Australian worker is protected from unlawful termination, regardless of the size of the business they work in. Employers must not terminate employees for any of the following reasons, or for reasons which include one of the following:

> a person's race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin (some exceptions apply, such as where it's based on the inherent requirements of the job)

> temporary absence from work because of illness or injury

> trade union membership or participation in trade union activities outside working hours or, with the employer's consent, during working hours

> non-membership of a trade union

> seeking office as, or acting as, a representative of employees

> being absent from work during maternity leave or other parental leave

> temporary absence from work to engage in a voluntary emergency management activity

> filing a complaint, or participating in proceedings against an employer.

11.4   Unfair dismissal (harsh, unjust or unreasonable)

The *Fair Work Act 2009 (Cth)* provides protection for employees, in certain circumstances, who claim that their dismissal was 'harsh, unjust or unreasonable'. Employees covered by a modern award, enterprise agreement or who fall within the high income threshold limit may make an application under this section of the legislation. 'Unfair dismissal' is the term often used in relation to applications brought under the Act.

11.4.1   Exclusions

Under the *Fair Work Act 2009 (Cth)* certain employees or categories of employee are excluded from making an application alleging harsh, unjust or unreasonable dismissal.

The exclusions are as follows:

> where the dismissal was a case of *genuine redundancy*

> where the employee is not covered by an award or enterprise agreement and their annual rate of earnings exceeds the *high income threshold* ($148,700 as at 1 July 2019)

> the employee was under a contract of employment for a specified period of time, for a specified task or for the duration of a specified season

> the employee was under a training arrangement for a specified period

> certain casual employees.

Who is eligible to make an application?

An employee is eligible to make an application for unfair dismissal if they have completed the minimum employment period of:

> one (1) year—where the employer employs less than 15 employees (a **small business** employer)

> six (6) months—where the employer employs 15 or more employees.

11.4.2   Constructive dismissal

Constructive dismissal occurs when the principal contributing factor to an employee's decision to leave the workplace is some unreasonable act, or unreasonable failure to act, on the part of the employer. This terminology is used in dismissal claims where the employee resigned but is claiming the dismissal was at the employer's initiative. An employee found to be constructively dismissed may then argue that their dismissal is harsh, unjust or unreasonable.

11.4.3   Fair dismissal

In order to prevent applications being made alleging unfair dismissal and orders by the Fair Work Commission for reinstatement or compensation, employers should be aware of the requirements that the Fair Work Commission will consider when deciding whether a dismissal is fair or not.

There are two elements of fairness:

Substantive fairness is concerned with ensuring termination is the appropriate remedy in the circumstances or that 'the punishment fits the crime'. Employers must have a valid, defensible reason for their actions that they would be willing to defend in a court of law.

Procedural fairness relates to the process followed leading to the termination. Procedural fairness applies to dismissal with notice and dismissals without notice or summary dismissals. Procedural fairness in relation to a dismissal with notice requires an employer to have followed a disciplinary procedure, giving the employee warning/s about their performance or behaviour, and an opportunity to improve.

Procedural fairness in relation to a summary dismissal requires an employer to thoroughly investigate the circumstances before making a decision to dismiss the employee and to give the employee a fair hearing and an opportunity to defend themselves against the allegations made.

11.4.4   Disciplinary procedure

If an employee's performance/conduct is not at the level required, the employee should be advised their performance/conduct is not acceptable. The employer should determine how serious the problem is and how they are going to deal with it.

If required, the employee should be provided with appropriate training and/or guidance to assist them to reach an acceptable level within a reasonable timeframe. The employee should be made aware of the consequence if they fail to improve to an acceptable standard. The consequence may be, if there is no improvement within the given timeframe, that their employment is terminated.

Employers should be aware of qualifying periods and apply them properly. The qualifying period represents the period of time in which an employee is ineligible to lodge an unfair dismissal application and is an opportunity to assess a person's fit and competency in their role. Due to other claims that can arise (e.g. discrimination, general protections) it is important to maintain a clear and transparent process so the employer can, if required, demonstrate reasons for a termination that are clearly related to performance or conduct.

If the employer can display that they have given the employee every reasonable opportunity to improve their performance/conduct they will have the best chance of defending any claims in relation to the employment relationship if the employment is terminated.

Employees not fulfilling the requirements of their role generally fall into one of the following categories:

> **Underperformance.** This occurs when someone is falling below the standard required. It is not a conduct issue as much as a shortfall in performance. It often relates to matters of quality or quantity of outputs, meeting targets or deadlines.

> **Misconduct.** This occurs when a behavioural issue results in expectations not being met. It concerns the poor conduct of the individual, rather than any skills or knowledge deficit as with underperformance issues. It often relates to attitude issues, disregard for rules or failure to obey or adhere to set standards, for example attending work on time.

> **Serious misconduct** is contained in the Fair Work Act and is considered to be matters of such seriousness that the employment relationship is unable to continue.

A warning process can include informal and formal procedures aimed at resolving a problem by one of two ways:

> ideally, the employee improving their performance/conduct, or

> if failing to get an improvement in response to warning/s and support, termination of employment.

Processes should be fair and transparent to both the employee and the employer in a delicate situation where both procedural and actual fairness is vital.

In general:

> Matters relating to underperformance should be supported by clarification of expectations, training and support prior to using formal warnings or disciplinary action.

> Misconduct can also be supported by clarification of expectations, training and support but may also attract disciplinary sanctions if evidence supports that the person did, or should have reasonably known, what was required and has breached a requirement.

> Serious misconduct generally results in serious outcomes such as final warnings or termination of the employment relationship.

11.4.5 Dismissal with notice

Informal process

An informal process is appropriate for minor performance/conduct improvement where matters may not have been bought to the employee's attention, or expectations may not be clearly communicated or understood. For example, poor performance/conduct may be caused by different factors such as lack of skills, training and/ or guidance.

Informal discussion

This may include on the spot feedback or comments relating to a specific aspect of performance and may be enough to guide the employee in the right direction.

Informal coaching / counselling

Discuss performance/conduct with the employee detailing the employer's requirements and expectations:

Victorian
Chamber of Commerce
and Industry

> Give the employee an opportunity to respond.
> Detail any action required to rectify the issue. This may include counselling, training, workload adjustments or improved performance (give specific examples of where the improvement is required).
> Document the discussion. The employee should sign the documentation to confirm the discussion in the counselling session. Keep a copy on the employee's file.
> Include a review timeframe if appropriate/required.

The employee's performance should be monitored and if the informal process does not resolve the performance/conduct issues you may need to proceed to a formal warning process. It important you document the steps taken throughout the informal process.

Formal process

Before making any decisions on disciplinary matters, ensure the person has the opportunity to consider the claims against them and respond accordingly.

The following standards are often used when determining whether allegations of misconduct are substantiated:

1. The balance of probabilities, i.e. whether there is sufficient evidence to substantiate allegations; and
2. The *Briginshaw standard*, which relates to the standard of evidence required if allegations involve a crime, fraud or other type of moral wrong doing, which if proven, would have serious consequences for the alleged wrong doer.

The Briginshaw standard outlines that the more serious the allegation against an individual is, the higher the standard of proof should be. Whilst this standard is not a requirement in workplace matters, it is a good test as to whether the matters and decisions would be defendable in a court.

The standard of proof differs between civil and criminal matters. In civil matters, the established standard is the 'balance of probabilities'. This is a lesser standard than the proof required in criminal matters, which is 'beyond reasonable doubt'.

First warning

> Arrange a formal meeting with the employee.
> The Victorian Chamber recommends advising employees they have the option to have a support person present to assist with any discussions relating to their performance/conduct. The support person is of their choice; however, the person must NOT be acting in a professional capacity (such as a lawyer) and is there only to support the employee and not to participate in the discussion.

   However, if their support person is part of the union they do have the right to be able to be a representative, please call the Advice Line for further information 8662 5222.

> Detail any history of counselling (previous related matters).
> Detail any action required to rectify the performance/conduct. This may include counselling, training, workload adjustments or improved performance (give specific examples of where the improvement is required).
> Give the employee the opportunity to respond to the allegations.
> Consider the employee's response to the allegations before deciding whether the matter warrants a warning.

> Advise the employee of the consequences that, if there is no improvement within the required timeframe, or a repeat of issues in the case of misconduct, further disciplinary action may be taken, up to and including termination of employment.

> Document the discussion. The employee should sign the documentation to confirm their understanding of the discussion.

> Keep a copy on the employee's file.

Second or further warnings

Follow the same process for a first warning.

Final written warning

> Arrange for a formal meeting with the employee.

> Detail any history of counselling (previous related matters and warnings).

> Advise the employee they have the option to have a support person present to assist with any discussions relating to their performance/conduct. The support person is of their choice; however, the person is NOT to act in a professional capacity (such as a lawyer) and is there only to support the employee and not to participate in the discussion.

> Clearly detail the employee's performance since the previous warning.

> Give the employee the opportunity to respond to the allegations.

> Consider the employee's response to the allegations before deciding whether the issue warrants a final written warning.

> Advise the employee of the consequences that, if there is no improvement within the required timeframe, or a repeat of issues in the case of misconduct, their employment may be terminated.

> Clearly outline the action required to rectify the performance/conduct. This may include counselling, training, workload adjustments or improved performance (give specific examples of where the improvement is required).

> Document the discussion. The employee should sign the documentation to confirm they understand and are fully aware of the consequences if there is no improvement.

> Keep a copy on the employee's file.

Termination of employment

Note: Small business employers (those with under 15 employees) should ensure they are familiar with the Small Business Dismissal Code when considering terminations. A termination that is consistent with the Small Business Code forms a valid defence to an unfair dismissal claim.

> Arrange a formal meeting with the employee.

> Advise the employee they have the option to have a support person present to assist with any discussions relating to their performance/conduct. The support person is of their choice; however, the person is NOT to act in a professional capacity (such as a lawyer) and is only there to support the employee and not to participate in the discussion. However, if their support person is part of the union they do have the right to be able to be a representative.

> Detail any history of counselling (previous related matters and warnings).

> Detail the employee's performance/conduct since the previous warning.

> Give the employee the opportunity to respond to the allegations.

> Consider the employee's response to the allegations. If the response is not regarded as satisfactory, termination can follow.

> Take sufficient time to weigh up the employee's response. Often this may involve scheduling a second meeting to advise decisions and outcomes.

> Provide the employee with the reason for the termination in writing.

> If the termination is not related to serious misconduct, ensure the employee is given the appropriate notice (or payment in lieu of notice), any outstanding wages and entitlements accrued such as annual leave, long service leave (if applicable) etc.

> Payment for outstanding entitlements should be made on the day of termination or within the next pay cycle.

11.4.6   Dismissal without notice / serious misconduct (summary dismissal)

An employee who has committed serious misconduct can be dismissed without notice following the substantiation of allegations.

Serious misconduct includes, in the course of employment, the employee engaging in theft, fraud, assault, intoxication at work, a serious breach of policies and procedures or conduct that causes serious and imminent risk to the health or safety of a person or the reputation, viability or profitability of the employer's business. (See also *1.1.2 Fair Work Regulations 2009 Reg 1.07*.)

Serious misconduct process

Immediately arrange a meeting with the employee when you become aware of the employee's suspected misconduct:

> Advise the employee of the allegations.

> Advise them of the process to be followed.

> If necessary, stand down the employee with full pay while the employer investigates the allegation.

> Alternatives to stand down include placing the employee on supervised shifts, or other interventions that minimise the potential risk of the person remaining in the environment at that time (for example, if someone is accused of assaulting a client, it would be unwise to leave them in an unsupervised environment whilst the matters are unresolved or unclear). However, if their support person is part of the union they do have the right to be able to be a representative, please call the Advice Line for further information 8662 5222.

Ensure you:

> Give the employee an opportunity to respond to the allegations during the process.

> Document all conversations and findings of the investigation (this may include statements from other employees, clients etc.).

> On completion of any investigation, arrange a meeting with the employee to discuss findings.

> Advise the employee they have the option to have a support person present to assist with any discussions relating to their performance/conduct. The support person is of their choice; however, the person is NOT to act in a professional capacity (such as a lawyer) and is there only to support the employee and not to participate in the discussion.

> Discuss the findings of the investigation with the employee and allow them to see any evidence, documentation, witness statements etc., and consider the employee's response.

> Consider the employee's further response to the investigation. If not satisfactory, the employee can be terminated immediately.

> Provide the employee with the reason for the termination in writing.

> Pay the employee any outstanding wages and entitlements (always check the binding industrial instrument and seek further clarification if required).

> Payment for outstanding entitlements should be made at the time following termination.

11.4.7   Termination interview

When you have made a decision to terminate an employee's employment, the termination interview can become a difficult exercise. The following points will help you conduct a lawful and compassionate termination interview:

Prepare

> Establish an agenda or a list of issues to discuss, such as the reasons for the proposed dismissal, the actions you took to prevent the outcome and the dismissed employee's entitlements (such as notice and accrued annual leave). Collect any documents or evidence which may assist you and to demonstrate the performance issues, such as time cards and productivity data.

> Have copies of previous warnings issued in relation to the dismissal.

> Allow time on the agenda for the employee to ask questions or make comments.

> Clear time in your diary for the interview, and ensure you will not have any interruptions (e.g. divert your phone calls).

> Notify the employee of the interview, providing them with adequate warning (the interview follows several indicative discussions, so it should not be a surprise to the employee).

> Advise the employee that they may bring a support person to the interview should they so desire.

Interview

> Explain the issue/s of concern clearly and concisely, providing examples.

> Summarise the disciplinary procedure followed, leading to the decision to dismiss.

> Use only a few key points.

> Avoid showing personal feelings and offer constructive suggestions.

> Don't over-emphasise the past; rather, focus on positive future actions for career rebuilding.

> State the decision factually, and keep your voice quiet and conversational.

> Specify termination conditions, set dates and explain entitlements.

> Allow the employee opportunities to respond.

Document

When dismissing an employee, record your actions carefully. Remember you are preparing evidence you may need in a court of law. Sign the records and request the employee's signature on the notice of dismissal. Retain copies of all correspondence given to the employee, including the notice of dismissal.

11.5   Redundancy

The generally accepted definition of a redundancy is a dismissal not on account of any personal act or default of the employee dismissed but because the employer no longer requires the job that the employee has been doing to be done by anyone.

Employers should be mindful of the following considerations:

> Redundancy does not apply in circumstances that are due to the ordinary and customary turnover of labour.
> Termination of employment in circumstances of redundancy does not involve any consideration of fault on the part of the employee.
> Redundancy should not be used as a way to address poor performance or to avoid disciplinary procedure.
> Jobs become redundant – not people. Employees are retrenched as a result of redundancies.
> Redundancy can occur because of economic recession (loss of business), funding cuts, technological change, transfer of business (merger/acquisition/take-over), and/or re- organisation of operations.

11.5.1   Identifying genuine redundancies

The genuine need for redundancies will often be questioned by employees, their unions and industrial tribunals. In order to identify a genuine redundancy, you should ask yourself these questions:

> What was the reason for the redundancy?
> On what basis was the employee(s) chosen for redundancy?
> Has anyone else filled the redundant position?
> Who carries out the employee's duties now?
> Have any employees been employed since the redundancy? What are their duties?
> Is any overtime being worked? Have any casuals been employed?
> Were alternative duties considered for those affected by redundancies?

Further questions to ask are:

> Why are particular positions becoming redundant?
> What measures have been taken to avoid or minimise terminations?
> Has redeployment been considered? Have skills been assessed and deployed?
> Is job-sharing feasible?
> Is early or voluntary retirement feasible?
> Is retraining an option?

11.5.2   Requirements for lawful redundancies

The National Employment Standards (NES) provide the rules relating to redundancy and redundancy pay.

What's redundancy?

Redundancy under the NES happens when an employer either:

> - decides they no longer want an employee's job to be done by anyone and terminates their employment (except in cases of ordinary and customary turnover of labour), or
> - becomes insolvent or bankrupt.

Note: What constitutes ordinary and customary turnover of labour will depend on the relevant circumstances. Redundancy may happen when:

> - the job someone has been doing is replaced due to the employer introducing new technology (i.e. it can be done by a machine)
> - business slows down due to lower sales or production
> - the business relocates
> - a merger or takeover happens
> - the business restructures or reorganizes.

Having made an operational decision that employees must be retrenched, criteria need to be established to determine which particular employees are to have their employment terminated. As we have seen with the other forms of termination, these criteria need to be fair and defensible. The more objective the criteria you use to select which employees are to be made redundant, the less likely you are to run into problems.

You should also take care not to breach any relevant anti-discrimination legislation (Refer *8.3.3 Performance management, disciplinary action and termination of employment*).

Reference should be made to particular modern awards, enterprise agreements, and contracts of employment or company policies for such clauses because preference provisions and other redundancy provisions may restrict the choice of which employees are to be made redundant.

Consultation

Once you have made a decision that may lead to jobs becoming redundant, modern awards and enterprise agreements require the employer to hold discussions with the employee/s concerned and their union(s).

To assist in these discussions, employers are often required to provide all relevant information in writing to the affected employee/s and their union/s, including number and categories affected, the number usually employed and the period over which the terminations will be made.

You should seek professional industrial advice (such as that offered by the Victorian Chamber) prior to inviting any third party into your redundancy processes.

Severance pay

In addition to the period of notice prescribed for ordinary termination of employment (refer *11.2.1 Notice by employer*, and points on other sources of notice), an employee whose employment is terminated must receive an amount of pay in respect of a continuous period of service. This pay is designed to compensate the employee for their severance from employment.

The amount of redundancy pay under the NES equals the total amount payable to the employee for the redundancy pay period. This is worked out using the table below, at the employee's 'base rate of pay' for his or her ordinary hours of work.

An employee's base rate of pay (other than a pieceworker) is the rate of pay payable to an employee for his or her ordinary hours of work, but not including any of the following:

> incentive-based payments and bonuses
> loadings
> monetary allowances
> overtime or penalty rates
> any other separately identifiable amounts.

Employee's period of continuous service with the employer on termination	Redundancy pay
At least 1 year but less than 2 years	4 weeks
At least 2 years but less than 3 years	6 weeks
At least 3 years but less than 4 years	7 weeks
At least 4 years but less than 5 years	8 weeks
At least 5 years but less than 6 years	10 weeks
At least 6 years but less than 7 years	11 weeks
At least 7 years but less than 8 years	13 weeks
At least 8 years but less than 9 years	14 weeks
At least 9 years but less than 10 years	16 weeks
At least 10 years	12 weeks

Note: long service leave entitlements provide the rationale for diminishing the redundancy pay entitlement for employees who have a period of 10 years' continuous service or greater.

It is possible for an employer to apply to the Fair Work Commission for a determination reducing their liability to pay redundancy pay to a specified amount (that may be nil), if the Fair Work Commission considers it appropriate. The employer may apply for the determination if an employee is entitled to redundancy pay and the employer finds other acceptable alternative employment or cannot pay the amount.

In calculating severance pay (in conjunction with the terms of notice), the employer must examine sources of the employee's terms of employment (i.e. modern awards, enterprise agreements, contracts of employment and company policies etc.).

Exemptions to the payment of severance pay

Redundancy pay is generally not payable under the NES to any of the following:

> - an employee whose period of continuous service with the employer is less than 12 months
> - an employee of a small business employer (see *Redundancy and small business* below)
> - an employee employed for a specified period of time, for a specified task, or for the duration of a specified season
> - an employee whose employment is terminated because of serious misconduct
> - a casual employee
> - an employee (other than an apprentice) to whom a training arrangement applies and whose employment is for a specified period of time or is, for any reason, limited to the duration of the training arrangement
> - an apprentice
> - an employee to whom an industry-specific redundancy scheme in a modern award applies
> - an employee to whom a redundancy scheme in an enterprise agreement applies if both:
>   - the scheme is an industry-specific redundancy scheme that is incorporated by reference (and as in force from time to time) into the enterprise agreement from a modern award that is in operation
>   - the employee is covered by the industry-specific redundancy scheme in the modern award.

Often, the terms of an award or agreement will say that you may not get redundancy pay if your employer finds an acceptable alternative position for you.

Redundancy and small business

An employer who is a small business employer is not required to provide redundancy pay on the termination of an employee's employment. A small business employer, for the purpose of determining redundancy pay, is an employer who, at a particular time, employs fewer than 15 employees. This is based on a head count of employees.

When calculating the number of employees employed at a particular time, all the following factors are to be taken into account:

> - all employees employed by the employer at that time are to be counted
> - a casual employee is not be counted unless, at that time, he or she has been employed by the employer on a regular and systematic basis
> - associated entities are taken to be one entity
> - the employee being terminated, and any other employees being terminated at that time are counted.

It is important to ensure that there is not differing provisions within your relevant Modern Award which may stipulate a requirement to pay leave even if you are less than 15 employee's please call the Victorian Chamber Workplace Relations Advice Line for further assistance on 8662 5222.

Employee leaving during notice period

An employee given notice by an employer for reasons of redundancy may terminate their services at any time during the period of notice. If this happens, severance pay is calculated as if the original notice period had run

its course, but the payment of due notice under either award or statute is discounted for the period of notice served.

Alternative employment

An employer in a particular redundancy case may apply to the Fair Work Commission to have the general severance pay prescription varied if they obtain acceptable alternative employment for the employee.

It is recommended that any employer wishing to make such an application should first discuss it with a Victorian Chamber consultant.

Time off during the notice period

During the period of notice of redundancy given by the employer, an employee is often allowed up to one day off during each week of notice, without loss of pay, to seek other employment. Please see your Award for further information.

Notifying Centrelink

Where a decision has been made to terminate 15 or more employees, the employer must notify Centrelink as soon as possible, giving relevant information including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out. This is a requirement under the provisions of the *Fair Work Act 2009 (Cth)*.

Superannuation benefits

Unless otherwise ordered by the Fair Work Commission, an employee who receives a benefit from a voluntary superannuation scheme will only receive the difference between the severance pay and the amount of the superannuation benefit they receive (in the case of employer contributions only). What this means is that where an employer has voluntarily introduced a superannuation scheme, and benefits are paid to an employee on termination, it is considered inequitable to make the employer pay severance pay, in addition.

Any employer seeking to discount a severance payment in this manner should check with a Victorian Chamber specialist consultants to see if their contributions can be discounted in this manner.

Transfer of business

Severance pay is not paid in cases of succession, assignment or transfer of business. If you have taken over a business from a previous owner, you should note that where a business is transmitted from one employer to another, and where existing employees become employees of the new owner:

> the continuity of the employee's employment is deemed to have not been broken by the transfer of the business

> the period of employment the employee had with the original owner (or any prior owner) is deemed to be service with the new owner.

Thus, on the purchase of the business, you may have financial obligations that accrued prior to your ownership.

Taxation

Taxation depends on the circumstances of each case, so each individual should seek tax advice.

The criteria necessary to qualify as a bona fide redundancy payment are set out in section 27F of the Income Tax Assessment Act and are briefly as follows:

> The termination payment must be made in consequence of the dismissal of the employee from employment by reason of the bona fide redundancy of the employee.

> The date of termination must be before the employee's 65th birthday or such earlier date on which their employment would necessarily have come to an end by reason of their attainment of a particular age or by completing a particular period of service.

> The Commissioner of Taxation must be satisfied that the employer and employee were dealing with each other at arm's length, or that the amount of the termination payment does not exceed the amount that could reasonably be expected to have been paid if the parties had been dealing with each other at arm's length.

> At the time of termination, there must not be any arrangement to employ the employee after the date of termination.

Statements of service

All terminated employees, including those terminated summarily for misconduct, must be given a Statement of Service. The employer should provide the employee with a written Statement of Service specifying the period of their employment and the classification or the type of work they performed.

This does not mean that the employer must provide a reference. A statement of service needs to state only the name of the employee, the duration of their employment and their position.

In each of the above cases, employers must also complete a statement of termination for the Australian Taxation Office, if requested by the employee. This is a formal requirement and is not discretionary.

Penalties

An employer who is found to have dismissed an employee unfairly may be exposed to the following penalties under federal legislation:

> payment in lieu of notice
> payment of compensation up to $74,350 (as at 1 July 2019) indexed, or six months' salary
> re-instatement of employment of an employee
> payment of wages lost during the period between the hearing and the reinstatement
> substantial legal costs and costs for the time involved in handling the matter.

11.6   Consultation obligations to communicate redundancies

When eliminating a large number of jobs, employers usually find themselves communicating the least valuable information. They are often preoccupied with explaining "why". Communication efforts, according to employees, should focus almost entirely on "who goes" and "how much will I get".

Employees facing redundancy are desperate for particular information:

> How many people are going?

> What are the criteria for selecting them?

> When do the terminations happen?

> How much is the severance package?

The fact is that 80 per cent of employees leaving their jobs do so voluntarily. What employees do want is information. But, what sort of information?

According to a number of employee surveys of companies undergoing redundancy programs, the last question employees wanted answered was, "What is the background information on the merger/down- sizing/organisational change?" This same research showed that money was uppermost in employees' minds at the time of change. Generally, the information employees required was conveyed to them poorly.

When communicating information on severance pay, for example, think of how employees are going to receive this information. Once again, research shows that when faced with a problem they can't solve, employees turn to (in order):

1. supervisor's advice
2. experienced co-worker's advice
3. unwritten company policy
4. company supplied manuals.

Communication model of a redundancy program

Employers must carefully plan the communication of a redundancy program using this model, for example:

Consider how you say it

For each topic listed, run a short seminar with a small group of supervisors. Have them answer some of the questions that might arise:

> Which positions will be made redundant?

> How much severance pay will the affected employees get? What is the redundancy timetable?

> What other information do you need?

Support these sessions with a short, simply-written document that contains facts concerning the impact of the redundancy program.

Consider what you say

The most important things to get right are the rules for determining which positions will be made redundant and, most important, the severance package. These points may often be discussed with the union(s) if there is a union presence at the workplace.

Keep the redundancy rules simple.

Remember that the uncertainty that can surround redundancies is more destructive to employees and the organisation than the reality. This means that open and timely communication can lessen the impact of the redundancy decision.

The method of handling redundancies determines the outcome: either confused, anxious, rumour-filled employees, uncertain of what's happening to them, or an organisation that knows what it is doing and where it is heading.

Handling supervisors' questions

Consider setting up a communication process or a 'hotline' dedicated to answering questions from your front-line communicators, the supervisors. Some businesses choose to use outside consultants to provide this resource. This allows supervisors to remain anonymous, if they wish, and relies on verbal as opposed to written communication.

Test their knowledge

It is important that supervisors fully understand and are prepared for the questions that employees will ask them. Supervisors who can't answer these questions will seriously undermine the process.

One way to ensure this information is understood is to test the supervisors. This is best done following each of the information seminars.

Carrying out redundancies is too important a task to handle without the aid of effective communication.

11.7   Documentation

11.7.1   Counselling Record Template

11.7.2   Final Warning Letter

11.7.3   Termination Summary Dismissal Letter

11.7.4   Warning Letter

12. Human resources policies and procedures

Today's complex and numerous employment laws require employers to have policies in place on a wide range of issues and to ensure that these are known and understood by their employees. Effective policies on matters such as discrimination, bullying, harassment, drugs and alcohol help minimise unwanted behaviour in the workplace, and litigation. An effective policy will clearly define the prohibited behaviour, make a strong statement against it, outline the consequences for breaching the policy, and provide information on where individuals can get help, advice or make a complaint.

Where a workplace requires employees to work outside the office, employers should be mindful that policies should encompass all areas of the business. For example, in a decision of the Australian Industrial Relations Commission, a worker who was dismissed for sexually harassing a co-worker on a field trip was held to have had his employment unfairly terminated because the employer did not have guidelines for behaviour on field trips.

It is important that all policies are brought to an employee's attention, not only on commencement of employment, but also on a regular basis during the employment relationship.

Policies and procedures should only be as complex as your organisation requires. For instance, a large multi-site business will require far more sophisticated and detailed policies and procedures than a small business. The priority is to ensure your approach is right for your business and that the documents do not serve to merely consume time and create frustration for your employees.

This chapter provides guidelines for the following:

> purpose and aims of human resource policies and procedures
> basic policies and procedures for small and medium-sized businesses
> writing policies and procedures.

12.1 Purpose of policies and procedures

Policies and procedures provide the foundation to the working partnership with your employees. They provide clarity and a possible remedy if either party fails to meet its obligations.

For instance, your counselling and termination policy and procedure documents will be crucial if you must act on an employee's poor performance. It assists you with identifying the gaps in employee performance and the appropriate action to take. It is almost impossible to protect your business in the event of an unfair dismissal application without the necessary policies and procedures.

Policies and procedures also have the following benefits:

> ensure your business meets minimum legislative requirements
> minimise grievances and disputes
> provide both parties with clear guidelines as to rights and responsibilities
> facilitate productivity improvements by enabling your employees to maximise their contribution
> provide a safe and positive work environment
> reduces risk.

At an operational level, the person responsible for managing human resources must ensure that the policies:

> comply with legislative requirements
> are practical, easy to understand, and apply to every-day situations
> support the business by improving productivity and work behaviours
> are relevant to the needs of the business.

12.2   Definition of policies and procedures

Policies

Policies are statements prepared by a business on specific issues to explain the guidelines for work practices, authorities and responsibilities. They explain both employee and employer rights and accountabilities, and the consequences of failing to adhere to the standards set.

Procedure

A procedure incorporates the policy (standard) and explains how the work practice should be undertaken. It provides a 'road map' to completing tasks, both simple and complex.

12.3   Human resource policy and procedure checklist

The following checklist is designed to highlight the areas where policy consideration may be required. As stated earlier, in some instances your business will not require certain policies because of its size and business function. However, be careful to revisit your policy documentation regularly to ensure your needs have not altered and any legislative amendments are reflected. Some activities, for instance, will have a significant bearing on policy needs (e.g. you may have engaged contract labour for the first time, or voluntary employees). If so, your policies need to take such situations into account.

Policy / Procedure	Date Completed	Required
Equal opportunity, discrimination, bullying Equal opportunity Anti-discrimination/harassment Bullying Victimisation Definition of harassment, discrimination Incorporation into other relevant policies/procedures		
Recruitment Internal promotion Advertising (internal, external)		

Policy / Procedure	Date Completed	Required

Equal opportunity, affirmative action
 	
Procedures (placement of advertisements, approved job description, salary level, timeframes)
 	
Geographic limitations, preferences Notification of unsuccessful applicants:
 	
   -   Before interview
 	
   -   After interview
 	
Notification of successful applicant Letter of appointment
 	
Reference checks Interview panel selection
 	
Interviewing documentation, record keeping Privacy		

Contracts, agreements Responsibility for drafting Process of approval Issuing		
Position descriptions Responsibility for drafting Process of approval Pro-forma standards Linked to reward and recognition system Linked to performance management system		
General conditions of employment Hours of work Breaks (paid, unpaid, timing, coordination) Overtime, approval Time off in lieu of overtime Variation on standard hours Annual leave		

Policy / Procedure	Date Completed	Required
Personal leave (eligibility, medical certificate requirements)		
Public holidays		
Carer's leave		
Long service leave		
Study leave		
Compassionate leave		
Jury service		
Maternity leave		
Paternity leave		
Adoption leave		
Other leave (leave without pay)		
Confidentiality		

Counselling, discipline, termination and redundancy
 	
Counselling:
  - Warnings (informal, formal)
  - Coaching, training and development
  - List of actionable breaches of conduct
  - Documentation, recording
 	
Termination:
  - Determining reasonable grounds for termination
  - List of actionable breaches of conduct
  - List of items warranting summary dismissal
  - Documentation, recording
  - Notification of
  - Notice, payment in lieu
  - Termination interview
  - Administration (collection of equipment, security pass)		

Policy / Procedure	Date Completed	Required
Redundancy: - Determining bona fide redundancy - Principles for selecting redundancies - Communication with employees (timing, content, method) - Documentation, recording - Notification of union - Notice, payment in lieu, severance pay - Outplacement, counselling - Administration (collection of equipment, keys, security pass) **Resignation:** - Notice of resignation in writing, reference		
Complaint and grievance procedure Defining grievance **Steps to be followed in the grievance procedure:** - Parties involved in each step - Time limits - Accountability/authorised - Conciliation/arbitration - Documentation/reporting - Communication with employees (timing, content, method) - Union representation		
Remuneration/benefits Wage/salary policy Method to determine wage, salary levels		

Policy / Procedure	Date Completed	Required
Wage, salary increases:		
- Method to determine amount		
- Timing		
- Linked to performance management system		
- Notification of		
- Overtime rates		
- Shift rates		
- Penalty rates		
- Superannuation		
- Employee loans		
- Annualisation of salaries		
- Salary packaging options		
Reward and recognition system:		
- Special allowances		
- Commission schemes		
- Bonus and incentive schemes		
- Profit sharing		
- Health insurance		
- Child care		
- Study leave/sabbatical		
Promotion, career development		
Principles of promotion, internal appointments		
Criteria for promotion		
Links to performance management system		
Training and development links		
Secondments		

Policy / Procedure	Date Completed	Required
Graduate training program		
Professional development program		
Transfers/relocation		
Procedure for employee requesting transfer		
Procedure for employer initiating transfer		
Transfers involving relocation		
Employee entitlements		
Support provided (language skills, living arrangements, schools, networks)		
Training and development		
Formal training policy Induction/orientation		
Health and safety		
Harassment, discrimination		
Identifying training needs		
Links to performance management system		
Links to promotion		
Links to wage/salary		
Links to counselling and discipline		
Recognition of prior learning		
Apprenticeships		
Traineeships		
Graduate training programs		
Professional education		
Security		
Protection of:		
- Intellectual property		
- Trade secrets		

Policy / Procedure	Date Completed	Required
- Product/service developmentRestrictions on employees after termination		
- Restrictions on access to premises		
- Security pass		
- After-hours access		
- Protocols for visitors		
- Access to personnel records		
- Storing/destroying of documentation, records		
Computer security:		
- Use of email		
- Use of internet		
- Restrictions on copying/transferring files		
Restrictions on access to files/computers:		
- Health and safety		
- Employee education program		
- Management/supervisor training		
- Employee Assistance Program (EAP)		
- Purpose, policy		
- Service provider (internal or external resource)		
- Accountable for coordination		
- Confidentiality of information		
- Links to performance management		
- Links to counselling and termination		
- Entitlement to EAP benefits		
Other issues Employee communication Telephone usage, including long distance and mobile calls		

Policy / Procedure	Date Completed	Required
Contract employment (process of engagement, documentation, management)		
Personnel records:		
- Requirements to update/store		
- Requirements to keep		
- What should/should not contain		
- Access		
- Security		
- Information to be provided to employees Requests for employee information:		
- Written		
- Telephone		
- Requests from government agencies		
- Subpoena		
- Requests from courts and law enforcement agencies		
Occupational health and safety		
First aid		
First aid officers Fire drill		
Record keeping/documentation		
Accountabilities		
Safety accident prevention program		
Risk assessment		
Health and safety committee		
Reporting of hazards		
Safety equipment and protocols		
Links to counselling and termination		
Training and education programs		

Policy / Procedure	Date Completed	Required
Investigation procedures		
Employee facilities		
Smoking policy		
Employee expenses and reimbursements		
Equipment		
Travel (authorisation, expenses covered)		
Authorisation		
Reimbursement procedure		
Documentation required of employee		
Entertaining (authorisation, expenses covered)		
Car usage		
Professional fees/memberships Training/education expenses		
Privacy		
Policy		
Complaints policy (stand alone or incorporated within company policy)		
Privacy statement		
Collection statements:		
- Recruitment		
- Employee personal and/or health information		
- Non-employee personal and/or health information		
Access		

12.4   Guide to writing policies and procedures

Human resource policies and procedures should be designed and presented in a consistent and clear format. The key is to include sufficient information to address legislative issues and operational needs while keeping them simple and user-friendly.

12.4.1   Drafting policies and procedures

The following process outlines how to draft your policy and procedure guidelines. Used in conjunction with the sample forms provided throughout this manual, the process is straightforward, easy to undertake, and important to your business.

Step 1. Plan	
Action	**Information source**
Identify your objectives to determine: > goals > budget > timeframe Using the checklist provided above, undertake an audit of the policies and procedures you have to establish or update. **Prioritise** the policies and procedures so that you undertake each individual area, otherwise it may become an intimidating task. You may want to identify a task group of interested employees to work on the project or, if time does not permit, allocate each area to relevant, available employees.	Guidelines and checklist contained in the Victorian Chamber Human Resources Manual Existing policies and procedures

Step 2. Review

Action	Information source
Business needs Consider the short and long term business strategy, plan and budget.	Business plan, strategy, budgets
Legislative guidelines Review the legislative guidelines, and requirements contained in the respective regulations (while you can review the legislation listed in the next column, in most cases the Victorian Chamber range of publications contains the information you will need).	Relevant publications, modern awards, Enterprise Agreements, Fair Work Act 2009 (Cth), Occupational Health and Safety Act, Equal Opportunity Act and supporting regulations
Previous work practices Consider how the task/function has been undertaken in the past. Was this effective? What improvements can be made?	Discussion with supervisors, employees and managers. Documentation and statistics such as work flows, productivity levels and number of sick days taken by employees
Industry standards Benchmark against industry standards. What do other businesses do? Are there prescribed industry standards and regulations that you must adopt?	Industry regulations, discussions with other businesses

Step 3. Design

Action	Information source
Once you have determined what needs to be done, prioritise and allocate. Design a pro-forma policy and procedure document, and presentation standards. Address the following issues, in this order: > format, page layout > authorisation procedure > timeframes for future reviews > communication methods and timing > piloting with sample of employees and managers > implementation > ongoing review	Guidelines and checklist contained in the Victorian Chamber Human Resources Manual Existing documents Discussions with employees and managers

Step 4. Pilot	
Action	**Information source**
Circulate a sample set of policies and procedures with a select group of employees and managers to ascertain: > user friendliness > readability > accuracy > practicality	Relevant employees and managers (no more than six)

Step 5. Amend	
Action	**Information source**
Make adjustments as required (to the level of detail, language style and format)	Information gained from the pilot exercise

Step 6. Authorise	
Action	**Information source**
The level of authorisation varies depending on the type of policy and procedure. For instance, the highest level of authorisation should be gained in the case of equal opportunity and harassment. Record the individual/s accountable for the authorisation in communication material to employees, and on the policies themselves. > Any future amendment to the policy or procedure should be verified and reapproved by the manager concerned.	Senior level personnel

Step 7. Implement	
Action	**Information source**
Plan the implementation process, because this step can have a significant impact on the effectiveness of your policies and procedures. It is imperative that employees and managers support and accept the documents otherwise they will not follow them. Presentation of the documents is also important. Consider including the policies and procedures in the following formats: > binders > posters > memos > letters > induction material > training courses Training and development of all employees and managers. For consistent and accurate implementation, managers and supervisors must understand and communicate business policies and procedures correctly. Employees should also participate in awareness sessions so they understand the practical effect of the documents. > Launch the policies and procedures with a statement to employees and circulate the documents in an appropriate format.	Presentation materials, copies of documentation for employees Training and employee awareness sessions

Step 8. Ongoing review	
Action	**Information source**
As stated earlier, your policies and procedures should be updated regularly to reflect changes in business needs and/or legislation changes. Revisit your policies and procedures at set periods throughout the year to be sure they remain up to date and effective.	Victorian Chamber publications and updates Feedback from employees and managers

12.4.2   Policy and procedure structure

The following headings are a guide only. You will find that each policy will vary and the information required will change accordingly. However, the headings provide a basic structure for each policy.

Header

Policy title, policy number, page numbers.

Footer

Date issued, review date, update number, authorised by.

Content headings:

Policy

Describes how the policy will operate, the expectations of employees and managers.

Purpose

Policy objectives, the aim of the policy.

Definitions

Defines any terms used in the policy that may need further description (e.g. what constitutes 'summary dismissal').

Procedure

Outlines the steps to be followed by employees and managers (i.e. process, authorities, timeframe).

Authority/Accountability

Who is responsible for approval and implementation?