



Quick guide

>Equal Opportunity Act 2010

The *Equal Opportunity Act 2010* strengthens discrimination laws in Victoria by changing some key definitions, creating new responsibilities for the Commission and strengthening the Commission's role in helping government, business and the community to identify and eliminate discrimination.

Under the *Equal Opportunity Act 2010*, it is still against the law to discriminate against a person on the basis of:

- age
- breastfeeding
- carer status
- disability
- employment activity
- gender identity
- industrial activity
- lawful sexual activity
- marital status
- parental status
- physical features
- political belief or activity
- pregnancy
- race (including colour, nationality, ethnicity and ethnic origin)
- religious belief or activity
- sex
- sexual orientation
- personal association with someone who has, or is assumed to have, any of these personal characteristics.

It is also against the law to sexually harass someone.

The *Equal Opportunity Act 2010* still covers discrimination in employment, education, accommodation, clubs, sport, goods and services, land sales and transfers, and local government, as well as sexual harassment.

New features of the Equal Opportunity Act 2010

The *Equal Opportunity Act 2010* has a number of important features:

- **A positive duty to eliminate discrimination**, which obliges organisations covered by the law to take proactive, reasonable and proportionate measures to eliminate discrimination, sexual harassment and victimisation.
- **Simplified definitions of direct and indirect discrimination** to make the law easier to understand.
- **A duty to provide reasonable adjustments for people with disabilities** in employment, education and provision of goods and services, to help the person with a disability to perform the job or access education and goods and services.
- **Protection of volunteers** and unpaid workers from sexual harassment in employment.
- **An extended definition of disability** to specifically address genetic predisposition and behaviour that is a manifestation of a disability.
- **An exception for religious bodies** from the Act, which allows them to discriminate against people on the basis of sex, marital status, gender identity and sexuality in some circumstances where discrimination is required to conform with religious belief.
- **A new streamlined dispute resolution service** which will provide quick, informal, flexible and free assistance to resolve claims of discrimination brought to the Commission.
- **New powers for the Commission to investigate systemic issues** without waiting for an individual complaint.

How we can help you comply with the Equal Opportunity Act 2010

- We will develop practice guidelines in key areas, such as understanding the positive duty and family responsibilities discrimination, to help people understand how to comply with the law.
- Organisations will be able to lodge an equal opportunity action plan with the Commission, detailing how they plan to eliminate discrimination in their organisation.
- If you ask us, we will be able to review your policies, procedures and practices for compliance with the *Equal Opportunity Act 2010*.

What you can do to prepare

- Review and update your policies, procedures and practices.
- Check our information on our website at humanrightscommission.vic.gov.au.
- Check our training calendar for equal opportunity training opportunities and events.
- Subscribe to our eupdate and ebulletin service through our website.
- Call us on **1300 292 153** or email enquiries@veohrc.vic.gov.au for more information.

Key legal definitions and explanations

In the law, certain words and phrases are used with a particular and precise meaning. This quick guide summarises some key definitions based on the *Equal Opportunity Act 2010* in plain English.

This material deliberately simplifies the law and should not be relied on by anyone who requires specific legal advice. More details are available on the Commission's website: humanrightscommission.vic.gov.au.

To read the most up-to-date, full legal definitions in the Act, download the Act from the Victorian Statute Book section at legislation.vic.gov.au.

Equal opportunity

Equal opportunity is about giving and getting a fair go. It does not assume everyone is the same and it does not mean treating everyone the same. In some circumstances, treating everyone the same is unfair and against the law (see 'indirect discrimination' below).

Discrimination

Discrimination is unfavourable treatment of a person in an area of public life (for example, at work) due to one of their personal characteristics. The *Equal Opportunity Act 2010* details two types of discrimination:

- direct discrimination
- indirect discrimination.

Direct discrimination is when a person treats, or proposes to treat, a person with a protected personal characteristic unfavourably, because of that personal characteristic. Direct discrimination often happens because people make unfair assumptions about what people with certain personal characteristics can and cannot do.

Indirect discrimination is also against the law and refers to situations where treating everyone the same is unfair. This occurs when an unreasonable requirement, condition or practice that purports to treat everyone the same ends up either actually, or potentially, disadvantaging someone with a personal characteristic protected by the law.

Discrimination can also become systemic when entrenched, structural and sometimes institutional patterns of behaviour or actions affect a range of people. These behaviours and actions are often part of organisational culture and are reinforced by policies or procedures. If your organisation receives a lot of complaints about the same or similar issues, it might be a result of systemic discrimination.

Discrimination checklist

Discrimination is against the law when:

1. unfavourable treatment (actual or proposed) of a person or group occurs
2. in an area of public life (eight areas listed below)
3. because that person or group has (or is assumed to have) a personal characteristic protected by the law (18 personal characteristics listed below).

1. Unfavourable treatment

For discrimination to be against the law, there needs to have been (or proposed to be) some unfavourable treatment. In the area of employment, unfavourable treatment may include:

- bullying or harassment
- being denied or refused a benefit that is made available to others
- being provided a benefit on unfavourable terms (for example, less pay or greater inconvenience)
- unfair allocation of tasks (too many tasks or an unfair share of unpleasant tasks)
- unfair rostering (including the allocation of leave and overtime)
- exclusion from essential communications
- being refused essential resources needed to do the job.

2. Area of public life

Victorian equal opportunity law applies to eight areas of public life, including:

- employment (and all work-related matters)
- provision of goods and services (whether paid for or free)
- education (pre-school, primary and secondary school, post-secondary, technical and further education)
- accommodation (including rental and hotel accommodation)
- sport
- clubs and club membership (an association of 30 or more people that has a licence to supply liquor under the *Liquor Control Reform Act 1998*)
- disposal of land (selling land by auction or public sale)
- local government.

3. Personal characteristics protected by the law

In the areas of public life listed above, it is against the law in Victoria to treat someone unfavourably because (or substantially because) they have, or are assumed to have, a personal characteristic protected by the law (listed below).

It is also against the law to treat someone unfavourably because they do not have, or are assumed not to have, a personal characteristic protected by the law.

Disability (previously called ‘impairment’)

- a disability, disease or injury, including work-related injury

Sex

- whether male, female or intersex

Sexual orientation and gender identity

- whether gay, lesbian, bisexual, transsexual, transgender, queer or heterosexual

Lawful sexual activity

- taking part in sexual activity that is not against the law

Pregnancy and breastfeeding

In Victoria it is against the law to discriminate against a woman because she is pregnant or might get pregnant, or because she is breastfeeding a child or expressing milk.

Marital status

- whether married, divorced, unmarried or in a de facto relationship

Parental status and carer status

- where a person is responsible for caring for children or other dependents

Note: does not cover those who are being paid to provide such care.

Race

- race, colour, descent or ancestry, nationality, ancestry or ethnic background

Religious belief

- includes taking part in religious activity, or not holding a religious belief

Note: to be protected by the Equal Opportunity Act the religion must be recognised by law.

Political belief or activity

- includes taking part in political activity, or not taking part in political activity at all

Industrial activity

- including being a member of an industrial organisation like a trade union or taking part in industrial activity, or deciding not to join a union

Employment activity

- for example, where someone asks a question or raises concerns about their rights or entitlements at work

Age

- whether young or old, or because of age in general

Physical features

- such as height, weight, size, hair or birthmarks

Personal association

- an association with someone who has, or is assumed to have, one of these characteristics, such as being the partner of an industrial activist

No personal characteristic?

It may still be against your organisation’s policies to treat someone unfavourably, even if it is not technically discrimination under the law. Most organisations have an internal complaint process to allow staff and others to raise concerns about the implementation of policies, decisions or actions.

If such treatment is repeated, unreasonable and creates a risk to health and safety (including emotional or psychological health) it may be bullying under the *Occupational Health and Safety Act 2004*.

Note: Some other state and federal laws make discrimination against the law when it happens because of other personal characteristics such as:

- social origin (for example, harassing someone because of their class or status in society)
- irrelevant criminal record (for example, refusing to employ someone as a bus driver because they were once convicted of billposting).

Reasonable adjustments

The *Equal Opportunity Act 2010* includes an explicit duty to address discrimination experienced by people with disabilities by making reasonable adjustments in the areas of employment, education and service provision.

For example, in the area of employment the Act provides a list of factors that help determine when it might be reasonable for adjustments to be made in a workplace. These factors are:

- the employee's circumstances, including the nature of their disability
- the nature of the role being offered
- the type of adjustment that is needed to accommodate the employee's needs
- the financial circumstances of the employer
- the size and nature of the workplace and the business
- the effect on the workplace and the business of making the adjustments, including the financial impact, the number of people who would be advantaged or disadvantaged by making them, and the impact on efficiency and productivity of staff
- the consequences for the employer if the adjustments are made
- any relevant action plan that has been made under the Commonwealth *Disability Discrimination Act 1992*
- any relevant disability standards made under the Disability Discrimination Act.

Note: Adjustments do not need to be made where the relevant activity complies with the Disability Discrimination Act.

Making reasonable adjustments requires an employer to balance the need for change with the expense or effort involved in making this change. If an adjustment requires a disproportionately high expenditure or disruption, then it will likely not be reasonable.

The *Equal Opportunity Act 2010* includes a limited exception to the duty to make reasonable adjustments, which allows duty holders to discriminate where adjustments are not reasonable or where the person with the impairment could not participate in the employment, education or service provision even if the adjustments were made.

Contact us

Enquiry Line 1300 292 153
Telephone 1300 891 848
Fax 1300 891 858
TTY 1300 289 621
Email information@veohrc.vic.gov.au
Website humanrightscommission.vic.gov.au



Victorian Equal Opportunity
& Human Rights Commission

Published by the Victorian Equal Opportunity and Human Rights Commission, Level 3, 204 Lygon Street, Carlton Victoria 3053. July 2011.

Disclaimer: This information is intended as a guide only. It is not a substitute for legal advice.