

**QUICK GUIDE**

# Equal Opportunity Act 2010

The *Equal Opportunity Act 2010* provides protections from discrimination in public life in Victoria. It provides avenues for people to resolve discrimination disputes and outlines the Commission's role in helping government, business and the community to identify and eliminate discrimination.

Under the *Equal Opportunity Act 2010*, it is 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](#)
- [profession, trade or occupation](#)
- [race \(including colour, nationality, ethnicity and ethnic origin\)](#)
- [religious belief or activity](#)
- [sex](#)
- [sex characteristics](#)
- [sexual orientation](#)
- [spent conviction](#)
- [expunged homosexual conviction](#)
- [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* covers discrimination in employment, education, accommodation, clubs, sport, goods and services, land sales and transfers, and local government, as well as sexual harassment.

# Features of the Act

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

<p><b>It makes discrimination – or unfavourable treatment based on a personal characteristic – unlawful in various areas of public life.</b> The law covers situations when a person is treated unfavourably, and situations when a practice or condition might appear neutral but has the effect of disadvantaging people with a protected personal characteristic.</p>
<p><b>It prohibits discrimination in a range of settings,</b> including at work, in education, when a person provides goods and services or accommodation, sport and clubs, and local government.</p>
<p><b>An obligation on organisations covered by the law</b> to take proactive, reasonable and proportionate steps to eliminate discrimination, sexual harassment and victimisation.</p>
<p><b>A duty to provide reasonable adjustments for people with disabilities</b> in employment, education and when providing goods and services, to help the person with a disability to perform the job or access education and goods and services.</p>
<p><b>An obligation for employers to accommodate the responsibilities of a parent or carer,</b> unless refusing to do so would be reasonable.</p>
<p><b>Protection of employees, volunteers and unpaid workers</b> from sexual harassment in employment.</p>
<p><b>An exception for religious bodies</b> 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.</p>
<p><b>A dispute resolution service</b> that provides quick, informal, flexible and free assistance to resolve claims of discrimination brought to the Commission.</p>
<p><b>Powers for the Commission to investigate serious issues</b> without waiting for an individual complaint.</p>

## How we can help you comply with the Act

1. The Commission develops practice guidelines in key areas, such as understanding sexual harassment laws and avoiding discrimination in recruitment, to help people understand how to comply with the law. Our guidelines can be found on our website at [humanrights.vic.gov.au](http://humanrights.vic.gov.au)
2. Organisations can lodge an equal opportunity action plan with the Commission, detailing how they plan to eliminate discrimination in their organisation.
3. On request, we can review your policies, procedures and practices for compliance with the *Equal Opportunity Act 2010*.

4. Check our [Human Rights and Equality Courses](#) for further training opportunities.

To subscribe to our e-newsletter *Equality Matters* go to [humanrights.vic.gov.au](http://humanrights.vic.gov.au)

For further information, see our [contact details](#).

## Key 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: [humanrights.vic.gov.au](http://humanrights.vic.gov.au)

To read the most up-to-date, full legal definitions in the Act, download the Act from the Victorian Statute Book at [legislation.vic.gov.au](http://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 or potentially, disadvantaging someone with a personal characteristic protected by the law.

Discrimination can 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, and
2. it is in an area of public life (see the eight areas listed on the next page), and
3. it is because that person or group has (or is assumed to have) a personal characteristic protected by the law (18 personal characteristics listed on the next two pages).

## 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:

- 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)
- bullying or harassment
- 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 (full-time, part-time and casual) 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 (amateur and professional)
- 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 over).

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.

<b>Age</b> whether young or old, or because of age in general.
<b>Disability</b> a disability, disease, or injury, including behaviour that is an outward sign or symptom of a disability.
<b>Employment activity</b> for example, where someone asks a question or raises concerns about their rights or entitlements at work.
<b>Expunged homosexual conviction</b> as homosexual acts are no longer considered a crime under Victorian Law, people can apply to have their historical homosexual convictions expunged (removed) from their criminal record. It is against the law for someone to discriminate against you because of this.
<b>Gender identity</b> is a person's gender-related identity, which may be different to the one assigned to them at birth. It includes a person's sense of their own body (whether affirmed by medical intervention or not) and other expressions of gender, including dress, speech, mannerisms, names and personal reference.
<b>Industrial activity</b> 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.
<b>Lawful sexual activity</b> taking part in sexual activity that is not against the law.
<b>Marital status</b> whether married, divorced, unmarried, in a de facto relationship or a domestic relationship.
<b>Parental status and carer status</b> 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.
<b>Political belief or activity</b> includes taking part in political activity, or not taking part in political activity at all.

<b>Pregnancy and breastfeeding</b>
including being pregnant or the potential to get pregnant, or because a woman is breastfeeding a child or expressing milk.
<b>Profession, trade or occupation</b>
ensures sex workers cannot be discriminated against because of their work.
<b>Race</b>
race, colour, descent or ancestry, nationality, ancestry or ethnic background.
<b>Physical features</b>
such as height, weight, size, hair or birthmarks.
<b>Religious belief</b>
includes taking part in a lawful religious activity, or not holding a lawful religious belief.
<b>Sex</b>
whether male, female, or intersex.
<b>Sex characteristics</b>
a person's physical features relating to sex including sexual and reproductive parts, chromosomes, genes, hormones, and any physical features they develop after puberty.
<b>Sexual orientation</b>
a person's emotional, affectional, and sexual attraction to, or intimate or sexual relations with, people of a different gender, the same gender, or more than one gender.
<b>Spent conviction</b>
a previous conviction from anywhere in Australia that no longer appears on most criminal record checks.
<b>Personal association</b>
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 discrimination under this 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*.

# Sexual harassment

Sexual harassment is unwanted conduct of a sexual nature, which could reasonably be expected to make the other person feel offended, humiliated, or intimidated.

Sexual harassment includes:

- an unwelcome sexual advance
- an unwelcome request for sexual favours
- any other unwelcome conduct of a sexual nature.

Sexual harassment can be physical, oral or written (including by email, the internet and social media), and can include:

- intrusive comments or questions about a person's private life or the way they look
- sexually suggestive behaviour, such as leering and staring or offensive gestures
- brushing up against a person, touching, fondling or hugging
- sexually suggestive comments or jokes
- displaying offensive screen savers, photos, calendars or objects
- repeated requests for a date
- requests for sex
- sexually explicit messages in emails, text messages or posts on social networking sites
- sexual assault
- suggestive behaviour.

**A single incident can constitute sexual harassment – it doesn't have to be repeated.**

The protection against sexual harassment in the *Equal Opportunity Act 2010* extends to people who work as volunteers (that is, workers who do not receive remuneration). Volunteers also have an obligation not to sexually harass other volunteers, employees or clients at a workplace.

# Victimisation

Treating a person unfavourably or punishing or threatening them because they have exercised their rights under workplace equal opportunity policies, or the law is known as 'victimisation'.

When we talk about a person being victimised, it means they're being treated badly or unfairly because they have made a complaint about discrimination, sexual harassment, or racial and religious vilification, it is believed they intend to make a complaint, or they've helped someone else to make a complaint, or they refuse to breach the Equal Opportunity Act.

## Reasonable adjustments for people with disabilities

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. 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.

## Reasonable accommodation of parenting or caring responsibilities

The *Equal Opportunity Act 2010* includes an obligation on employers to not unreasonably refuse to accommodate an employee's responsibilities as a parent or carer. For instance, an employer may be able to accommodate a person's responsibilities as a parent by offering work on the basis that they could work additional daily hours to provide for a shorter working week or occasionally work from home.

The Act provides a list of factors that help determine when it might be reasonable for adjustments to be made in a workplace, which are:

- the employee's circumstances, including the nature of their responsibilities
- the nature of the role
- the nature of the arrangements 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 accommodating those responsibilities, including the financial impact, the number of people who would be advantaged or disadvantaged by making them, and the impact on efficiency and productivity the business
- the consequences for the employer and the employee if the adjustments are made, or not made.

## Contact us



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