



Volunteers and the Equal Opportunity Act 2010

> Know your rights

Every year, thousands of Victorians support their community by volunteering with a wide range of organisations.

This fact sheet provides volunteers with information about their rights under the *Equal Opportunity Act 2010*, which came into effect in August 2011.

About the Equal Opportunity Act 2010

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

- > encourage the identification and elimination of discrimination, sexual harassment and victimisation
- > promote and facilitate the progressive realisation of equality.

The *Equal Opportunity Act 2010* applies to a broad range of organisations. These can include:

- > state government departments and agencies
- > local government
- > private companies
- > not-for-profit organisations, whether or not they receive state government funding or are incorporated
- > some sporting and social clubs.

The *Equal Opportunity Act 2010* can also apply to individuals.

Sexual harassment

The *Equal Opportunity Act 2010* protects volunteers from sexual harassment. This means that:

- > organisations have a responsibility to take reasonable steps to prevent sexual harassment
- > volunteers have the right not to be sexually harassed by their employer, a paid staff member, another volunteer or a client
- > organisations' sexual harassment policies must cover volunteers as well as paid staff.

Under the *Equal Opportunity Act 2010*, volunteers also have an obligation not to sexually harass their employer, a paid staff member, another volunteer or a client.

What is sexual harassment?

Sexual harassment is unwelcome conduct of a sexual nature. It involves behaviour that could reasonably be expected to make a person feel offended, humiliated or intimidated. Sexual harassment can be physical, verbal or written.

Some examples of sexual harassment include:

- > persistent, unwelcome demands or even subtle pressure for sexual favours or dates
- > leering, touching or unnecessary intrusion into someone's personal space
- > offensive jokes and comments, name-calling, intrusive questions or speculation about another person's physical appearance or private life
- > displaying or sending pornography (especially when it is directed at particular

individuals) ranging from material that might be considered mildly erotic through to material that is sexually explicit

- > use of mobile phones (text messaging), emails, notice-boards or any other workplace communication method for any of the above.

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

It is also against the law to victimise someone because they make a complaint about sexual harassment.

Examples of sexual harassment

Katie is a volunteer worker with a home care agency. One day when she is visiting John, a service user, he starts stroking her arm and telling her how pretty she is. Katie asks him to stop but he pulls her onto his lap and tries to kiss her.

Martin is a voluntary committee member of a youth service. In his role he has access to staff personal information. Martin obtains contact details for Kathy, a staff member, and calls her to ask her out. Kathy refuses but Martin continues to text and email her suggesting she go out with him.

Frequently asked questions

Does sexual harassment cover incidents between volunteers, or between volunteers and staff, outside the organisation's premises?

Yes, it can. For example, when:

- > the conduct occurs near work hours, for example, while volunteers and staff are packing up to leave, or walking to their car to go home for the night
- > volunteers are required to travel off site for an event, for example, attending a training session, function or sporting match
- > the organisation encourages volunteers to spend time at a particular place or in a certain way, for example, after work drinks or an end-of-year get-together at someone's house.

Can men be sexually harassed or just women?

Both men and women can experience sexual harassment at work, although it is most commonly experienced by women. Any kind of unwanted conduct of a sexual nature – by or to a man or woman – is sexual harassment and it is against the law.

Can an organisation stop two volunteers, or a volunteer and a staff member, from having a relationship?

No. Discriminating against people for 'lawful sexual activity' is also against the law. This applies to a volunteer having a consensual relationship with another volunteer, or a staff member.

Sexual harassment has nothing to do with genuinely mutual attraction or private, consenting friendships, sexual or otherwise.

To find out more, ring the Commission's Enquiry Line on 1300 292 153.

Discrimination

Under the *Equal Opportunity Act 2010*, volunteers may be protected from discrimination in certain circumstances. It will depend on where you are volunteering and what you are doing.

You are more likely to be protected if your club or organisation:

- > is a club covered by the Act (see below for a list of the kinds of clubs that are covered)
- > runs sporting activities, or
- > requires you to undertake training or skill development in order to volunteer, or provides accreditation or professional experience as part of your volunteering.

If you are unsure about whether you are protected, ring the Commission's Enquiry Line on 1300 292 153.

What is discrimination?

Discrimination can be direct or indirect.

Direct discrimination is treating, or proposing to treat, someone unfavourably or bullying them, because of a personal characteristic protected by law, such as sex, race, age, gender, sexual orientation or disability. For example, a real estate agent refuses to lease a property to a family because of their race.

You can read the full list of protected characteristics on our website:

humanrightscommission.vic.gov.au/discrimination

Indirect discrimination is when a person imposes or proposes to impose a condition, requirement or practice that has, or is likely to have, the effect of disadvantaging a person because of a personal characteristic protected by law. The condition will only be unlawful discrimination if it is not reasonable. The focus here is on broad patterns of behaviour or policies that adversely affect people who are members of a particular group. For example, a manager refuses an employee's reasonable request for flexible work arrangements.

When are volunteers protected from discrimination?

Areas in which volunteers may be protected from discrimination under the *Equal Opportunity Act 2010* include **club membership**, **sporting activities** and where **goods or services** are provided.

Club membership

Under the *Equal Opportunity Act 2010*, it is against the law for certain clubs to discriminate against club members in their memberships or membership benefits.

If you're a club member who also volunteers with your club, you will have this protection if your club is covered by the Act. This means you will also have the obligation not to discriminate against another club member.

Clubs covered by the Act are associations formed for social, cultural, political, sporting or other lawful purposes that:

- > have more than 30 members
- > have a liquor licence, and
- > operate their facilities wholly or partly from their own funds.

The Act has some exceptions and allows certain clubs to discriminate for particular reasons – for example, clubs established for people of a certain age group can discriminate on the basis of age.

Example of discrimination against club members

While volunteering at a function at their bowls club (which is covered by the *Equal Opportunity Act 2010*) two club members, May and Xiu were speaking in their first language, Mandarin. The Club Secretary told them they should be speaking English as it was an Australian club and if they didn't want to speak English, they shouldn't volunteer anymore.

Sport

Under the *Equal Opportunity Act 2010*, it is against the law to discriminate against someone by excluding them from participating in a sporting activity. This includes:

- > coaching
- > umpiring or refereeing
- > administering a sporting activity.

People who perform these roles are protected from discrimination under the Act. This also means they have a responsibility not to discriminate when they are performing these roles.

Example of discrimination in sport

James volunteered as a coach for his son's soccer team. When the parents of another team member found out James was in a same-sex relationship, they contacted the club and insisted he no longer coach the team as they believed he was not an appropriate role model. The club president told James that while the club was sorry to lose him, it had no choice but to dismiss him as the coach.

Providing goods and services

Under the *Equal Opportunity Act 2010*, it is against the law for organisations covered by the Act to discriminate in providing goods and services. In some circumstances, an organisation offering a volunteering opportunity may be considered to be providing a service to their volunteers.

This may be the case where, for example, the organisation has a structured volunteering program in which:

- > a volunteer is required to undertake training or skill development in order to volunteer
- > a volunteer undertakes an assessment or gains accreditation or professional experience as part of their volunteering.

Under the *Equal Opportunity Act 2010*, volunteers who provide services on behalf of an organisation – such as volunteers in a charity shop or a community legal centre – also have an obligation not to discriminate against clients when providing services.

Example of discrimination in goods and services

Sarah is a trainee volunteer with a telephone counselling service that also employs paid staff. The service has a policy that both paid staff and volunteers must undertake a certificate in telephone counselling in order to provide phone counselling without supervision. The manager tells Sarah she isn't needed anymore when he finds out she's pregnant. He says, "You're only a volunteer and I'm not going to waste training on someone who isn't going to stick around."

Reasonable adjustments for volunteers with a disability

Under the *Equal Opportunity Act 2010*, an organisation may be required to make reasonable adjustments for a volunteer with a disability in certain circumstances. This will depend on where you are volunteering and what you are doing.

What is a disability?

Types of disabilities covered by the Act include physical, psychological, sensory, neurological and intellectual disabilities. They may be short term, long term or permanent. The law protects people who have had a disability in the past and those who may have a disability in the future.

What is a reasonable adjustment?

Reasonable adjustments could include things like:

- > flexibility in role requirements
- > providing a hearing loop at training events
- > installing a ramp to allow access to a building.

Making reasonable adjustments involves the organisation balancing the need for the adjustment with the expense or effort involved in making the adjustment. What is reasonable will depend on the circumstances. To find out more, ring the Commission's Enquiry Line on 1300 292 153.

Frequently asked questions

I'm not allowed to volunteer because of my criminal record – is this discrimination?

Discrimination on the basis of criminal record is not covered the Victorian *Equal Opportunity Act 2010*. However, under federal law, the Australian Human Rights Commission may investigate complaints of discrimination in employment and occupation on the basis of criminal record and, where appropriate, try to resolve these complaints by conciliation.

For more information about discrimination in employment and occupation on the basis of criminal record, contact the Australian Human Rights Commission on 1300 656 419.

I've been told I have to stop volunteering because I'm 'too old' – is this discrimination?

It may be. Some organisations have difficulty obtaining insurance to cover volunteers over a certain age so they may exclude older volunteers.

While age discrimination is prohibited under the *Equal Opportunity Act 2010*, whether it is against the law for an organisation to exclude an older volunteer because of their insurance company's policy depends on a number of factors.

These include whether the organisation could reasonably be expected to obtain alternative insurance and whether the insurance company's age restriction is lawful.

If you are unsure about how this applies to your situation, ring the Commission's Enquiry Line on 1300 292 153.

What if there's a problem?

If you feel you have experienced sexual harassment, discrimination or victimisation while volunteering, there are different options you can take.

Most organisations have a complaints procedure you could use to try to resolve your issue, informally or through a formal complaint. You may have received a copy of the procedure during induction or training. Otherwise a volunteer manager or supervisor should be able to help you find it.

You can also ring the Victorian Equal Opportunity and Human Rights Commission Enquiry Line for a free, confidential discussion about making an external complaint. Call 1300 292 153.

Under the *Equal Opportunity Act 2010*, the Commission provides a free, fair and timely dispute resolution service.

When a complaint is made, the Commission may contact the person or organisation the complaint is made against and try to resolve the issue. The Commission does not advocate or act for people making a complaint.

Complaints to the Commission are resolved through a process known as conciliation. This is where the people involved in a dispute talk through the issues with the help of the Commission to try and reach an agreement on how the dispute will be resolved.

The Commission is not a court and cannot make a decision about whether a breach of the law has occurred.

Other useful contacts

I can do that – Victoria's Volunteering Portal
volunteer.vic.gov.au

PILCHConnect
Legal assistance for community organisations
(03) 8636 4455
pilchconnect.org.au

Volunteering Victoria
(03) 8327 8500
volunteeringvictoria.com.au



Victorian Equal Opportunity
& Human Rights Commission

Need more information?

Contact the Commission:

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

We welcome your feedback!

Were these resources useful? Easy to use?
Would you like to see something else included?
Please email us at research@veohrc.vic.gov.au

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