



Volunteers and the Equal Opportunity Act 2010

> Sexual harassment fact sheet

Volunteers make an enormous contribution to the Victorian community. Every year thousands of Victorians contribute their time and energy on a voluntary basis to organisations in the not-for-profit, public and private sectors, gaining valuable skills and experience and strengthening their connection with their communities.

Volunteer-involving organisations range from incorporated associations with both paid staff and volunteers, to unincorporated community groups, clubs and associations largely or wholly run by volunteers.

Organisations work with volunteers in a range of ways. Some offer a structured volunteering program, others engage with members of the community in an ad hoc way when they offer to help out at an event or activity. Different laws apply differently depending on the type of organisation and its relationship with its volunteers.

The aim of this fact sheet is to provide the range of volunteer-involving organisations in Victoria with information to assist them to comply with their obligations under the new *Equal Opportunity Act 2010*, which came into effect in August 2011.

Compliance with equal opportunity laws is consistent with volunteer management best practice. It can assist with volunteer recruitment and retention. Like paid staff, volunteers who feel they are treated fairly and equally are more likely to commit to your organisation for the long term. Importantly, it can also help manage legal risk by reducing the likelihood of complaints of discrimination, sexual harassment and victimisation.

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 people. This 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
- > individuals.

The Equal Opportunity Act 2010 and volunteering

The sexual harassment provisions of the *Equal Opportunity Act 2010* apply to volunteers in the same way as they apply to paid employees.

The discrimination provisions in the *Equal Opportunity Act 2010* do not cover volunteering as a separate area of public life. However, they may apply to volunteers in certain circumstances – this will depend on the type of organisation with which they volunteer and the nature of the volunteering opportunity. For more information see [Volunteers and the Equal Opportunity Act 2010 >Discrimination fact sheet](#).

Sexual harassment and volunteers

Volunteers are protected by the sexual harassment provisions in Part 6 of the *Equal Opportunity Act 2010* and have the same responsibilities as paid employees under these provisions.

This means that:

- > volunteers have the right not to be sexually harassed by their employer, a paid staff member, another volunteer or a client
- > volunteers have an obligation not to sexually harass their employer, a paid staff member, another volunteer or a service user
- > organisations' sexual harassment policies will need to cover volunteers as well as paid staff.

When applying the sexual harassment provisions in the *Equal Opportunity Act 2010*, an 'employee' includes a volunteer or unpaid worker and an 'employer' includes a person who employs a person on an unpaid or voluntary basis.

A member of the governing body of a body corporate or unincorporated association, such as the board or committee of management, is taken to be the employer of paid staff or volunteers of that body.

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 have made a complaint of sexual harassment.

Examples of sexual harassment

Sarah 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. Sarah 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.

What should organisations do to prevent and respond to sexual harassment?

Under the *Equal Opportunity Act 2010*, organisations working with volunteers have a **positive duty** to take reasonable and proportionate measures to prevent sexual harassment. Instead of simply reacting to complaints when they happen, the Act requires organisations to be proactive about sexual harassment and take steps to prevent sexual harassment from happening in the first place.

The measures that organisations should take to prevent sexual harassment will vary depending on their size and resources. They don't have to be expensive or time consuming – in fact most organisations with paid staff will already have these measures in place. Making sure they apply to volunteers is an easy way for volunteer-involving organisations to take steps to comply with the positive duty to prevent sexual harassment and is consistent with best practice in volunteer management.

Prevention is best

Measures that volunteer-involving organisations could take to prevent and respond to sexual harassment against paid staff, volunteers and clients include:

- > having a sexual harassment policy
- > having a grievance or complaints policy and procedure
- > including information about the policies and procedure in induction or training for paid staff and volunteers
- > providing regular reminders about the policy and procedure, for example, by displaying posters around the organisation
- > making sure any complaints of sexual harassment are taken seriously by managers and responded to appropriately.

For organisations without a policy or procedure, there are resources available to download from humanrightscommission.vic.gov.au/employerstoolkits. Some of the organisations listed under Contacts will also have good resources on policies and grievance procedures.

Who is responsible?

In some circumstances, an organisation to which the Act applies may be responsible for sexual harassment against, or by, a volunteer unless they can show they have taken reasonable precautions to prevent it. This is known as **vicarious liability**.

For example, an organisation could be legally liable for a complaint of sexual harassment by a volunteer who was acting as their agent if management knew about the problem and did nothing to prevent or respond to it. An organisation could also be liable for a complaint of sexual harassment by an employee against a volunteer if they didn't take reasonable precautions to prevent it.

In some circumstances the *Wrongs Act 1958* will be relevant here as well. This Act provides that an incorporated community organisation may be responsible for the actions of its volunteers, rather than the volunteers themselves being directly liable in civil proceedings, for things done in good faith when undertaking community work. This protection for individuals will not apply when the actions are not in good faith or when they were contrary to instructions given by the community organisation.

Incorporated or unincorporated?

Unlike other areas of law, the *Equal Opportunity Act 2010* does not make a distinction between the obligations of associations that are incorporated and those that are not. When the *Equal Opportunity Act 2010* talks about a 'person' having obligations, this can include a natural person, a corporation or an unincorporated association.

The Act makes clear that a dispute against an unincorporated association may be brought against the association in the name of its president, secretary or other similar officer.

Under the *Equal Opportunity Act 2010*:

- > a person or organisation can be liable for their own unlawful actions by discriminating, sexually harassing or victimising someone
- > an employer can be vicariously liable for the actions of its employee

- > a person or organisation can be vicariously liable for the actions of its agents, this could include volunteers in some circumstances
- > a person or organisation can also be liable if it requests, instructs, induces, encourages, authorises or assists another person to discriminate against, sexually harass or victimise someone, and
- > a person or organisation can also be liable if it victimises someone because they have made a complaint of sexual harassment.

The Wrongs Act also means that an incorporated community organisation can be liable instead of an individual volunteer for things done in good faith when undertaking community work (so long as it was not contrary to instructions given by the community organisation).

The best thing for an organisation to do is to provide clear guidance on what volunteers are authorised to do, for example, by providing a role or position description, and to make clear its expectations that sexual harassment is not acceptable.

If problems arise...

Internal complaints process

It is important that complaints of sexual harassment by anybody associated with the organisation – volunteers, paid staff or service users – are taken seriously by the organisation. You can make sure volunteers know their rights and responsibilities by having a grievance or complaints policy and procedure that applies to volunteers, and by ensuring that volunteers are aware of the policy and know who they can talk to in the organisation if they feel they have been unfairly treated.

A sample policy that can be adapted for your organisation is available for download at humanrightscommission.vic.gov.au/employerstoolkits

Under Part 7 of the *Equal Opportunity Act 2010*, it is unlawful to victimise someone for making a complaint of sexual harassment. For example, victimisation could include dismissing a paid staff member or not offering a volunteer any more shifts after they made a complaint of sexual harassment to your organisation or another agency.

When dealing with a complaint of sexual harassment, organisations should take care not to treat the complainant in a way that could be perceived as victimisation.

External complaints processes

Several agencies handle complaints about sexual harassment:

Victorian Equal Opportunity and Human Rights Commission

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

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

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, and with the aim of reaching an agreement on how the dispute will be resolved.

Victorian Civil and Administrative Tribunal (VCAT)

If a complaint can't be resolved by the Commission, the complainant may make an application to the Victorian Civil and Administrative Tribunal (VCAT) to have the matter listed for hearing.

Under the *Equal Opportunity Act 2010*, a person who feels they have experienced sexual harassment could also make an application directly to VCAT for hearing. However, if a settlement agreement has been reached at the Commission, the matter cannot be reopened by making an application to VCAT.

Criminal offences

Some types of sexual harassment may also be offences under criminal law, including indecent exposure, stalking, sexual assault and obscene or threatening communications, such as phone calls, letters, emails, text messages and postings on social networking sites.

In these instances, an organisation should advise the individual that they can report the matter to the police and provide any necessary support and assistance that the individual may need. The organisation can also seek advice from relevant agencies such as Victoria Police.

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

Checklist for organisations

Do you:

- have a sexual harassment policy that applies to both paid staff and volunteers, which makes clear the organisation's expectations that sexual harassment is not acceptable?
- have a grievance or complaints policy and procedure?
- include the policies and information about your grievance procedure in induction or training for both paid staff and volunteers?
- keep a record of volunteers and staff who have received information about your policies and procedure?
- provide regular reminders about your sexual harassment policy and grievance procedure, for example, by displaying posters around your organisation?
- provide a role or position description for volunteers?
- make sure staff and volunteers know who they can talk to in your organisation if they feel they have experienced sexual harassment?
- know how to respond appropriately to a complaint of sexual harassment by a staff member or volunteer?



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.