



Volunteers and the Equal Opportunity Act 2010

> Discrimination 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 relationships 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 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.

The sexual harassment provisions of the *Equal Opportunity Act 2010* apply to volunteers in the same way as they apply to paid employees. For more information see [Volunteers and the Equal Opportunity Act 2010 >Sexual harassment fact sheet](#).

What is discrimination?

Discrimination can be direct or indirect.

Direct discrimination is treating, or proposing to treat, someone unfavourably because of a personal characteristic protected by law, such as sex, race, age, sexual orientation or disability.

For a full list of characteristics protected by the *Equal Opportunity Act 2010*, go to: 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.

It is also against the law to victimise someone for speaking up about their equal opportunity rights or making a complaint of discrimination.

Discrimination and volunteers

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.

Areas in which the discrimination provisions may be found to apply to protect volunteers include **club membership**, **sporting activities** and where **goods or services** are being provided.

Club membership

Under Part 4 of the *Equal Opportunity Act 2010*, it is unlawful for clubs to which the Act applies to discriminate against club members in the terms of their membership or the membership benefits provided to them.

A member of a club who volunteers for their club is protected from discrimination, and is prohibited from discriminating against another club member, on these grounds if their club is covered by the Act.

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.

Exceptions apply to clubs established:

- > for members of a particular sex – to allow them to discriminate on the basis of sex
- > to preserve a minority culture – to allow them to discriminate on the basis of race
- > for people of a particular age group – to allow them to discriminate on the basis of age
- > for a political purpose – to allow them to discriminate on the basis of political belief of activity.

It's important to note that clubs that aren't covered by the *Equal Opportunity Act 2010* may be covered by federal anti-discrimination laws.

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 at club events anymore.

Sport

Under Part 4 of the *Equal Opportunity Act 2010* it is unlawful to discriminate against someone by excluding them from participating in a sporting activity. This includes coaching, umpiring or refereeing, or administering a sporting activity. People who perform these roles are protected from discrimination under the Act. This is an area that relies heavily on volunteers at the local community level.

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 that James is in a same-sex relationship they contacted the club and insisted that 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.

Provision of goods and services

Under the *Equal Opportunity Act 2010* it is unlawful for organisations to which the Act applies 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 those volunteers.

An organisation offering a volunteering opportunity may be considered to be providing a good or a service where, for example, it has a structured volunteering program in which:

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

Volunteers can also have obligations as providers of goods and services.

Example of possible 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, "She's 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*, organisations may be required to make reasonable adjustments for staff and clients with a disability. These provisions under the *Equal Opportunity Act 2010* 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.

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 future.

What is a reasonable adjustment?

Making reasonable adjustments involves balancing the need for the adjustment with the expense or effort involved in making the adjustment. To assess whether an adjustment is reasonable, an organisation should consider the nature of the adjustment required and the financial impact of the adjustment on the organisation.

An organisation would not be required to make an adjustment that is not reasonable with regard to the person's disability, or if the person could not participate in the organisation even after the adjustment was made.

Reasonable adjustments could include things like:

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

What is reasonable will depend on the circumstances. An adjustment would not be reasonable if the organisation could not afford it, or if people with a disability could not participate even after the adjustment were made.

What adjustments should volunteer-involving organisations consider making for volunteers with a disability?

It's good practice to ask a volunteer with a disability what changes could be made to the role to accommodate their disability. These don't need to be expensive – for example, they may need to take more frequent breaks, shorter shifts or may not be able to undertake heavy lifting.

Some of the adjustments that organisations providing services can make to meet their obligations under the Act will benefit volunteers, paid staff and clients as well – for example, making sure their premises are accessible to people with a physical disability.

Regardless of whether an organisation is legally required to make a particular adjustment for a volunteer, it is good practice for organisations to be as accommodating as is reasonably practical of the diversity of people wanting to volunteer with them. An open and accepting attitude can go a long way, as shown by the quote below from a volunteer with a disability:

“Previous places simply could not accept that I was capable of doing things. They could not get past the disability and mental illness and simply saw me as a ‘thing’ that needed to be pitied and babysat. I am now at a brilliant place that is able to focus on what I can do and see the whole me. They accept that I may at times have issues but that does not mean there is not something valuable that I can offer.”

Other relevant laws

Charter of Human Rights and Responsibilities

Public authorities also have obligations under the Victorian *Charter of Human Rights and Responsibilities Act 2006* (the Charter), which sets out the basic rights and responsibilities of all Victorians.

Under the Charter, public authorities have an obligation to consider the rights protected by the Charter when developing policies and delivering services.

Organisations that are public authorities under the Charter include:

- > state government departments and agencies
- > local councils
- > private companies delivering services on behalf of the State Government
- > not-for-profit organisations delivering services on behalf of the State Government
- > public bodies such as public schools, public hospitals, museums and libraries.

The rights protected by the Charter include the right to equal and effective protection against discrimination and the right to privacy. These rights may apply in relation to discrimination against a volunteer, for example, in a public school or with a program funded by the state or local government.

For more information about the Charter go to: humanrightscommission.vic.gov.au/charter.

Racial and Religious Tolerance Act

The *Racial and Religious Tolerance Act 2001* makes it against the law to vilify a person or group of people on the grounds of their race or religion.

Vilification is behaviour that incites or encourages hatred of, serious contempt for, revulsion or severe ridicule of another person or group of people on the grounds of their race or religion.

For more information about the Racial and Religious Tolerance Act go to: humanrightscommission.vic.gov.au/vilification.

Federal anti-discrimination laws

Volunteers in Victoria may also be covered by federal laws that prohibit discrimination on grounds including sex, age, race, religion, disability, criminal record and political opinion. These laws are administered by the Australian Human Rights Commission. For more information about these laws go to humanrights.gov.au.

What should organisations do to prevent and respond to discrimination?

Under the *Equal Opportunity Act 2010*, many volunteer-involving organisations will already have a **positive duty** to take reasonable and proportionate measures to prevent discrimination if they have paid staff members or provide services to clients. Instead of simply reacting to complaints when they happen, the Act requires organisations to be proactive about discrimination and take steps to prevent it from happening in the first place.

The measures that organisations should take to prevent discrimination 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 these measures apply to volunteers is an easy way for volunteer-involving organisations to ensure that everyone associated with the organisation – paid staff, volunteers and clients – is treated fairly and equally. This will also help to minimise risk by making a complaint of discrimination less likely, and is consistent with best practice in volunteer management.

Prevention is best

Measures that volunteer-involving organisations could take to prevent and respond to discrimination include:

- > having an equal opportunity 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 discrimination 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.

Take care in the relationship – good practice when dealing with volunteers

As with paid staff, problems can arise with volunteers if they feel unfairly treated at key points in the volunteering relationship, such as at the recruitment stage or when leaving the organisation. Exercising particular care at these times can help prevent volunteers feeling that they have experienced discrimination.

To ensure organisations don't risk discriminating against potential volunteers, it is good practice to draft a volunteer position description prior to recruiting for a volunteer role. As with recruiting for paid positions, organisations should ensure that any requirements relate to the skills and experience needed for the role and avoid references to personal characteristics under the *Equal Opportunity Act 2010* that a person may or may not have, for example, gender or age, unless an exception or exemption under the Act applies to your organisation.

Organisations that interview potential volunteers should prepare a list of questions that relate directly to the role requirements. As with interviewing for paid positions, avoid asking questions that may be presumed to be relevant only to certain people, such as women, older people or people with a disability. Instead, prospective volunteers should be asked whether they can fulfil the key requirements of the role.

If you're considering managing a volunteer out of a role because they can no longer perform the inherent requirements of the role, think about whether you could make reasonable adjustments to enable them to continue as a volunteer.

For example, could they take more frequent breaks, perform less physical duties, or be transferred to a role that is more suitable?

If there are no other alternatives to discontinuing their relationship with your organisation, it is good practice to have a process around this rather than just letting them go. In any discussion, focus on their ability to fulfil the requirements of the role and avoid references to personal characteristics under the *Equal Opportunity Act 2010* that they may or may not have, for example, age or disability.

Having a process that makes the volunteer feel valued and recognises the important role that volunteering with your organisation may play in their life will mean that they are less likely to feel unfairly treated. Perhaps you could farewell the volunteer with a celebration as you would a staff member who was retiring and present them with a gift or certificate acknowledging their contribution.

Who is responsible?

In some circumstances, an organisation to which the Act applies may be responsible for discriminating 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 discrimination 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 discrimination 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
- > an employer can be vicariously liable for the actions of its employees
- > a person or organisation can be vicariously liable for the actions of its agents, which could include volunteers in some circumstances
- > a person or organisation can be liable if it requests, instructs, induces, encourages, authorises or assists another person to discriminate against, sexually harass, or victimise someone
- > a person or organisation can be liable if it victimises someone because they have made a complaint of discrimination.

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

If issues can be dealt with at the organisational level when they first arise, it can stop them escalating into something bigger. 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 can be downloaded from humanrightscommission.vic.gov.au/employerstoolkits. Some of the organisations listed under Contacts will also have good resources on policies and grievance procedures.

External complaints processes

Several agencies can handle complaints about discrimination:

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 discrimination 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.

Australian Human Rights Commission

Information about federal laws which prohibit discrimination on grounds including sex, age, race, religion, disability, criminal record and political opinion is available from the Australian Human Rights Commission. For more information about these laws go to humanrights.gov.au.

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 an equal opportunity policy that applies to both paid staff and volunteers, which makes clear the organisation's expectations that discrimination 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 equal opportunity policy and grievance procedure, for example, by displaying posters around your organisation?
- have position descriptions for volunteer roles that focus on the requirements of the role and make clear what the volunteer is authorised to do?
- know about your obligations to provide reasonable adjustments for people with disabilities?
- make sure staff and volunteers know who they can talk to in your organisation if they feel they have experienced discrimination?
- know how to respond appropriately to a complaint of discrimination 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.