



Victorian Equal Opportunity
& Human Rights Commission

Locked out

> Discrimination in Victoria's private rental market





Victorian Equal Opportunity & Human Rights Commission

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Discrimination in the private rental market

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Contents

Introduction	2
Chapter 1: About the research	3
The Commission's interest in the private rental market	3
The positive duty	3
Victoria's social housing framework	3
Objectives	4
Methodology	4
Chapter 2: The private rental market in Victoria	6
Legal and policy context	6
Regulation and institutional environment	7
Barriers to the private rental market – previous research and findings	8
Research in other jurisdictions	8
Other research	9
Chapter 3: Survey findings	10
Summary of findings	10
Refusals and geographical locations	10
Reasons given and making complaints	10
Analysis of findings	11
Rights awareness and making complaints	14
Review of complaints to the Commission	14
Impacts on health and wellbeing, and perceptions of applying for properties	14
Chapter 4: Conclusion and next steps	16
Conclusion	16
Myths and stereotypes	16
Next steps	17
Appendix 1: Discrimination and renting fact sheet	18
Appendix 2: Discrimination in the private rental market survey	20
Appendix 3: Organisations that distributed the survey	24

Introduction

This report analyses the findings of a survey by the Victorian Equal Opportunity and Human Rights Commission (the Commission) on the experiences of people seeking accommodation in the private rental market in Victoria. The purpose of the survey was to gather current information and a stronger evidence base on an issue that was being consistently raised by community stakeholders, that some people are denied access to private rental accommodation based on personal characteristics that are protected under the *Equal Opportunity Act 2010*, including race, sex, age, disability or being a parent.

This project was conducted using the Commission's research power under section 157 of the Equal Opportunity Act, which provides that the Commission may:

- undertake research into any matter arising from, or incidental to, the operation of this Act that it considers would advance the objectives of the Act, and
- collect or analyse data relevant to the operation and the objectives of this Act.

This research will inform the Commission's future work to address discrimination in the private rental market. This is reflected in the methodology and content of the survey, which includes questions relating to all Equal Opportunity Act attributes and seeks information about locations, interactions with landlords and rental agents, and tenant perceptions of the process of applying for rental properties.

About the Commission

The Commission is an independent statutory body with responsibilities under three laws:

- *Equal Opportunity Act 2010*
- *Racial and Religious Tolerance Act 2001*
- *Charter of Human Rights and Responsibilities Act 2006* (the Charter).

The Equal Opportunity Act makes it against the law to discriminate against people based on a number of different personal characteristics. The Racial and Religious Tolerance Act makes it against the law to vilify people because of their race or religion.

Under these laws the Commission helps resolve complaints of discrimination, sexual harassment, victimisation, and racial or religious vilification through a free and impartial dispute resolution service, with the aim of reaching a mutual agreement.

The Charter requires government departments and public authorities to act in ways that are compatible with human rights and properly consider relevant human rights when making decisions. The Commission's role is to educate people about the rights and responsibilities in the Charter and to report annually to the Victorian Government about the operation of the Charter. The Commission does not handle complaints related to the Charter.

Services provided by the Commission include:

- an Enquiry Line service available by telephone, email or webchat
- a free, fair and timely dispute resolution service
- information and education about equal opportunity, racial and religious vilification and the Charter.

Chapter 1: About the research

The Commission's interest in the private rental market

Barriers to the private rental market, including unlawful discrimination, are a significant cause of disadvantage for many people in Victoria. The link between discrimination and disadvantage is acknowledged in the objectives of the Equal Opportunity Act, which include the goal of progressively realising equality by addressing systemic discrimination, and removing barriers to achieve substantive equality for all Victorians.

The purpose of this research was to gauge the extent to which prospective tenants experience discrimination when applying for private rental properties based on characteristics protected under the Equal Opportunity Act.

The positive duty

Under the Equal Opportunity Act, duty holders are required to take reasonable and proportionate measures to eliminate discrimination as far as possible. This is known as the positive duty. While individuals cannot pursue a complaint of discrimination against an individual or organisation for not complying with the positive duty, a contravention of the duty may be the subject of an investigation undertaken by the Commission.

The introduction of the positive duty provides opportunities to identify ways in which duty holders under the Equal Opportunity Act, including employers and those providing accommodation and goods and services, are adapting policies, practices, and procedures to address discrimination before it occurs. Consequently, one of the aims of the research was to assist in determining what may be required to support those who provide or manage private rental accommodation in Victoria to meet the positive duty and take positive action to prevent discrimination.

Victoria's social housing framework

The Victorian Government is currently conducting a public consultation on the future direction of social housing. The consultation discussion paper, *Pathways to a fair and sustainable housing system*, suggests a range of options for change to the current system including:¹

- reviewing existing methods for determining eligibility for social housing
- reviewing ongoing eligibility of tenants for public housing, based on their changing needs, life circumstances, employment, and income
- examining the structure and length of existing leases.

The review follows a Parliamentary Inquiry and reports by the Victorian Auditor-General into public housing, indicating there is a need for reform to address the sustainability of the current system.² Significantly, the government consultation paper identifies transition to private rental as a crucial component of 'freeing up' existing public housing stock, in order to provide public housing to those most in need, and promote independence of those the Office of Housing considers no longer require public housing.

If private rental is to be a viable, long-term housing option for people leaving public housing, or an alternative for those seeking public housing, it is crucial that barriers to the private rental market, including unlawful discrimination, are also removed.

1 State of Victoria, Department of Human Services, *Pathways to a fair and sustainable social housing system* (2012).

2 Victorian Parliament Family and Community Development Committee, *Inquiry into the Adequacy and Future Directions of Public Housing in Victoria* (2010) and Victorian Auditor-General, *Access to Public Housing* (2012).

Objectives

The objectives of the project were to:

- investigate perceptions of tenants about the process of applying for private rental properties
- determine the extent to which discrimination is a factor preventing people from accessing the private rental market, distinct from market forces or other barriers
- investigate current levels of understanding among tenants about complaint-handling bodies and their rights in relation to discrimination
- raise awareness among tenants about their rights under the Equal Opportunity Act. All survey participants received the Commission's fact sheet on discrimination and renting, which is provided at **Appendix 1**
- scope opportunities for future work by the Commission to address discrimination in the private rental market.

Methodology

The Commission conducted the survey with the assistance of a range of organisations across Victoria from 1 November 2011 to 31 March 2012. Organisations were sent copies of the survey form along with the Commission's fact sheet on discrimination in the private rental market, and were encouraged to either hand clients a survey to complete in their own time or work with them to complete the survey. A copy of the survey form is provided at **Appendix 2**.

To inform the project, the Commission also conducted a review of complaints received in the area of accommodation from 1 July 2009 to 31 May 2012.

Survey design

The survey was developed in consultation with organisations including the Tenants Union of Victoria, the Victorian Council of Social Service, and Housing for the Aged Action Group.

The survey targeted a range of groups who can be vulnerable to discrimination.

The survey asked respondents whether they thought they were refused a property because of a personal characteristic protected under the Equal Opportunity Act including:

- disability
- age
- race
- having children
- marital status
- sexual orientation
- gender identity.

The survey also asked people about their source of income to identify whether this could be a factor preventing them from accessing private rental accommodation.

While the source of a person's income is not specified as a protected attribute under the Equal Opportunity Act, it was nonetheless included in the survey as some sources of income are closely connected to those attributes. For example, only people with disability are eligible for the Disability Support Pension.

Respondents were asked to describe their experiences of discrimination based on a personal characteristic protected under the Equal Opportunity Act. Those who felt they were denied a property because of a characteristic were asked to describe why they felt this was the case.

Respondents were able to describe their experiences in their own words in the survey, with open questions about the impact refusals had on them, and a chance to make general comments about their experiences in the private rental market.

The survey also examined the geographical concentration of problems by asking respondents in which suburb or town the properties they had been refused were located, whether the refusal was from an agent or directly from a landlord and, if from an agent, the name of the real estate agency if known.

Respondents were asked whether they complained to somebody if they felt they had been denied a property because of discrimination. This was important to gain further insight into rights awareness among consumers and levels of understanding about making a complaint of discrimination.

Organisations involved

The survey was administered through a range of organisations, including migrant resource centres, community legal centres, homelessness services and other community organisations. A number of surveys were also provided to Centrelink engagement officers across Victoria.

In selecting organisations to assist with the survey, the Commission wanted to ensure there was wide geographical coverage, and selected agencies working with particular groups who may face challenges securing accommodation. These included:

- Tenants Union of Victoria
- Council to Homeless Persons
- Centrelink
- Homeground
- WAYSS Dandenong
- United Care Cutting Edge and Bridge Youth Services, Shepparton
- Rumbalara Family Services, Shepparton
- Victorian Aboriginal Legal Service
- Homeless Persons' Legal Clinic
- Housing Resource and Support Service
- Spectrum Migrant Resource Centre
- Salvation Army Social Housing Service, Sunshine.

The Commission also sought the assistance of the peer education support officers at the Council to Homeless Persons, who worked with organisations in Geelong to collect responses to the survey.

A full list of organisations who distributed the survey is provided at **Appendix 3**.

Limitations of the research

All efforts were made to reduce errors in responses and to ensure a broad and diverse sample size of attribute groups and geographical locations.³ However, the Commission acknowledges the accuracy of the data and limitations to this survey may include:

- a relatively small number of survey respondents (165)
- potential for bias in information received due to the points at which information was sought from respondents, that is, largely disadvantaged people approaching organisations who may have had trouble securing accommodation
- potential over-representation of certain attribute groups over others due to the small sample size, and target groups of particular organisations participating.

While providing insight into the barriers faced by respondents and their perceptions of applying for properties, the small sample size, when compared to the size of the private rental market, means that it is difficult to extrapolate results to the entire private rental market.

Low vacancy rates and rising rents mean that more people will inevitably miss out on properties. Difficult market conditions may add to perceptions that discrimination is occurring when in fact it may not be.

While some responses reveal explicit examples of discriminatory treatment, responses are perception based and are not necessarily accurate statements about the actual motivations and intentions of real estate agents and landlords. Nonetheless, these responses are still relevant to the research as they reflect current levels of understanding among consumers about a range of factors, including rights awareness, making complaints and perceived barriers to accessing the private rental market.

The Commission is mindful that the views of the real estate industry are not represented in the report, as the research focused solely on the experiences of those seeking private rental accommodation in Victoria. The Commission looks forward to working with the real estate industry in progressing the next phase of this project which will include training and education for landlords and agents based on the findings of this report.

³ The seven dimensions of data quality prescribed by the Australian Bureau of Statistics informed the Commission's research and development of the survey. These are institutional environment, relevance, timeliness, coherence, interpretability and accessibility.

Chapter 2: The private rental market in Victoria

Private rental properties make up a significant proportion of all housing stock in Victoria. According to 2011 Census data, the proportion of private rental dwellings that were privately rented in Victoria was 515,586. That is, 26.5 per cent of all occupied private dwellings.⁴ By contrast, the total number of social housing dwellings in Victoria is approximately 83,000, accommodating around 143,000 tenants and representing 3.8 per cent of Victoria's total housing stock.⁵

This chapter outlines the legislative and policy framework governing the private rental market in Victoria, the key organisations involved in its regulation, and provides a brief overview of existing research on discrimination and other barriers for people seeking accommodation in the private rental market.

Legal and Policy Context

Equal Opportunity Act

The Equal Opportunity Act makes it against the law to discriminate against someone based on their race, sex, age or disability, among other characteristics, in an area of public life including accommodation.

A landlord or rental agent must not treat a person unfavourably when they are applying for a rental property by:⁶

- refusing or not accepting an application
- processing an application in a different way
- offering the property on different terms (for example requiring a higher amount for the bond)
- refusing to provide accommodation to a person because they have an assistance dog.⁷

It is against the law to discriminate against someone with disability in accommodation, for example, denying someone accommodation because they use an aid such as a wheelchair, crutches or scooter. A landlord or rental agent must allow a person offered a property to make alterations to accommodate their disability, provided that:⁸

- the person bears the cost of the alterations themselves
- the alterations will not alter the premises of another occupier
- things can be put back the way they were before the alterations
- the person agrees to restore the premises to its previous state before they leave.

Under the Equal Opportunity Act the positive duty requires individuals and organisations to take reasonable and proportionate measures to eliminate discrimination, sexual harassment and victimisation before it occurs.⁹

Although source of income is not a protected attribute under the Equal Opportunity Act, some sources of income are closely connected to those attributes. This raises the question of whether refusing accommodation solely based on receipt of a particular welfare payment, for example, the Disability Support Pension, or Parenting Payment might amount to discrimination under the Equal Opportunity Act.

This is because it is also unlawful to treat a person unfavourably because of a characteristic associated with a particular attribute protected by the Equal Opportunity Act. The characteristic may be either one which a person with an attribute 'generally has', or one 'that is generally imputed to a person with that attribute'.¹⁰

4 Australian Bureau of Statistics 2011 Census of Population and Housing <http://www.censusdata.abs.gov.au/census_services/getproduct/census/2011/quickstat/2>.

5 Above n 1, 7, 20.

6 *Equal Opportunity Act 2010* s 52.

7 *Equal Opportunity Act 2010* s 54.

8 *Equal Opportunity Act 2010* s 55.

9 *Equal Opportunity Act 2010* s 15.

10 *Equal Opportunity Act 2010* s 7.

It is arguable that a person with disability in receipt of the Disability Support Pension could establish that the receipt of that pension amounts to a characteristic associated with the attribute of disability, or in the case of a Parenting Payment, the attribute of parental status.

Residential Tenancies Act

While the Equal Opportunity Act deals with discrimination in accommodation, the principal law governing residential tenancies in Victoria is the *Residential Tenancies Act 1997*. This Act deals with rights and responsibilities of tenants and landlords, and includes provisions relating to:

- repairs and maintenance
- terms and conditions of leases and termination of leases
- payment of rents and bonds
- powers of the Victorian Civil and Administrative Tribunal (VCAT) in relation to residential tenancy matters.

The Residential Tenancies Act covers discrimination against tenants with children, but does not include other provisions about discrimination. Section 30 of the Act contains exceptions to discrimination against tenants with children, including where the premises is the principal place of residence of the person refusing to let to a tenant with children, or where the premises are unsuitable for children.¹¹

The Residential Tenancies Act was amended on 1 September 2011 to include a number of changes relating to the regulation of residential tenancy databases. These changes followed an examination of the adequacy of previous laws and calls for reform, including research undertaken by the Victorian Law Reform Commission (VLRC).¹² Recommendations arising from the VLRC's research included calls for greater transparency regarding procedures for listing, accessibility of recorded information, and national consistency in the use and regulation of residential tenancy databases.

The changes to the Residential Tenancies Act are indicative of policy efforts to remove some of the barriers preventing people from accessing the private rental market. Changes to the Residential Tenancies Act regarding the use and regulation of residential tenancy databases include:

- a requirement for landlords to notify a tenant before seeking to rely on a residential tenancy database listing
- listings cannot remain on a database for more than three years
- tenants can apply to VCAT for an order that information on a database be amended or removed.

Regulation and institutional environment

Consumer Affairs Victoria (CAV) is Victoria's consumer affairs regulator and provides support and advice to tenants and prospective tenants on a range of matters, including the content of rental agreements, rights and responsibilities of landlords and tenants, payment of rents and bonds, rent increases and termination of leases. These are summarised in CAV's 'red book', *Renting a Home: A Guide for Tenants*.¹³ CAV also helps resolve tenancy disputes through its Estate Agents Dispute Resolution Service. Other initiatives by CAV relating to regulation of the private rental market include:

- development and delivery of prescribed training for estate agents and representatives for the purposes of licensing and employment
- workshops on rental rights and responsibilities to organisations in a wide range of sectors and settings
- information sessions for private landlords about the rights and responsibilities of tenants and landlords in the private rental market.

A range of community and advocacy organisations in Victoria also provide support and advice to tenants and prospective tenants about their rights. These include the Tenants Union of Victoria (TUV), Housing for the Aged Action Group and the Homeless Persons' Legal Clinic.

¹¹ *Residential Tenancies Act 1997* s 30.

¹² Victorian Law Reform Commission, *Residential Tenancy Databases* (2006).

¹³ State of Victoria, Consumer Affairs Victoria, *Renting a Home: a Guide for Tenants* (2010).

The Real Estate Institute of Victoria is the peak professional association for the real estate industry in Victoria. The Real Estate Institute of Victoria works with both consumers and workers in the industry on a range of matters including professional development of members, licensing and research on current trends in the real estate market in Victoria.

Barriers to the private rental market – previous research and findings

Private rental vacancy rates in Victoria are low and demand for properties continues to outstrip supply. In March 2012, vacancy rates were 2.2 per cent and 1.5 per cent for regional Victoria.¹⁴ Rental affordability for Metropolitan Melbourne fell in the last quarter from 10.6 per cent to 9.5 per cent. The number of affordable rental lettings in Regional Victoria also fell, and in the past decade has dropped from 83.8 per cent in September 2002 to 55.2 per cent in March 2012.¹⁵

In this context discrimination can present an extra barrier, making access to the private rental market even more difficult. The Commission is also mindful that in such a competitive and difficult market, people may be less likely to make a complaint of discrimination or know that they can.

Existing research on barriers to the private rental market in Victoria includes the Tenants Union of Victoria's research *Access to the Private Rental Market: Industry Practices and Perceptions* (the TUV report).¹⁶ This report identifies barriers ranging from basic problems, such as a lack of consumer understanding about the application process and providing incomplete information, to more intangible, subjective factors influencing decisions of landlords or rental agents. These include judgments based on physical appearance and the way prospective tenants present themselves.

While these subjective factors appear to significantly influence decision making, in most cases they are not relevant to the crucial 'non-negotiable' tenant pre-requisites, which include the person's income regardless of its source, history of payment, and rental and employment records.¹⁷ In other words, the essential factors considered by agents and landlords are those which relate to capacity to pay the rent and maintain the property.

Among the findings in the TUV report were that people from different backgrounds are sometimes treated differently when applying for rental properties. These include:

- students and young people
- people from culturally and linguistically diverse backgrounds
- Aboriginal and Torres Strait Islander peoples
- people with physical disabilities and/or mental illness
- single parents
- people deriving all or most of their income from Centrelink
- ex-public housing tenants.

These findings were particularly relevant to the Commission's research, and provided further impetus for investigating the extent to which discrimination against some of these groups can prevent them from accessing the private rental market.

Research in other jurisdictions

The Western Australian Equal Opportunity Commission (EOC) commenced an inquiry into the experiences of Aboriginal and culturally and linguistically diverse (CALD) people in the private rental market in 2008.¹⁸ The resulting report, *Accommodating Everyone* (the EOC report),¹⁹ provided a number of recommendations to address the issue of discrimination in the private rental market.

14 State of Victoria, Department of Human Services, *Rental Report: March Quarter* (2012) 2.

15 Ibid, 13. The affordability benchmark used is that no more than 30 per cent of gross income is spent on rent. The indicator measures affordability for lower income households which are defined as those receiving Centrelink incomes.

16 Tenants Union of Victoria, *Access to the Private Rental Market: Industry Practices and Perceptions* (2008).

17 Ibid 12.

18 The Equal Opportunity Commission conducted this inquiry using its research function under s 80 of the *Equal Opportunity Act 1984* (WA).

19 Equal Opportunity Commission Western Australia, *Accommodating Everyone* (2009).

The EOC report details a pattern of denial of access to accommodation for these groups, and also refers to CALD and Aboriginal applicants having to accept poor quality accommodation and less favourable treatment once in accommodation. The report also notes the reluctance of Aboriginal and CALD renters to complain to relevant complaint handling bodies, including the EOC. The research also identifies the challenges of establishing a case of discrimination that can be proven, particularly in a market where demand significantly outstrips supply.

The Victorian Equal Opportunity and Human Rights Commission considered transferrable recommendations from the EOC's report, including key findings about education and training for consumers, and engagement with industry.

The Australian Human Rights Commission (AHRC) is currently developing a National Anti-Racism Strategy. The AHRC's report on the findings from its consultations identifies access to housing and barriers to the private rental market for both CALD and Aboriginal and Torres Strait Islander peoples as a key area of concern.²⁰

According to the report, many participating in consultations suggested real estate agents stereotype people based on their racial background. Strategies for addressing racial discrimination in the private rental market include suggestions about changes to requirements regarding identity points, greater use of interpreters by real estate agents, and incorporating equal opportunity obligations into accreditation processes for landlords and real estate agents.

Other research

The Commission's research was also influenced by other research on discrimination and barriers to the private rental market including:

- Migrant and Refugee Rental Housing Assistance Project undertaken by the South Central Region Migrant Resource Centre and the Migrant Information Centre, *Finding a home – a research report on supporting newly arrived migrants and refugees to secure housing* (2007)
- Australian Housing and Urban Research Institute, *Indigenous people and private rental housing: a review of the Australian literature with special reference to Victoria* (2007)
- Australian Housing and Urban Research Institute, *Housing assistance, social inclusion and people living with a disability* (2011)
- Australian Housing and Urban Research Institute, *The health impacts of housing: toward a policy-relevant research agenda* (2011)
- Australian Housing and Urban Research Institute, *Pathways into and within social housing* (2012)
- Footscray Community Legal Centre, *Making it Home – Refugee Housing in Melbourne's West*, (2012).

²⁰ Australian Human Rights Commission, *National Anti-Racism Strategy: Consultation Report* (2012).

Chapter 3: Survey findings

Summary of findings

The Commission received 165 responses to the survey.²¹ The majority of respondents had applied for properties and been unsuccessful multiple times over the last two years, with 40 respondents indicating they were refused properties more than 10 times, and 32 respondents indicating they were refused between six and 10 times in the last two years.

The questions were structured so that respondents could give more than one answer to some questions. When asked whether the refusal was due to a protected characteristic such as race, age, sex or having children, responses varied and a number of respondents indicated that they believed multiple characteristics were a reason for being refused properties.

The highest number of respondents indicated their parental status was a factor preventing them from accessing private rental (44 respondents), followed by age (38 respondents), marital status (34 respondents), race (37 respondents) and disability (27 respondents).

A significant number indicated they were denied properties due to their source of income, which was often combined with protected characteristics, for example, having children and receiving parenting payments as a sole or main source of income. A number of respondents who suggested they were denied a property due to having a disability also listed their source of income (receipt of Disability Support Pension) as a reason for being refused properties.

²¹ Some respondents did not answer every question in the survey. Therefore, the number of answers to certain questions does not always match the total number of responses received.

Respondents could also choose more than one answer to some questions. Therefore, in some instances, the total number of answers to a question appears to exceed the total number of responses received. This is most obviously the case in question three of the survey, where some people chose more than one protected characteristic as a factor leading to refusal of rental properties.

Respondents indicated a range of other factors preventing them from accessing the private rental market, which are not protected characteristics under the Equal Opportunity Act. These included having pets, lack of employment and rental history, and the high cost of rent.

Refusals and geographical locations

The majority of respondents indicated refusals had come from a rental agent rather than directly from a landlord. This most likely reflects the reality that most people apply for rental properties through an agent rather than the landlord.

There was a broad geographical spread of responses, with a range of suburban areas and real estate agencies also identified. These included inner-Melbourne suburbs such as Fitzroy, Northcote, Prahran, Essendon and North Melbourne, as well as outer metropolitan areas such as Sunshine, Melton and Dandenong. Responses also came from a range of regional areas including Shepparton, Ballarat, Geelong and Corio.

Reasons given and making complaints

Most respondents (88) indicated they were not given a reason if they missed out on a rental property. If reasons were given, agents often indicated the landlord was 'fussy' and had chosen someone else, or that they had been unsuccessful due to the large number of applicants. Other respondents said they were given reasons that were clearly discriminatory and did not relate in any way to their capacity to pay the rent and maintain the property.

The majority of respondents (120) did not complain to someone even if they felt they had been unlawfully discriminated against. Many respondents indicated they were not aware it was possible to make a complaint, or that they didn't think it would make any difference if they did.

Analysis of findings

Characteristics leading to refusal of a rental property

Table 1: Characteristics leading to refusal of rental properties

Reason	Number
Because I have children	44
Age	38
Race	37
Marital status	34
Disability	27
Mental health	10
Sex	8
Because I was pregnant	3
Religion	3

Parental status including pregnancy

Parental status was the most commonly identified attribute leading to refusal of a rental property, with 44 respondents suggesting they were denied properties because they have children.

Closer analysis of the survey results suggested that particularly women with children find it very difficult to access the private rental market. While there were more female respondents (111) to the survey than males (45), women were much more likely than men to indicate that their parental status, or receipt of a Parenting Payment, was a factor leading to refusal of rental properties.²²

Twenty of the female respondents with children said they had been refused rental properties more than 10 times in the last two years, compared with six males who said the same.

Receipt of a parenting payment was the most commonly cited source of income preventing people from renting private rental properties (32 respondents).

There was also a close connection in the survey results between parental status, marital status and source of income.

Marital status

Thirty-four respondents indicated their marital status was a factor preventing them from successfully applying for properties, and many indicated that this, combined with having one or more children, meant they had missed out on rental properties.

When answering the question about the impact of being refused a rental property, respondents indicated they feel agents and landlords are more likely to consider that single people with children will damage the property or won't be able to pay the rent.

Closer analysis of the data also indicated that women were more likely than men to cite their marital status as a reason for being refused rental properties, which also occurred more frequently. In particular, 15 women with children indicated their marital status was a factor leading to refusal of rental properties, compared with only one father who said the same. Nine women with children indicated their marital status was a factor leading to refusal of rental properties, and that they had been denied properties more than 10 times in the past two years.²³

One respondent indicated in their comments that their marital status had been mentioned explicitly:

'They told me to my face that I wasn't a family. I was on the pension and not working, and then I was told it was because I didn't have a husband.'

Others felt their marital or parental status was a factor leading to refusal, even if it wasn't explicitly mentioned, due to stereotypes about single mothers and after observing their treatment compared to others. As respondents indicated:

'I'm going to end up homeless. Mostly it's ended up in tears – the process of me getting knocked back time and time again. I think I'm knocked back because I'm a single mother. I get curious and go past there and I see there's a couple in there or a family.'

Other respondents felt they were refused rental properties based on their parental or marital status, separate from considerations about capacity to pay the rent.

'I think it's a typical stereotype of single mothers. I think they're worried that we'll be feral and have wild children. I rang them yesterday and asked if my wage was a problem and they said no and then I asked if it was because I'm a single mother and they wouldn't reply.'

'I'm a single parent, hence the assumption that I may be incapable of paying the rent regularly. Even the estate agent who recommended me could not understand the owner's rejection, given I was securely employed.'

²² Not all respondents indicated whether they were male or female in the 'About you' section of the survey.

²³ It is not always clear whether 'marital status' refers to being single. However, combined with comments from respondents in the free text section on assumptions made about the stability and financial capacity of single people, particularly those with children, it seems this was most likely the case for those who responded to the survey.

Age

Thirty-eight respondents suggested they were refused rental properties because of their age. The majority of these appeared to be young people aged 18–25 receiving youth allowance. A number of younger respondents said they felt they were unsuccessful due to perceptions they would be unable to pay the rent because of their age or receipt of youth allowance, or because agents and landlords considered they would be more likely to damage the property:

'Real estate agents will not rent to young people who resemble students.'

'Landlords believe young people trash houses and that people on Youth Allowance or other benefits are unable to manage funds properly.'

No responses indicated refusal based on being older, although one survey respondent indicated that receiving the aged pension was a factor leading to a refusal. However, the survey only had limited distribution by organisations assisting older people who may have trouble accessing housing. Consultations to formulate the survey indicated many older people face distinct issues when it comes to housing, which are more likely to relate to the impact of rising rents and cost of living for those already renting.

Race

Thirty-seven respondents indicated their race was a factor preventing them from getting rental properties. In particular, recently arrived migrants indicated they had found it difficult to access the rental market.

Barriers for these groups included not having any rental history in Australia, or not being considered for properties once forms of identification providing their nationality, such as a passport, were shown. As one survey participant identified when asked about what had happened:

'I think it's because my passport is from Syria – that is why whenever I showed it as evidence they refused.'

One survey respondent highlighted the difficulties faced by newly arrived migrants and refugees who rely on friends and community networks for support:

'Myself and three friends all applied multiple times for various rental properties, each time it was refused. We are all Afghani men awaiting decision on our wives' visas to reunite with us. We have to stay with friends and community members.'

While the Commission did not seek responses from organisations about their experiences assisting clients, one organisation submitted a response highlighting the difficulties they faced when applying for properties on behalf of newly arrived refugee clients, reporting that these applicants are continually knocked back due to a lack of rental history and low income.

Respondents indicating their race was a factor preventing them from successfully applying for properties also identified some of the perceptions and stereotypes that they believe can affect their chances:

'Someone once told me that people of my nationality make properties dirty so they would not rent to me.'

'Real estate agents think that African clients can't keep houses clean.'

'The agent was not interested in my income or length of employment once she realised I was Aboriginal.'

The Commission also received responses from international students. One survey respondent highlighted some of the difficulties international students can face in the private rental market, including treatment when they are renting:

'There are many international students who are totally exploited and marginalised in the private rental market – sharing a dirty toilet with six others, take visas etc. as 'bond' – increased rent if house improvements are made at renter request (basic), get oven to work, get electrical outlets installed etc.'

Disability

Twenty-seven respondents indicated that having a disability was a factor leading to refusal of rental properties. Thirty-one respondents said receipt of the Disability Support Pension was a factor (see Table 3: source of income).

In particular, some respondents with disability reported having difficulty with rental agents and landlords about the need for special adjustments, or requiring an assistance dog:

'I was told outright that the rental agencies don't consider an assistance dog any different from a pet and they don't allow pets.'

'The landlord would not allow installation of ramps, handrails, etc. as needed, as they felt it would devalue their property.'

While the survey was limited to attempts to access the private rental market, and did not extend to treatment during a lease and termination of tenancies, one respondent said they had experienced discriminatory treatment on a number of occasions after successfully applying for a property, due to having an assistance dog. This included having a restrictive clause in the rental contract requiring the assistance dog to remain in the backyard at all times, and strict requirements regarding waste disposal and fumigation of the property.

These were examples of explicit unfavourable treatment due to disability. There were also examples of more general perception-based information in the responses. This suggests a lack of understanding by agents and landlords about disabilities generally, and the legal obligations of landlords, agents and tenants when it comes to making adjustments for a person with disability in accommodation:

'I was simply unable to find properties that we could make accessible. Work is needed, and you could see the look on the agents' faces... the "oh yes, I'll ask the owner".'

Ten respondents felt they were denied a rental property because of their mental health. A number of respondents also identified as having a mental health disability such as depression, anxiety and post traumatic stress disorder. Paired with some of the findings in the survey about the stress involved in seeking to rent in a highly competitive market, it was clear from responses that continually being turned down for properties can contribute to mental illness or aggravate existing conditions.

Table 2: Number of survey respondents with disability

Type of disability	Number
Mental health disability	23
Physical disability	14
Other	13
Sensory disability (for example blind/deaf)	4
Cognitive impairment/intellectual disability	4
Acquired brain injury	3
Autism Spectrum Disorder	2
Combination of disabilities	1

Other characteristics

One respondent suggested their sexual orientation was a reason leading to refusal of rental properties:

'The property manager demanded to know why two applicants of the same sex were applying for a one-bedroom property. When we made it clear that we were a couple, the property manager advised that they would prefer a single applicant but continued to receive applications from heterosexuals.'

Another respondent spoke about stereotypes regarding same-sex relationships, and the effect this can have on their chances when competing for properties in the private rental market:

'I have applied with my same-sex girlfriend... we are not seen as having the same stability as heterosexual relationships.'

Source of income

A large number of survey respondents suggested they were refused rental properties because of their source of income. The highest number (32 respondents) indicated receiving a Parenting Payment was a reason, followed by the Disability Support Pension (31 respondents) and Newstart or 'other' (26 and 27 respondents respectively).

There was a strong correlation between the sources of income identified, and attributes leading to refusal of a rental property (see Table 1: Characteristics leading to refusal of rental properties).

In particular, the high number of respondents indicating they receive a Parenting Payment or the Disability Support Pension was consistent with the number suggesting that disability or having children was a reason leading to refusal of rental properties.

Table 3: Responses to question 4 – source of income

Type of payment	Number
Parenting Payment	32
Disability Support Pension	31
Other	27
Newstart	26
Youth Allowance	11
Carers allowance/payment	5
Age pension	1

Rights awareness and making complaints

Respondents were asked whether they complained to someone if they felt they were denied a property because of one of the characteristics listed. The majority of respondents (120) indicated that they did not.

Respondents who said they didn't make a complaint were asked why. Most indicated in their comments that they didn't think there was any point making a complaint or that they didn't know they could. Other factors preventing people from complaining also included time and effort involved, difficulty proving discrimination or fears that making a complaint would affect their future chances of renting a property. Worrying about chances, reputation, or 'black listing' appeared to be an issue for those seeking to rent in regional areas where it is more difficult to remain anonymous.

A number of respondents referred to the difficulty of proving discrimination, suggesting that even if a landlord or agent does discriminate it is easily disguised as another reason for refusal, such as the cost of rent or the large number of applicants applying for the same property.

A number of respondents also indicated they felt disempowered and so overwhelmed by the process of applying, and the urgency of securing accommodation, that making a complaint was not a real option.

Review of complaints to the Commission

The findings from the survey confirmed some of the patterns in complaints of discrimination in the area of accommodation received by the Commission from 1 July 2009 to 31 May 2012.

The Commission received 11 such complaints during this period. Most of these related to discriminatory treatment once in a rental property. Complaints of discrimination when applying for properties included the following:

A complainant made an application for a rental property. When she contacted the real estate agent about the progress of her application she was told that a decision had not been made. She discovered that the property had been advertised again with a drop in the rental price. The complainant alleged that she was not considered for the property because she was a single mother.

A complainant alleged that he was not offered a rental property because he and his partner were in a same-sex relationship. They considered they had good references and strong financial circumstances.

A complainant used an electric mobility scooter and walking stick. He was looking at a rental property and was told by the real estate agent that there was no car space for the scooter and that it could not be garaged anywhere on the premises.

The Commission considers that the very small number of complaints received in the area of accommodation is likely to be a reflection of levels of awareness among consumers about making a complaint and the consequences of doing so, rather than an indication that discrimination is not occurring. As confirmed by the results of the survey, while many respondents felt discrimination was a factor leading to refusal of rental properties, the majority did not complain or did not think there would be any point in doing so.

Impacts on health and wellbeing, and perceptions of applying for properties

The key aim of the survey was to examine the extent to which unlawful discrimination is a factor preventing some people from successfully applying for rental properties. However, responses also confirmed the wide-ranging impacts on health and wellbeing of a failure to secure housing, the extent to which certain personal characteristics can result in refusal of a rental property and, more broadly, the highly competitive nature of the private rental market in Victoria.

The survey asked respondents to describe the impacts of unsuccessfully applying for rental properties. Responses about the impacts, and perceptions of the process of applying, provided insight into the significant and wide-ranging consequences of being refused rental properties.

A number of respondents described mental health consequences resulting from their failure to secure a home, which frequently affected their relationships with partners, friends and children:

'I was continuously refused properties and was forced to stay with friends for nearly a year which caused a lot of stress and led me to have to see a psychiatrist due to depression.'

'In Melbourne, I sometimes sleep at Southern Cross Station. In addition, my wife is very sick of living outside each time. I am traumatised and don't know what to do.'

Respondents indicated they could not get on track with other aspects of their life, such as finding employment, staying in a job or maintaining a secure environment for their children (including school attendance). A number of respondents said they had become temporarily homeless, were 'couch surfing' and staying with friends, living in their car, or having to seek emergency accommodation.

'It affected everything I've tried to build my life up for. I can't get a job without a home.'

'I started getting depressed. It was tiring, running around trying to do it. I was spending \$150 per week in petrol to collect forms and look at houses.'

Responses clearly indicated that finding a home to rent is difficult, and constant refusal of tenancy applications can lead to significant negative personal consequences.

These findings were consistent with existing research indicating that lack of housing or inadequate housing leads to disadvantage and has a significant impact on people's wellbeing.

A report from VicHealth, *Precarious Housing and Health Inequalities* is one example of research examining the links between housing, health and wellbeing.²⁴ This report finds that people in precarious housing have worse health outcomes than those who are adequately housed, and suggests there are multiple aspects of precarious housing that affect people's health and wellbeing.

The Australian Housing and Urban Research Institute has also researched the health impacts of housing, examining a range of other 'non-shelter' outcomes flowing from insecure or inadequate housing, such as access to labour markets and a range of other benefits.²⁵

While these research examples are primarily concerned with the adequacy of secured housing and health impacts, these effects can be even more significant for those who are unable to secure accommodation due to discrimination and other barriers.

Discrimination is therefore a significant factor that can affect people's access to housing and lead to disadvantage, including poor physical and mental health outcomes.

24 VicHealth, *Precarious housing and health inequalities: what are the links?* (2011).

25 Australian Housing and Urban Research Institute, *The health impacts of housing: toward a policy-relevant research agenda* (2011) 5.

Chapter 4: Conclusion and next steps

Conclusion

The survey findings provide a glimpse into the experiences of people seeking to rent properties in Victoria, and the extent to which discrimination is a factor preventing some people from gaining a home.

Key findings from the survey include:

- some people experience discrimination in the private rental market based on characteristics that are protected under the Equal Opportunity Act including race, disability or having children
- while the majority of responses were perception based, there were a number of more explicit examples of discriminatory treatment. These included direct references to characteristics, such as family status, or unfavourable treatment of applicants with disability who required adjustments to the property
- proving discrimination is difficult as rental agents usually give other reasons for the refusal relating to capacity to pay the rent or the large number of applicants who applied for the same property²⁶
- there appears to be a general lack of awareness among consumers about their rights, and where and how they can make a complaint of discrimination
- discrimination has wide-ranging consequences relating to individual health, security and wellbeing.

Myths and stereotypes

Some respondents from different backgrounds reported that rental agents and landlords made decisions about their suitability as tenants based on myths and stereotypes, including that:

- younger people will be less likely to pay the rent or will not look after the property
- single people, particularly those with children, are less stable and will be less likely to pay the rent or maintain the property
- alterations for people with disability will damage the property, are difficult to make and are costly.

Rental agents and landlords have a legitimate interest in finding tenants who will not damage the property and can pay the rent. However, they can do so without engaging in unlawful discrimination or allowing irrelevant personal characteristics to influence their decisions.

In considering how to respond to the issue of discrimination in the private rental market, the Commission is mindful that dispelling some of these myths and stereotypes among agents and landlords is an important step to ensure better access to the private rental market for groups who are vulnerable to discrimination.

The Commission has committed to work with the Real Estate Institute of Victoria and Consumer Affairs Victoria to guide decision-making by agents to prevent discrimination based on irrelevant personal characteristics.

²⁶ A number of respondents highlighted the difficulty in proving discrimination, particularly when giving reasons why they did not make a complaint (question 16 in the survey).

Next steps

One survey objective was to help scope future work to address the issue of discrimination in the private rental market, using the Commission's functions under the Equal Opportunity Act.

This report on the findings of the survey and options for a second phase of the project is also timely, given the Victorian Government's current consultations on future options for social housing. Removing barriers to the private rental market, including unlawful discrimination, is crucial if private rental is to be considered a viable long-term housing option for people leaving public housing or those who are unable to access it in the first place.

Having conducted this survey, the Commission will now focus its attention on addressing discrimination in the private rental market using the key actions identified below. In doing so, the Commission will also explore opportunities for input from key organisations, including those that assisted with the survey.

Action 1: Working with the industry to implement the positive duty

The positive duty in the Equal Opportunity Act requires duty holders to take reasonable and proportionate measures to prevent discrimination from occurring, rather than responding after a complaint is made.

The Commission has developed a range of materials targeted at employers as duty holders under the Act, encouraging them to take active steps to prevent discrimination through planning to adapt their systems of work.

In a similar manner, the Commission will identify opportunities to work with agents and landlords, as duty holders under the Act, to determine how they can proactively prevent discrimination in their role as providers of private rental accommodation in Victoria.

Positive duty materials for those providing rental accommodation would include guidance on avoiding requests for unnecessary discriminatory information in application forms or when meeting and interviewing applicants, and ensuring there are systems in place to prevent discrimination from occurring.

Action 2: Working with CAV and the industry to improve agent and landlord knowledge

Specific actions the Commission will undertake to educate and inform agents and landlords will include:

- presenting the findings from the survey to agents, as an indication of current perceptions among a sample of prospective tenants about difficulties applying for properties and experiences of discrimination
- developing fact sheets for both agents and landlords to help them comply with their obligations under the Equal Opportunity Act
- working with Consumer Affairs Victoria (CAV) and the Real Estate Institute of Victoria (REIV) to incorporate information about discrimination in accommodation and legal obligations, including the positive duty under the Equal Opportunity Act, into training modules delivered by those organisations.

Action 3: Developing materials to raise awareness for tenants

The Commission has functions under the Act to educate and inform all Victorians about their rights and responsibilities under the Equal Opportunity Act. As already mentioned, the findings from the survey confirmed that most respondents who suggested they had experienced discrimination when applying for rental properties didn't complain about it or know that they could.

To complement materials for agents and landlords, the Commission will develop materials to raise awareness for tenants about their rights under the Equal Opportunity Act and how to make a complaint if they experience discrimination.

Specific actions the Commission will undertake to educate and inform prospective tenants will include:

- developing new communications materials, including tailored products for those having trouble finding a home to rent, which will be provided to organisations that distributed the Commission's private rental survey
- updating web content to include information on discrimination in accommodation under the Equal Opportunity Act, and how people can make a complaint to the Commission
- seeking opportunities to target particularly vulnerable groups and provide them with a Commission fact sheet and materials informing them about their rights and the Commission's services (for example, targeting international students during O Week).

Appendix 1: Fact sheet



Victorian Equal Opportunity
& Human Rights Commission

Discrimination and renting

> Know your rights

There are different laws that protect you when you are renting a property or applying for one. As well as having rights under residential tenancies laws, you also have rights under Victoria's *Equal Opportunity Act 2010*, which can protect you from discrimination when renting.

The *Equal Opportunity Act 2010* makes it against the law to discriminate against someone because of their race, sex, age, disability, marital status, family responsibilities, and sexual orientation among other personal characteristics.

Discrimination is treating someone unfavourably because of one of these characteristics, and causing them to be disadvantaged as a result. For a full list of characteristics, go to humanrightscommission.vic.gov.au.

Victoria's equal opportunity laws make discrimination unlawful in areas including:

- > employment
- > goods and services
- > education
- > local government
- > sport
- > clubs and membership
- > accommodation.

What the law says about discrimination in private rental accommodation

It is against the law for a landlord or a rental agent to treat you unfavourably when you are applying for a rental property by doing any of the following things because of a personal characteristic such as race, sex, age, disability, or having children:

- > refusing or not accepting your application
- > processing your application in a different way
- > offering you the property on different terms (e.g. requiring a higher amount for the bond)
- > refusing to provide accommodation because you have an assistance dog.

Examples

Tiffany meets with a real estate agent to look through a property she wants to rent. Tiffany has her two children with her and the agent advises that he cannot rent the property to her because her children are under five and likely to damage the property.

David speaks to a real estate agent on the phone about his application form for a rental property. The agent has seen David's surname and asks about his ethnic background. David hears from the agent the next day and is told his application was not successful. When David asks why, the agent says he's had problems with 'people from your country' in the past.

humanrightscommission.vic.gov.au

Discrimination against people with disabilities in accommodation

In Victoria, it is against the law to discriminate against someone because of a disability. Disability includes physical, mental or intellectual conditions and may be short term, long term or permanent.

It is against the law for an agent or a landlord to deny you a rental property because you have a disability or use an aid such as a wheelchair, crutches or scooter.

If you are offered a rental property and would like to make alterations to the property to accommodate your disability (e.g. handrails or ramps), you have to pay for the alterations yourself. The agent or landlord must allow you to make such alterations to the property to accommodate your special needs provided that:

- > the alterations will not alter the premises of another occupier (i.e. impact on your neighbours' property)
- > things can be put back to the way that they were before the alterations
- > you agree to restore the accommodation to its previous state before you leave.

If you have an assistance dog, it is unlawful for a landlord or rental agent to require that you keep the dog elsewhere, or to require an additional fee.

Make a complaint to the Commission

If you feel you have been discriminated against when renting or applying to rent because of your race, sex, age, disability or sexual orientation among other personal characteristics, you or someone on your behalf can make a complaint to the Commission.

You can make a complaint to us by letter or email, by filling in an online complaint form, or calling us.

When you lodge a complaint we will contact you about it and may ask for more information. We can try to help you resolve your complaint through a conciliation process between you and the person you are complaining about.

In some cases we may decide we cannot deal with your complaint. If this happens, we will contact you and explain why. If we can't help you we will try to refer you to someone who can.

1300 292 153

enquiries@veohrc.vic.gov.au
humanrightscommission.vic.gov.au

Level 3, 204 Lygon Street, Carlton Vic 3053
Telephone 1300 891 848
Fax 1300 891 858
TTY 1300 289 621
Interpreters 1300 152 494

Online complaint form:
humanrightscommission.vic.gov.au/complaints



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.

Appendix 2: Survey



Victorian Equal Opportunity
& Human Rights Commission

Discrimination in the private rental market

The Victorian Equal Opportunity and Human Rights Commission is researching discrimination against people seeking private rental accommodation in Victoria.

We would appreciate your response to our short survey. The information collected will inform a report the Commission will publish in 2012.

This survey is anonymous. All information you provide will be kept confidential. You cannot be identified by participating in this survey.

The Victorian Equal Opportunity and Human Rights Commission complies with Victorian privacy laws and the privacy provisions of the Equal Opportunity Act 2010. For more information about our privacy policy, please visit humanrightscommission.vic.gov.au/privacy.

If you would prefer to complete the survey over the phone please call (03) 9032 3435. If you need an interpreter, you can call the Commission using its interpreter service on 1300 152 494.

Your experience seeking private rental accommodation

1. In the last two years (2010 and 2011) did you apply for a private rental property but were unsuccessful?

Yes

No (If no, survey **ends**)

2. In the last two years, how many times did you apply for a private rental property but were unsuccessful?

Once

Twice

Three times

Four times

Five times

Between six and ten times

More than ten times

3. In the last two years, do you think you were refused a private rental property because of your (you may tick more than one box):

Disability

Age

Race

Because I have children

Sex

Religion

Mental health

Marital status

Because I was pregnant

Because of my source of income
(select applicable)

Disability Support Pension

Newstart

Sickness benefit

Youth allowance

Age pension

Carers allowance/payment

Parenting payment

Workers compensation payment

Other (please describe) _____

Because I am:

Gay

Lesbian

Bisexual

Transgender

Another reason (e.g. having a pet). Please describe below

4. If yes, please tell us what happened and the impact it had on you:

5. Why do you think any of these characteristics had something to do with why you were refused a private rental property?

6. In which suburb or town was the property you were refused located?

7. Was your application refused by a:

- Real estate agent
- Landlord (direct)
- Other (please describe) _____

Appendix 2 continued

8. If it was through a real estate agent, please tell us the name and suburb of the real estate agency if you know it.

9. Were you given a reason for not getting the property?

Yes

No

10. What reason were you given?

11. If you felt that you were denied the property because of one of the characteristics listed at **question 3**, did you complain about it to someone?

Yes

No

12. If yes, who did you complain to?

- Consumer Affairs Victoria
- Real Estate Institute of Victoria
- Community organisation
- Victorian Equal Opportunity and Human Rights Commission
- Australian Human Rights Commission
- Media
- Local Member of Parliament
- Other (please describe) _____

13. If no, why didn't you make a complaint?

14. Is there anything else you would like to tell us about your experiences in the private rental market?

About you (you may tick more than one)

Are you:

Female

Male

Are you:

Gay

Lesbian

Bisexual

Transgender

Intersex

How old are you?

Under 18 years

36–45

18–25 years

46–60

26–35

Over 60

Do you identify as:

Aboriginal or Torres Strait Islander

being from a Culturally and Linguistically Diverse background

(if yes, please describe your background) _____

Having a disability

Physical disability

Sensory disability (e.g. blind, deaf)

Cognitive impairment/intellectual disability

Acquired brain injury

Autism spectrum disorder

Mental health disability

Combination of disabilities

Other (please describe) _____

Do you have children that live with you?

Yes

No

1

2

3

4 or more

Thank you for taking our survey. Your response is very important to us.

Appendix 3

Organisations that distributed the survey

Aboriginal Family Violence Prevention and Legal Service

Aboriginal Housing Victoria

Asylum Seeker Resource Centre

Bridge Youth Service (Shepparton)

Carers Victoria

Council to Homeless Persons

Department of Human Services, Centrelink

Elizabeth Hoffman House

Flatout

Flemington and Kensington Community Legal Centre

Footscray Community Legal Centre

Gateway Community Health

Homeless Persons' Legal Clinic

Homeground

Housing for the Aged Action Group

Housing Resource Support Service

Ngwala Willumbong Co-operative Ltd

Northern Family and Domestic Violence Service, Berry Street

Peninsula Community Legal Centre

Private rental access practitioner group (Melton City Council)

Rumbalara (Shepparton)

Salvation Army, Sunshine (SASHS)

Spectrum Migrant Resource Centre

Tenants Union of Victoria

United Care Cutting Edge (Shepparton)

Victorian Aboriginal Legal Service

Vincentcare

WAYSS Dandenong

West Heidelberg Community Legal Service

Youthlaw



Victorian Equal Opportunity
& Human Rights Commission

Contact us

Enquiry Line	1300 292 153 or (03) 9032 3583
Fax	1300 891 858
Hearing impaired (TTY)	1300 289 621
Interpreters	1300 152 494
Email	information@veohrc.vic.gov.au
Website	humanrightscommission.vic.gov.au