

Volunteering, Disability and Discrimination

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.

Unfortunately people with disability face barriers and discrimination, even in the context of volunteering.

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 Victorian 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 Victorian 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

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.



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.

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.



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

It is 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 under-take 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. "

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 Victorian 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.

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?
- promote and embrace your organisational values?
- 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 Opportunities and Human Rights Commission



This guide is based on information developed by the Victorian Equal Opportunities and Human Rights Commission (VEOHRC)

The VEOHRC 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 Commission helps people resolve complaints of discrimination, sexual harassment, victimisation and racial or religious vilification through a free, fair and timely dispute resolution service with the aim of achieving a mutual agreement.

The services provided by the Commission include:

- a free telephone Enquiry Line
- a free, fair and timely dispute resolution service
- information and education about equal opportunity, racial and religious vilification and the Charter of Human Rights and Responsibilities education, training and consultancy services.

Further resources

<https://disabilitylaw.org.au/>

www.nfplaw.org.au/

www.legislation.gov.au/Series/C2004A04426

www.daru.org.au/taking-action-on-disability-discrimination

https://westernsydney.edu.au/choosingyourpath/legislative_requirements

<https://www.volunteeringtas.org.au/wp-content/uploads/2016/04/Inclusive-Practice-Report-Volunteering-and-disability-project-2009-10.pdf>

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For more resources visit: www.victoriaalive.org.au

If you have any suggestions for improvements to this guide, we welcome your input.

Contact us by email at: info@volunteeringvictoria.org.au or by phone on 03 8327 8501.

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Volunteering Victoria is unable to provide legal advice and this information should not be relied upon as a substitute for legal advice.

