

FACTSHEET

Equal Opportunity Act 2010

Religious exceptions reform

The Victorian Government recently made changes to the [Equal Opportunity Act \(2010\)](#). These changes came into effect on 14 June 2022. The changes ensure a fairer balance between the right to religious freedom and the right to be free from discrimination.

This fact sheet provides **information about the changes to anti-discrimination laws for religious organisations and schools**, and the Victorian community.

Discrimination

[Discrimination](#) is when a person is treated unfairly because of a personal characteristic protected by the law.

The [Equal Opportunity Act \(2010\)](#) makes discrimination and sexual harassment against the law when it happens in certain areas of public life. This includes at work, school or in shops.

However, the Act recognises the need to balance everyone's rights. This includes the rights of those with religious beliefs. That's why there are [exceptions that mean discrimination is not against the law in certain circumstances](#).

Religious exceptions

Before 14 June 2022, the Equal Opportunity Act allowed religious bodies and schools to discriminate in certain circumstances against a person because of one of the following personal characteristics:

- sex
- sexual orientation
- lawful sexual activity
- marital status
- parental status
- gender identity.

*These will be called “**the highlighted personal characteristics**” throughout this fact sheet.*

This meant that on the basis of one of the highlighted personal characteristics religious bodies and schools could, in certain circumstances, lawfully:

- refuse entry to a prospective student
- expel a student
- refuse to employ someone
- fire someone, or
- otherwise treat someone differently.

Changes to the Equal Opportunity Act from 14 June 2022

From 14 June 2022, unless another non-religious exception applies, religious bodies and schools are not allowed to discriminate against people **based on the highlighted personal characteristics** in:

- employment decisions
- decisions about school students.

However, they can discriminate **based on religious beliefs**, in limited circumstances, if the discrimination is reasonable and proportionate.

Example of change

A person who is both Christian and transgender applies to be the Deputy CEO of a large Christian charitable organisation.

The Christian organisation cannot refuse to employ the person because they are transgender. This is because they cannot discriminate based on gender identity.

However, this does not mean the organisation would be forced to employ the person if they weren't the best candidate.

Discrimination relating to employment

Religious bodies and schools cannot dismiss, refuse to employ or otherwise discriminate against employees (and potential employees) because of one of the highlighted personal characteristics.

Religious bodies and schools can now only discriminate against employees (and potential employees) based on the person's religious belief or activity and only where:

- conformity with religious beliefs is an inherent (core, essential or important) requirement of the job;

- the other person cannot meet that inherent requirement because of their religious belief or activity; and
- the discrimination is reasonable and proportionate in the circumstances.

Discrimination relating to students

Religious schools cannot refuse enrolment, expel or otherwise discriminate against students and prospective students because of one of the highlighted personal characteristics (e.g. the student is gay). Religious schools can only discriminate based on a student's, or prospective student's, religious beliefs or activities. However, the discrimination must be reasonable and proportionate in the circumstances and:

- to do so would conform with the school's doctrines, beliefs or principles of the religion, or
- the discrimination is reasonably necessary to avoid injury to the religious sensitivities of the school's religion.

Religious schools may be able to rely on other exceptions to discrimination that are available to all (including non-religious) duty holders. The availability of other exceptions will depend on the circumstances.

Discrimination by religious bodies

Religious bodies can still discriminate based on one of the highlighted personal characteristics in other circumstances. However, there is a new requirement. The discrimination must be reasonable and proportionate in the circumstances. This is in addition to existing requirements that it must:

- conform with the doctrines or beliefs of the religion, or
- be reasonably necessary to avoid injury to religious sensitivities of adherents of the religion.

Religious organisations or bodies may be able to rely on other exceptions to discrimination that are available to all (including non-religious) duty holders. The availability of other exceptions will depend on the circumstances.

Discrimination by individuals

Individuals cannot discriminate in the circumstances covered by the Equal Opportunity Act to comply with religious beliefs, unless another non-religious exception applies.

Changes to the Equal Opportunity Act from 14 December 2022

On 14 December 2022, further changes to religious exceptions in the Equal Opportunity Act will come into effect.

From this date, when providing goods or services funded by the Victorian Government religious bodies will only be able to discriminate based on a person's religious belief. They will not be able to discriminate based on other personal characteristics (unless a non-religious exception applies).

What will not change

Religious bodies and schools will still be able to discriminate in relation to:

- ordaining or appointing priests, ministers of religion or members of a religious order
- training or educating people seeking to be ordained or appointed as priests, ministers of religion or members of a religious order
- selecting or appointing people to perform functions relating to, or participating in, any religious observance or practice.

Complying with the law

Religious bodies and schools risk a complaint being made to the Victorian Equal Opportunity and Human Rights Commission if they do not comply with the Equal Opportunity Act.

Religious organisations and bodies who are also duty holders under the Equal Opportunity Act also have a legal obligation to take reasonable and proportionate measures to eliminate discrimination as far as possible. This is known as the '**positive duty**'. The positive duty requires duty holders to take action to prevent discrimination. Simply responding to complaints that arise is not enough to comply with the law.

Duty holders can include:

- employers
- providers of accommodation, education, goods and services
- clubs and sporting organisations

Information on [how to embed the positive duty in practices and procedure](#) is available on the Victorian Equal Opportunity and Human Rights Commission website.

Further information

[Further information on changes to the Equal Opportunity Act](#) is available on the Victorian Equal Opportunity and Human Rights Commission website.

If you think you have been discriminated against, further [information, advice and support services](#) can be found on the Department of Justice and Community Safety website.

Frequently asked questions

Do the changes mean religious schools must hire people who don't have the same religious beliefs?

No. Where having the same religious belief is an inherent (i.e. core, important or essential) part of the role, religious schools can choose to only hire people who hold the same religious beliefs as the school, provided it is reasonable and proportionate in the circumstances. Whether having the same religious belief is an inherent requirement of the role will depend on the role itself, as well as the nature of the school and its religious principles or beliefs. It is a 'common sense' and objective test.

Do the changes mean religious schools can't teach their religion anymore?

No. The proposed laws do not affect a parent's right to send their children to religious schools which teach and practice their religion.

Is Victoria the only place in the world with these types of laws?

No. There are similar laws in Tasmania which have existed for over a decade.

Do the changes mean religious bodies can't decide who is allowed to be a priest or imam?

No. The Equal Opportunity Act already allows religious bodies to decide who can be chosen for roles which involve religious practice or observance, such as being a priest or imam. This has not been changed and is not impacted by the amendments.

Do the changes mean religious schools have to accept students from other religions?

No. The Equal Opportunity Act already allowed religious schools to only accept students from the relevant religion. The changes to the Equal Opportunity Act mean that religious schools can continue to only accept students from the relevant religion.

Do the changes mean that single-sex religious schools have to admit students of the opposite sex?

No. Single-sex schools are still allowed to exclude students of the opposite sex. However, schools (including single-sex schools) cannot discriminate against students on the basis of their gender identity (for example, by expelling a transgender student because of their gender identity).

Can religious schools decide not to hire a teacher only because the teacher is gay or an unmarried parent?

No. Religious schools cannot refuse to hire someone due to that person's sexual orientation or marital status.

Are religious schools required to hire a person even if that person's religious beliefs are different to those of the school?

No. In certain circumstances, where religious belief is an inherent (i.e. important or essential) part of the role, a school can still decide not to hire someone if that person's religious beliefs are different to those of the school, provided it is reasonable and proportionate in the circumstances.

Do the changes to the Equal Opportunity Act create a double standard by allowing other groups, like political parties, to choose who they hire, when religious bodies are losing this right?

No. Religious bodies and schools can continue to choose who they hire based on religious belief, provided that conformity with that belief is an inherent requirement of the role and is reasonable and proportionate in the circumstances. But they cannot discriminate based on unrelated attributes such as sexuality or gender identity.

Similarly, political parties can only choose who they hire based on the person's political belief but not based on other unrelated attributes.

Do the changes breach international human rights law?

No. The changes appropriately balance the right to freedom of religion with the right to equality so that both can be appropriately recognised and enjoyed.

Do the changes create a new power for judges to decide the appropriateness of the religion of a religious body or school?

No. Under existing laws in Australia there are times when a court may need to decide what type of religion is being practiced by a religious body or school, based on the evidence. This is the case under existing laws around Australia and has remained the case following the changes to the Equal Opportunity Act.

The changes have not created a new power for judges to determine the 'best' or 'most appropriate' religion. Religious belief or activity remains a protected attribute under the Equal Opportunity Act.

Who is included in the definition of 'religious bodies'?

A religious body is defined as:

- a body established for a religious purpose; or
- an entity which establishes, directs, controls or administers an educational or other charitable entity that is conducted in accordance with religious doctrines, beliefs or principles.

What does 'conforms with the doctrines, beliefs or principles of the religion' mean?

To rely on this exception, a religious body needs to show that the discrimination is required because:

- their religion dictates that they need to act in a particular way (i.e. gave them no alternative)
- acting in a different way will mean that matters genuinely significant to the doctrines, beliefs or principles are not respected.

The focus should be on:

- the specific conduct that the religious body wishes to take; and
- how that conduct is required to comply with religious beliefs.

This is an objective assessment. That means it is not the personal view of the alleged discriminator that is relevant, but an impartial view of whether the conduct was required.

How do the new Equal Opportunity reforms interact with the Charter of Human Rights and Responsibilities?

The Charter requires public authorities (including functional public authorities such as organisations delivering services on behalf of government) to properly consider, and act compatibly with, the human rights in the Charter.

Public authorities include Victorian state and local government departments and agencies and functional public authorities who are exercising functions of a public nature and whose functions are carried out on behalf of government.

Proper consideration of human rights requires decision makers to:

- understand, in general terms, which human rights are relevant
- identify any interference or limitations

- turn their mind to the possible impact of the decision on a person’s rights
- justify the decision having balanced any competing interests or obligations.

For example, competing interests or obligations might include:

- respecting and protecting the rights of others
- public interest considerations, and
- other obligations and considerations under law.

Proper consideration of human rights should not be a ‘tick-the-box’ exercise. It should be done in a practiced and common-sense way.

The obligation to act compatibly with human rights requires you to identify which human rights are relevant in the circumstances, consider whether your action limits any rights, and determine whether any limitation is reasonably justified and proportionate.

More information on the Charter can be accessed at the Victorian Equal Opportunity and Human Rights Commission’s guide: [*The Charter of Human Rights and Responsibilities: A guide for Victorian public sector workers \(June 2019\).*](#)

Contact us



Enquiry line	1300 292 153
Fax	1300 891 858
NRS Voice Relay	1300 555 727 then quote 1300 292 153
Interpreters	1300 152 494
Email	enquiries@veohrc.vic.gov.au
Twitter	twitter.com/VEOHRC
Facebook	facebook.com/VEOHRC
Website	humanrights.vic.gov.au