

## FACTSHEET

# Equal Opportunity Act 2010

## Reforms to religious exception to government-funded goods and services

This fact sheet provides information for **religious organisations or bodies that receive government funding to provide goods and services**. It explains the recent changes to the law and how this will impact new and existing contracts.

### Background

In December 2021, the Victorian Parliament passed the *Equal Opportunity (Religious Exceptions) Amendment Act 2021*.

The reforms narrowed and removed religious exceptions to discrimination in the *Equal Opportunity Act 2010*. This includes where religious organisations or bodies provide government-funded goods and services.

The reforms on goods and services will come into operation on **14 December 2022**. This commencement period is necessary to allow for planning and implementation activities to occur with impacted organisations.

### Changes from 14 December 2022

Previously, religious exception provisions under the *Equal Opportunity Act 2010* permitted religious organisations and bodies that provide goods and services, to discriminate on a range of personal attributes.

Under the changes, religious organisations or bodies that provide government-funded goods or services **will no longer be able to discriminate when providing the goods or services (unless another exception applies)** because of a person's:

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

#### Discrimination includes:

- refusing to provide the good or services,
- offering the goods and services on less favourable terms
- subjecting a person to detriment or unfavourable treatment when providing them.

## Religious exceptions

A religious organisation or body will still be able to discriminate in the provision of government-funded goods and services where:

- it is on the basis of a person's religious belief or activity, and
- the action taken conforms with religious doctrine or is necessary to avoid injury to the religious sensitivities of the adherents of the religion, and
- it is reasonable and proportionate to discriminate in all the circumstances.

What is reasonable and proportionate will vary depending on the individual circumstances of each case.

## Other exceptions under the Equal Opportunity Act 2010

Religious organisations or bodies that provide government-funded goods and services may be able to rely on other exceptions to discrimination that are available to all (including non-religious) goods and services providers. The availability of other exceptions will depend on the circumstances.

## Who will be impacted by the changes?

Any religious organisation or body that holds a funding contract with the Victorian Government to provide goods or services will be impacted by the changes.

This includes new and existing funding contracts.

### Example of change

A transgender teenager contacts a religious youth support organisation. The organisation receives government funding to provide support for dealing with bullying.

The organisation cannot refuse to assist the teenager based on their gender identity.

## Preparing for the changes

To prepare for the changes, religious organisations or bodies that hold contracts with the Victorian Government:

- should update policies to comply with the new provisions, and
- ensure no current practices are discriminatory.

## Complying with the law

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

Some religious organisations and bodies are also duty holders under the Equal Opportunity Act. This means they have a legal obligation to take reasonable and proportionate measures to eliminate discrimination as far as possible. This is known as the '**positive duty**'. 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 our website.

## More information

More information [about the Equal Opportunity Act reforms](#) can be found on our website.

Information on the [reforms and links to available support services](#) can also be found on the Department of Justice and Community Safety website.

## Frequently asked questions

### What was the law before these changes?

Before the amendments, there was a general exception in the *Equal Opportunity Act 2010* allowing discrimination by religious bodies. Discrimination was allowed where:

- it was done on the basis of a person's:
  - religious belief or activity
  - sex
  - sexual orientation
  - lawful sexual activity
  - marital status
  - parental status, or
  - gender identity **and**

- it conformed to the doctrines, beliefs or principles of the religious, or was reasonably necessary to avoid injury to religious sensitivities.

This meant that religious bodies did not need to comply with Part 4 of the *Equal Opportunity Act 2010*. This included obligations when providing goods or services.

### **When can religious organisations and bodies discriminate when providing government-funded goods and services?**

Religious organisations or bodies that deliver Victorian government-funded goods and services will be able to discriminate when providing them where:

- the discrimination is on the basis of a person's religious belief or activity (and not their sex, sexual orientation, lawful sexual activity, marital status, parental status, or gender identity); and
- it conforms with the doctrines, beliefs or principles of the religion, or it is reasonably necessary to avoid injury to the religious sensitivities of the adherents of the religion; and
- it is reasonable and proportionate based on the circumstances of the case.

This includes in the following circumstances:

- the religious organisation or body refuses to provide goods or services
- the religious organisation or body offers the goods and services on less favourable terms
- the religious organisation or body subjects a person to detriment or unfavourable treatment in providing goods or services.

Religious organisations or bodies that provide government-funded goods and services may also be able to rely on other exceptions to discrimination in the *Equal Opportunity Act 2010* that are available to all (including non-religious) goods and services providers.

### **What if a religious organisation or body only provides other services that are not funded by the Victorian government?**

The new laws only apply to goods or services that are partly or wholly funded by the Victorian government. This means that if a religious organisation or body is providing goods or services which are not funded by the Victorian government, they may discriminate for reasons beyond a person's religious belief or activity (e.g., sexual orientation).

However, section 82 of the *Equal Opportunity Act 2010* states that this discrimination must still be reasonable and proportionate in the circumstances.

### **What are 'government-funded goods or services'?**

Government-funded goods or services means goods or services provided under a funding agreement between a religious body and a public sector body. This includes accommodation services.

### **What are 'goods or services'?**

Goods can include money and food. Goods sold or provided by religious bodies include items sold in a religious store, such as candles, prayer books, or religious icons.

Services is a broad term and covers any act of helpful or beneficial activity by an organisation or business for a person. Services provided by universal or mainstream organisations are also likely to fall within this definition, including:

- medical clinics
- health, aged, disability and counselling services
- maternal and child health program
- homelessness services
- outreach and welfare services.

Services are also defined in the *Equal Opportunity Act 2010* as:

- a) access to and use of any place that members of the public are permitted to enter
- b) banking services, the provision of loans or finance, financial accommodation, credit guarantees and insurance
- c) provision of entertainment, recreation or refreshment
- d) services connected with transportation or travel
- e) services of any profession, trade or business, including those of an employment agent
- f) services provided by a government department, public authority, state-owned enterprise or municipal council.

Services can include providing accommodation, information or health and other support services. Services provided by religious bodies include:

- marriage or wedding ceremonies
- funerals
- faith education programs
- religious camps or retreats.

Goods and services which are free or paid for are both included in the definition.

## **Who is included in the definition of ‘religious bodies’?**

A religious body is defined as:

- a body established for a religious purpose
- 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 lawfully discriminate a religious body will need to show that the discrimination is required because:

- their religion says that they need to act in a particular way (there must be no alternative), or
- if acting in a different way will mean that matters are not respected which are genuinely significant to the doctrines, beliefs or practices.

The focus should be on:

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

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

## **Does the legislation apply to discrimination that occurred before commencement of the reforms?**

The reforms to discrimination in the provision of goods and services will come into operation on 14 December 2022, unless it is proclaimed to come into operation at an earlier date.

This means that any discrimination which occurred, or complaint that were made, prior to 14 December 2022 will be dealt with under the previous law.

## **What do religious bodies who receive government-funded services need to do to comply with the changes?**

Religious organisations or bodies which hold contracts with the government should update policies to comply with the new provisions and ensure no current practices are discriminatory.

The *Equal Opportunity Act* contains a positive obligation on duty holders not to discriminate. Therefore, religious organisations and bodies who receive government funding should consider what steps may be necessary to ensure their organisation eliminates discrimination as far as possible.

For example, updating policies and public facing material to accord with the changes to the law, to make it clear that:

- the organisation will not discriminate against persons on the basis of their sex, sexual orientation, lawful sexual activity, marital status, parental status, or gender identity
- where the organisation lawfully discriminates against a person on the basis of religious belief or activity, they will only do so where the discrimination is reasonable and proportionate in the circumstances.

### **Are religious schools included in these new reforms?**

Yes, the reforms limit the ability of religious bodies to discriminate in the provision of government-funded goods and services and religious schools when running an educational institution. The test for when religious schools can discriminate in providing goods or services aligns with other exceptions to discrimination for religious schools under the Equal Opportunity Act.

### **How will the reforms impact organisations which also receive funding from other sources?**

The goods and services exception will only apply to services that are partly or wholly funded by the Victorian Government.

It will not apply to other goods and services that are funded from other sources, such as the Commonwealth Government.

However, the reforms may have a practical effect on religious organisations and bodies that receive Commonwealth funding for services. This is because most providers are funded through complex arrangements. This can comprise of state, Commonwealth and private funding. These providers are unlikely to be able to easily separate their funding sources for each service. So, in practice, organisations may not want to discriminate in any of their services to avoid unlawful discrimination under Victorian law.

### **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 on our website: [\*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	<a href="mailto:enquiries@veohrc.vic.gov.au">enquiries@veohrc.vic.gov.au</a>
Twitter	<a href="https://twitter.com/VEOHRC">twitter.com/VEOHRC</a>
Facebook	<a href="https://facebook.com/VEOHRC">facebook.com/VEOHRC</a>
Website	<a href="http://humanrights.vic.gov.au">humanrights.vic.gov.au</a>