



Victorian Equal Opportunity  
& Human Rights Commission

# Guideline: Family violence services and accommodation

> Complying with the Equal Opportunity Act 2010

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This information is intended as a guide only. It is not a substitute for legal advice.

The information in this guideline is not intended to cover every provision or defence available under the Equal Opportunity Act. Please check the Act to see whether any exceptions may be relevant to your personal circumstances.

It is also important to consider your legal obligations under other laws that may apply to you. Even where exceptions and exemptions apply under the Equal Opportunity Act 2010, you may still have obligations under federal anti-discrimination or workplace relations laws.

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# Part 1: About this guideline

## Introduction

This guideline was developed as a result of a recommendation made by the Royal Commission into Family Violence (the Royal Commission), which handed down its report in March 2016. The Royal Commission identified that there are groups of people who are particularly at risk in their experiences of family violence and who experience barriers to accessing services and accommodation, which could be discrimination.<sup>1</sup>

This guideline is issued under section 148 of Victoria's *Equal Opportunity Act 2010* and responds to the barriers identified in the Royal Commission's report. It outlines the legal obligations regarding discrimination against people when they seek to be provided with services and accommodation. Specifically, it considers the legal obligations of the organisations and staff providing services and accommodation to people experiencing family violence. It also offers practical guidance for those providers on how to prevent discrimination from occurring in the first place.

The Victorian Equal Opportunity and Human Rights Commission (the Commission) consulted widely to make sure that this guideline is relevant and useful.<sup>2</sup> The Commission was assisted by advocates, peak bodies and service providers which highlighted the key issues and barriers to accessing and providing

inclusive and non-discriminatory family violence services. In total, the Commission consulted with 55 stakeholder organisations, agencies and departments, as well as consulting with the Victorian Government LGBTI Taskforce working groups on Justice and Family Violence, and the Family Violence Diverse Communities and Intersectionality Working Group at the Department of Premier and Cabinet.<sup>3</sup>

## Who is this guideline for?

This guideline is specifically targeted toward specialist family violence services and mainstream or universal services that provide crisis response and recovery services and accommodation, including men's behaviour change programs.

## Why do I need to follow this guideline?

People experiencing family violence are often dealing with multiple, intersecting and complex issues in their lives, including violence and intimidation, potential homelessness, job security, and maintaining the care and education of their children. It is therefore crucial that providers understand their legal duty to not discriminate against their clients, but also to prevent and eliminate discrimination from their service delivery so that their clients are able to access the help they need, when they need it.

While this guideline is not legally binding, a court or tribunal may consider whether a person or organisation has complied with it when hearing a complaint of discrimination.<sup>4</sup>

<sup>1</sup> State of Victoria, *Royal Commission into Family Violence: Summary and recommendations*, Parl Paper No 132 (2014–16), 18. Recommendation 141 provided that the Commission issue a guideline to guide service providers in meeting their obligation to act inclusively and avoid discrimination when delivering services to all people who are affected by family violence. The guideline should apply to family violence service providers (including men's behaviour change programs), as well as to universal and mainstream organisations.

<sup>2</sup> Section 148(2) of the *Equal Opportunity Act 2010* (Vic) requires that the Commission consult with persons or bodies that the Commission considers represents the areas or persons to whom the guidelines will relate.

<sup>3</sup> Where the Commission provides information about working with particular community groups, we have developed this guidance based on our consultations. However, we have also referenced submissions to the Royal Commission, where they deal with relevant issues.

<sup>4</sup> *Equal Opportunity Act 2010*, (Vic), s 149.

# Part 2: Understanding the issues

## Overview

### What is family violence?

Family violence is a widespread, systemic, and pervasive human rights issue that has profound impacts on countless lives and communities.

Family violence is defined in section 5 of the *Family Violence Protection Act 2008* as:

- (a) behaviour by a person towards a family member of that person if that behaviour—
- (i) is physically or sexually abusive; or
  - (ii) is emotionally or psychologically abusive; or
  - (iii) is economically abusive; or
  - (iv) is threatening; or
  - (v) is coercive; or
  - (vi) in any other way controls or dominates the family member and causes that family member to feel fear for the safety or wellbeing of that family member or another person; or
- (b) behaviour by a person that causes a child to hear or witness, or otherwise be exposed to the effects of, behaviour referred to in paragraph (a).

The Family Violence Protection Act defines 'family member' broadly, reflecting that family violence can be experienced through a range of different familial relationships.<sup>5</sup> The Royal Commission provided a range of examples of what these relationships may look like, including:

- between current or former intimate partners who are or were married or in de facto relationships

5 *Family Violence Protection Act 2008* (Vic), s 8; State of Victoria, *Royal Commission into Family Violence: Summary and recommendations*, Parl Paper No 132 (2014–16), 2.

- in heterosexual, same-sex and other diverse relationships
- between parents (or step-parents) and children
- between siblings
- between grandparents, grandchildren, uncles, aunts, nephews, nieces and cousins.

It can also occur in relationships that are considered to be 'family-like'. For example, in Aboriginal and Torres Strait Islander communities kinship relationships, or between a person with a disability and their unrelated paid support worker or carer.<sup>6</sup>

### Family violence and gender

Although family violence can and does occur across a range of familial relationships, the Royal Commission found clear trends that emerged from the data, including that:

- family violence disproportionately affects women and children, and the majority of perpetrators are men
- female victims are more likely to be a current or former partner of the perpetrator, while men are more likely to experience violence in different familial relationships – for example, as a son or a sibling.<sup>7</sup>

Family violence is therefore a deeply gendered issue, rooted in the structural inequalities and an imbalance of power between women and men.<sup>8</sup>

6 *Family Violence Protection Act 2008* (Vic), s 8(3); State of Victoria, *Royal Commission into Family Violence: Summary and recommendations*, Parl Paper No 132 (2014–16), 2.

7 State of Victoria, *Royal Commission into Family Violence: Summary and recommendations*, Parl Paper No 132 (2014–16), 18.

8 State Government of Victoria, *Ending Family Violence: Victoria's Plan for Change*, Department of Premier and Cabinet <<http://www.vic.gov.au/familyviolenceplan>>.

Other reports have also indicated that one in three Australian women over the age of 15 has experienced physical or sexual violence and/or emotional abuse by an intimate partner, with most of the family violence that occurs in Victoria being perpetrated by men against women and children.<sup>9</sup>

Children are often present when family violence is perpetrated in the home. In 2015/16, family violence concerns were indicated in almost half of the reports to child protection, and more than two thirds of substantiated reports to child protection.<sup>10</sup>

## Family violence and intersectional discrimination

Family violence can happen to anyone, as violence has no geographical, socio-economic, age, ability, cultural or religious boundaries. This includes:

- Aboriginal and Torres Strait Islander people with a disability
- people from cultural, religious and linguistically diverse backgrounds, including immigrant and refugee peoples (often referred to as 'CALD' and referred to in this guideline as 'multicultural communities')
- people from lesbian, gay, bisexual, trans and gender diverse, and intersex (LGBTI) communities
- older people
- people who work in the sex industry
- younger people
- people in prison or exiting prison
- people living in rural, regional or remote areas.<sup>11</sup>

For many of these groups identified above, family violence is often hidden or rendered invisible. Many submissions to the Royal Commission reported a lack of awareness both within communities, service and accommodation providers and by government about the type and extent of family violence that people from diverse backgrounds experience.<sup>12</sup>

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9 Ibid.

10 Ibid. 47.5 per cent of reports to child protection, and 68.7 per cent of substantiated reports to child protection.

11 Ibid.

12 See e.g. Australian Institute of Family Studies, Submission No.0827.001 to the Royal Commission into Family Violence, 29 May 2015, 11–12, 25; Australian Women against Violence Alliance, Submission No.0838.001 to the Royal Commission into Family Violence, undated, 15; Australian Greek Welfare Society, Submission No.0578.001 to the Royal Commission into Family Violence, undated, 4; Commission for Children and Young People, Submission No.0790.001 to the Royal Commission into Family Violence, 29 May 2015, 21, 23.

Submissions from people who had experienced family violence also reported a distinct fear of prejudice in accessing services and accommodation – whether by staff at the service or other service users. For example, fear of homophobia, transphobia, heterosexism and racism were all reported to the Commission as key barriers to accessing services, as well as being provided with inappropriate and inaccessible services based on assumptions or stereotypes about people with diverse backgrounds or experiences.<sup>13</sup>

Some people also experience distinct barriers to accessing services:

- Aboriginal and Torres Strait Islander communities are affected by historic dispossession of land and culture, the experiences of the stolen generation, and the trauma associated with those experiences, resulting in distrust of services.<sup>14</sup>
- People from multicultural communities, particularly refugees or migrants, can be affected by their experiences of migration and settlement. This may include uncertain visa status and fear of impending migration outcomes (for example obtaining or losing residency rights), lack of understanding about forms of family violence reinforced by cultural norms and beliefs, speaking English as a second language, lack of or inappropriate use of interpreters, and a lack of culturally appropriate services, accommodation and access points.<sup>15</sup>
- People from LGBTI communities may face fear of discrimination and 'outing' by services, fear that organisations will rely on legal exceptions or exemptions in anti-discrimination law to exclude them, fear that their gender identity will be questioned, and face inappropriate services and unsafe accommodation.<sup>16</sup>

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13 State of Victoria, *Royal Commission into Family Violence: Report and recommendations, Vol V*, Parl Paper No 132 (2014–16), 7, 28–29, 106–107, 143, 145, 147, 152, 154; See e.g. the following submissions to the Royal Commission into Family Violence: No to Violence and Safe Steps (joint submission), Submission No.0933.001, 19 June 2015, 11–18; Muslim Women's Centre for Human Rights, Submission No.0728.001, 7, 10, 17; Australian Women Against Violence Alliance, Submission No.0838.001, undated, 13; InTouch Multicultural Centre Against Family Violence, Submission No.0612.001, undated, 14, 46. Also see Women with Disabilities Australia, *Violence against Women with Disabilities Resource Manual: More than Just a Ramp*, Commonwealth of Australia (2007) 19–21, 28.

14 State of Victoria, *Royal Commission into Family Violence: Report and recommendations, Vol V*, Parl Paper No 132 (2014–16), 7, 48.

15 Ibid, 106–110, 114–115, 121.

16 Ibid, 145–146, 152–155.

- Sex workers may experience discrimination associated with the stigma persisting about their occupation.<sup>17</sup>
- Older people may experience ageism and lack of recognition of elder abuse as a form of family violence.<sup>18</sup>
- People with disabilities face systemic barriers in gaining access to services and accommodation, and receiving services which are not adjusted to their individual needs.<sup>19</sup>

Volume V of the Royal Commission's report provides more detail on these experiences.

Intersectionality, in the context of discrimination and the Equal Opportunity Act, is a term that is used to describe how personal characteristics such as gender, ethnicity, ability, sex, sexual orientation, gender identity, religion or age can interact on multiple levels to create overlapping forms of discrimination and power imbalances that can lead to distinct experiences of family violence.<sup>20</sup> More broadly, intersectionality can be used to support inclusive service delivery by recognising the social, systemic and historic forces that connect people's identities and circumstances with distinct experiences of violence and access to violence support.

For example, the experience of accessing the family violence support system and the experience of violence itself may be very different for a lesbian woman who also has a physical disability, or a transgender Aboriginal woman, or a young Muslim man with limited English and an acquired brain injury, compared to other people who have experienced family violence but do not share these characteristics. This is not to diminish the experience of a person identifying with a specific group or community, but to recognise that there are many factors that may make it difficult for people with particular experiences or backgrounds to access the supports and infrastructure that they require.

As it is increasingly recognised that people with the diverse backgrounds identified above are at greater risk of family violence or experience it at higher rates, it is important that the service system responding to family violence is equipped with tools to support clients and provide an inclusive and non-discriminatory service.

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17 Ibid, 252, 255.

18 Ibid, 71, 80–82, 86.

19 Ibid, 186–187.

20 State Government of Victoria, *Ending Family Violence: Victoria's Plan for Change*, Department of Premier and Cabinet <<http://www.vic.gov.au/familyviolenceplan>>.

# Part 3: Understanding the law

The Equal Opportunity Act promotes inclusive and non-discriminatory service delivery through:

- prohibiting direct and indirect discrimination because of a protected characteristic by service and accommodation providers and their staff (see pages 6–13), unless an exception or exemption applies (see pages 14–18)
- requiring services and accommodation providers to make reasonable adjustments for clients with a disability (see part page 11)
- prohibiting requests for information that could be used to discriminate against a person, unless the information is reasonably required for a purpose that does not involve prohibited discrimination (see page 13)
- requiring service and accommodation providers to take reasonable and proportionate steps to eliminate discrimination as far as possible within their organisation (see Part 4: Inclusive service delivery, beginning on page 19).

These legal obligations encourage service providers to identify and address the systemic causes of discrimination, in order to promote and make full participation possible by all people in society and reduce barriers to accessing services.

## Discrimination by service providers

### Definition of ‘services’

The Equal Opportunity Act prohibits discrimination in the provision of goods and services. ‘Services’ is a broad term and covers any act of helpful or beneficial activity by an organisation or business for a person.<sup>21</sup> It can cover the provision of services to more than one person, and services that are tailored to individuals.<sup>22</sup>

In the context of these guidelines, services includes:

- services that are voluntary or require payment<sup>23</sup>
- health services and support (such as social workers)<sup>24</sup>
- providing information<sup>25</sup>
- services provided by any profession, trade or business<sup>26</sup>
- services provided by a government department, public authority or local council.<sup>27</sup>

All services provided by specialist family violence crisis response, intake and recovery organisations are likely to fall within the definition of services in the Equal Opportunity Act and must not unlawfully discriminate against clients.

21 *Slattery v Manningham CC* [2013] VCAT 1869 [29] citing *Bayside Health v Hilton* [2007] VCAT 1483; *Kavanagh v WorkCover Authority* [2011] VCAT 2009 [42].

22 *Falun Dafa Association of Victoria Inc. v Melbourne CC* [2003] VCAT 1955 [39] [41].

23 *Equal Opportunity Act 2010* (Vic), s 44(2); *Bayside Health v Hilton* [2007] VCAT 1483 [18].

24 *Bayside Health v Hilton* [2007] VCAT 1483 [20].

25 *Bayside Health v Hilton* [2007] VCAT 1483 [18].

26 *Equal Opportunity Act 2010* (Vic), s 4.

27 *Equal Opportunity Act 2010* (Vic), s 4.

Services provided by universal or mainstream organisations – including medical clinics, health, aged, disability and counselling services, maternal and child health programs run through local government, homelessness services, outreach and welfare services – are also likely to fall within the definition and must not unlawfully discriminate against their clients.

It does not matter where an organisation's services are based – whether in a community centre or community health centre, a standalone clinic or facility, a youth centre, or within a school (such as through school welfare and outreach services) or within a client's home. It also does not matter how the services are delivered, such as on the telephone, internet, or in person.

### Are all government services covered by the Act?

Some government services are covered by the Equal Opportunity Act, and some are excluded from this definition where they do not 'confer a benefit, advantage or welfare' on a person, or where they relate to the 'exercise' or 'performance of a statutory duty'.<sup>28</sup> For example, Victoria Police provides services covered by the Act when they respond to a request for assistance via an emergency call; or when they are protecting people from injury or death. However, Police also provide services which are *not* covered by the Equal Opportunity Act when investigating an alleged offence, or deciding whether or not to lay charges.<sup>29</sup>

Courts may also be providers of services covered by the Act in certain circumstances where they are helping people who attend court. For example, allowing access to and use of public areas of a court building, is expressly covered by the definition of 'services' in the Act. Where a government service is excluded from the definition of 'service' in the Act, this means a person cannot complain about conduct that appears to be discrimination.

28 *Kavanagh v Victorian WorkCover Authority trading as WorkSafe Victoria (Anti-Discrimination)* [2011] VCAT 2009 [48].

29 *Djime v Kearnes* [2015] VCAT 941 [70].

## Obligations of service providers

The Equal Opportunity Act makes discrimination against the law in the provision of goods and services to the public. Specifically, the Act provides that a person must not discriminate against another person:

- by refusing to provide goods or services to the other person
- in the terms on which goods or services are provided to the other person by subjecting the other person to any other harm (including humiliation and denigration) in connection with the provision of goods or services to that person.<sup>30</sup>

The Act also requires service providers to make reasonable adjustments for people with disabilities in order for them to participate in or access services, or obtain a benefit from services.<sup>31</sup> Failure to make adjustments may be another form of discrimination.<sup>32</sup> More information about reasonable adjustments can be read on page 11.

The Equal Opportunity Act also makes discrimination against people with disabilities in access to public premises against the law.<sup>33</sup> This includes any place that the public or a section of the public is allowed to enter, such as toilets.

30 *Equal Opportunity Act 2010* (Vic), s 44(1).

31 *Equal Opportunity Act 2010* (Vic), s 45.

32 See *Equal Opportunity Act 2010* (Vic), s 46, which says that a failure to make reasonable adjustments is discriminatory unless the adjustments are not reasonable in all the circumstances, or the person cannot or would not be able to participate in, access or obtain benefit from the service even after adjustments were made.

33 *Equal Opportunity Act 2010* (Vic), s 57. It is unlawful to discriminate by refusing access to premises or any of the facilities that members of the public are otherwise entitled to access; in the means of access to the premises; in the terms and conditions on which they can access the premises or use the facilities; or by asking someone to leave the premises or stop using the facilities.

# Discrimination by accommodation providers

## Definition of accommodation

The term 'accommodation' in the Equal Opportunity Act has a broad definition and includes any permanent or temporary accommodation in: business premises; a house or flat; a hotel or motel; a boarding house or hostel; a caravan or caravan site; a mobile home or mobile home site; or a camping site.<sup>34</sup>

## Obligations on accommodation providers

It is against the law for a person or organisation to discriminate in the offering of accommodation, or when providing accommodation.

A person must not discriminate against another person who is applying for accommodation in:

- refusing, or failing to accept, their application
- the way in which their application is processed
- the terms on which the accommodation is offered to them.<sup>35</sup>

A person must not, in the provision of accommodation, discriminate by:

- varying the terms on which the accommodation is provided
- denying or limiting access by the other person to any benefit associated with the accommodation
- evicting the person
- refusing to extend or renew the provision of accommodation
- the terms on which the provision of accommodation is extended or renewed
- subjecting the other person to any other harm (including humiliation and denigration) in connection with the provision of accommodation to that person.<sup>36</sup>

In relation to the obligations on both service and accommodation providers, the term 'person' means both a natural person, such as a receptionist or a case worker, as well as legal persons, such as incorporated or unincorporated entities. The obligation to not discriminate therefore falls on staff of a service and the service itself, and legal responsibility for any unlawful discrimination can be attributed to either or both an individual or the organisation (see page 14 for information on legal responsibility for discrimination).

## What is discrimination?

In the context of the above obligations, prohibited discrimination can be either direct or indirect, and the conduct must be connected to a personal characteristic that is protected by the Equal Opportunity Act. Actions can be discriminatory even where a person has other reasons for their conduct, provided the characteristic is the main reason for the conduct.

In determining whether a person has discriminated against someone else, the person's motive is irrelevant.<sup>37</sup> Discrimination can occur where a person acts alone or with another person, and can also occur by either *doing* an act – or – *failing* to do something.

## Direct discrimination

Direct discrimination happens when someone is treated unfavourably because of a personal characteristic protected by the law. Direct discrimination often happens because people make unfair assumptions about what people with certain personal characteristics can and cannot do – or about what kinds of services people with particular characteristics should or shouldn't access.

Some examples of direct discrimination might include:

- poor service delivery or refusal to provide services because of a protected characteristic
- treating or proposing to treat clients in a way that humiliates them because of a protected characteristic
- creating a hostile environment because of a protected characteristic.

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<sup>34</sup> See *Equal Opportunity Act 2010* (Vic), s 4(1).

<sup>35</sup> *Equal Opportunity Act 2010* (Vic), s 52.

<sup>36</sup> *Equal Opportunity Act 2010* (Vic), s 53.

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<sup>37</sup> *Equal Opportunity Act 2010* (Vic), s 10.

The test for direct discrimination must be read with the obligations on service and accommodation providers outlined above. The table below gives examples of some behaviour that would be considered discrimination under the Equal Opportunity Act:

<b>Example of unfavourable treatment</b>	<b>Relevant protected characteristic</b>	<b>Breach of legal obligations under the Equal Opportunity Act</b>
Refusing to provide relationship counselling to a sex worker because you disapprove of their work	Lawful sexual activity	Refusing to provide services (section 44(1)(a))
Publicly humiliating a person because they cannot speak English	Race or a characteristic associated with race	Subjecting a person to detriment in the provision of services (section 44(1)(c))
Requiring a gay man in a men's behaviour change program to change his partner's name to a female name, and pretend he is heterosexual	Sexual orientation	Subjecting a person to detriment in the provision of services (section 44(1)(c))
Evicting a person with a history of mental illness from a hostel because of fears they will harm other tenants and staff	Past disability and characteristics that are generally imputed to a person with a mental illness	Evicting a person from accommodation (section 53(c))
Denying a transgender woman entry to a refuge because of the stereotype they make other women feel uncomfortable or unsafe	Sex and gender identity	Refusing an application for accommodation (section 52(a))

## Indirect discrimination

Indirect discrimination occurs when an unreasonable requirement, condition or practice is imposed that disadvantages a person or group because of a personal characteristic.

Indirect discrimination happens when a policy, practice or behaviour seems to treat all people the same way, but it actually unfairly disadvantages someone with a protected personal characteristic. It often occurs where an unreasonable blanket rule is put in place.

These behaviours often become part of organisation's culture and are reinforced by policies or procedures. If an organisation has a lot of

complaints about the same or similar issues, it might be because of entrenched discrimination, also known as systemic discrimination.

Importantly, where a condition, requirement or practice is reasonable in all the circumstances, it will not be against the law even if some people are disadvantaged by being refused help or offered help on terms that might disadvantage them.

The test for indirect discrimination must be read with the obligations on service and accommodation providers outlined above. The table below gives examples of conditions or rules that might be against the law, if they are unreasonable:

Example of a condition, requirement or practice	Disadvantages a group of people	Relevant protected characteristic	Breach of legal obligations
Blanket policy of no pets or animals onsite	People with assistance animals either cannot use the service or are limited in accessing the service	Disability (includes assistance animals)	Discrimination in the terms on which services are provided (section 44(1)(b)) or subjecting a person to detriment (section 44(1)(c))
Requiring all refuge residents to participate in all tasks relating to communal cooking and cleaning <sup>38</sup>	People who have disabilities that mean they cannot cook or clean	Disability	Discrimination in the terms on which accommodation is provided (section 52(c)) or subjecting a person to detriment in connection with providing accommodation (section 53(f))
Anyone who wants to use an interpreter at a medical appointment must pay a 20 per cent surcharge	People who speak English as a second language, or who do not speak English at all	Race or a characteristic associated with race	Discrimination in the terms on which services are provided (section 44(1)(b)) or subjecting a person to detriment (section 44(1)(c))
Requiring provision of a birth certificate as proof of identity for entry to a women-only refuge	People whose gender identity does not match their sex assigned at birth	Gender identity or sex	Discrimination in the terms on which accommodation is provided (section 52(c)) or subjecting a person to detriment in connection with providing accommodation (section 53(f))
Only providing accommodation to people who are able to live without assistance and communicate independently	People who have a disability support worker, carer or interpreter	Disability	Discrimination in the terms on which accommodation is provided (section 52(c)) or subjecting a person to detriment in connection with providing accommodation (section 53(f))

<sup>38</sup> See Women with Disabilities Australia, *Violence against Women with Disabilities Resource Manual: More than Just a Ramp*, Commonwealth of Australia (2007), 33, 36.

## Discrimination caused by policies, rules and conditions

Discrimination by service and accommodation providers may occur through the policies, rules and conditions they impose on their clients. For example, rules relating to eligibility or standards of behaviour; house rules or conditions of entry into refuges or transitional housing; or participation requirements for counselling programs.

Rules and conditions that disadvantage people with a protected characteristic will be against the law unless the provider proves that they are reasonable. This is part of the test for indirect discrimination in the Equal Opportunity Act.

Whether a rule or condition is reasonable will depend on all the circumstances of the organisation and the people who might be affected, including:

- the nature and extent of any disadvantage resulting from the policy, rule or condition
- whether that disadvantage is proportionate to the result sought by the organisation
- costs of any alternative policies, rules or conditions and the financial position of the organisation
- whether reasonable adjustments or accommodation could be made to the policy, rule or practice to reduce the disadvantage.<sup>39</sup>

Each of these factors needs to be weighed and considered from an objective point of view.

## Reasonable adjustments for people with disabilities

Another form of discrimination in Victoria is failing to make reasonable adjustments for people with disabilities.<sup>40</sup>

The law requires service providers to make reasonable adjustments to allow people with disabilities to participate in or access services, or to derive a substantial benefit from services.

Whether or not an adjustment is reasonable involves taking into account:

- the person's circumstances, including the nature of their disability

- the type of adjustment that is needed
- the service provider's financial circumstances
- the effect on the service provider of making the adjustments
- the consequences for the service provider if the adjustments are made
- the consequences for the person if the adjustments are not made
- any relevant action plan that has been made under the federal *Disability Discrimination Act 1992*
- any relevant action plan made under Victoria's *Disability Act 2006*.

The Equal Opportunity Act says that service providers must make adjustments unless they are unreasonable after weighing the above factors, or if the person will not be able to access the service or obtain its benefit even after the adjustments are made.<sup>41</sup> When thinking about an adjustment, service providers need to balance the need for change and the impact on the client with the expense or any other potential disadvantages that might result from the change.

Some examples of adjustments might include:

- providing services at a person's home
- providing car spaces that are accessible to people with disabilities
- ensuring there is enough time to interview a person for intake, assessment and safety planning as longer meetings times may be required
- ensuring that corridors, waiting areas and consulting rooms are accessible for people using wheelchairs, assistance dogs or mobility aids<sup>42</sup>
- providing information in a range of formats (such as audio, Easy English, electronic versions, large print or DVDs, or including subtitles in any videos)
- offering and arranging for communication supports, such as Auslan interpreters or communication assistants, during consultations with a client who has communication accessibility needs.

<sup>39</sup> *Equal Opportunity Act 2010* (Vic), s 9(3).

<sup>40</sup> *Equal Opportunity Act 2010* (Vic), s 45.

<sup>41</sup> *Equal Opportunity Act 2010* (Vic), s 45(2).

<sup>42</sup> The Equal Opportunity Act protections do not extend to all assistance animals – only dogs (see s 7(4)(c)).

## What are 'protected characteristics'?

Under the Equal Opportunity Act, there are a number of personal characteristics (also described as 'attributes') that are 'protected', meaning a person cannot treat someone unfairly or unfavourably because they have that characteristic – or because it is assumed they do.

The following protected characteristics are relevant for this guideline:

- **Sex:** This term is not defined in the Act. Sex refers to a person's biological sex traits and is recorded on the basis of anatomical, chromosomal and hormonal characteristics. Sex has historically been understood as binary (that is, as exclusively female or male). It is now known and accepted by the courts that biological sex characteristics include many variations and that sex is not binary.<sup>43</sup>
- **Gender identity:** This is defined in the Act as meaning a person of one sex who identifies as a member of another sex on a genuine basis. This may be by assuming characteristics of the other sex (through style of dressing, medical intervention or otherwise) or because the person is living or seeks to live as a member of another sex. The definition of gender identity in the Act also refers to a person of indeterminate sex identifying as a member of a particular sex. This legal definition varies to the broader definition commonly given to 'gender identity', as a person's internal sense of self and how they identify, understand or perceive their gender. It is important to recognise that sex and gender identity are different and separate concepts.
- **Race:** This is a broad term defined to cover a person's colour, descent or ancestry, nationality or national origin, and ethnicity or ethnic origin. It also includes the situation where two or more distinct races are collectively referred to as a race, by covering the collective race and each of the distinct races.<sup>44</sup>
- **Religious belief or activity:** Religious belief is about having, or not having, a religious belief or view that is not against the law. Religious activity is where a person takes part, chooses not to take part or refuses to take part in a religious activity that is not against the law. For example, being Muslim, Hindu, Christian or Jewish; participating in religious fasting, prayer or ceremonies; wearing religious attire or symbols; or holding religious beliefs about not eating specific food such as pork or beef.
- **Age:** This term is not defined in the Act, and takes its ordinary meaning. It is understood to include discrimination against people of a specific age, age groups, or how old someone thinks a person is.
- **Disability:** This covers all physical, intellectual or psychological illnesses or injuries, and their manifestations or symptoms. The legal definition of disability in the Act includes: total or partial loss of body function or a body part; the presence of organisms (such as HIV or Hepatitis C) that may cause disease or disability, malformation or disfigurement of the body; mental or psychological diseases or disorders (such as mood or anxiety disorders); conditions or disorders that may result in a person learning more slowly. It includes actual or presumed disability, temporary or permanent disability, as well as a disability that occurred in the past, present or future (including having a genetic pre-disposition towards a disability as well as the onset of foreseen or unforeseen mental illness). Discrimination on the basis of disability also includes discrimination because a person has an 'assistance aid', defined in the Act as equipment or device that alleviates the effects of a person's disability such as a wheelchair or hearing aid, or an assistance dog or person helping them (such as an Auslan interpreter or reader).<sup>45</sup>
- **Sexual orientation is defined in the Act as being homosexual, lesbian, bisexual or heterosexual.** This refers to sexual and emotional attraction to people of a particular gender or genders.

43 *NSW Registrar of Births, Deaths and Marriages v Norrie* (2013) 250 CLR 490; [2014] HCA 11 [1], [35], [37], citing *AB v Western Australia* (2011) 244 CLR 390, 402; [2011] HCA 42 [23].

44 Discrimination on the basis of race can arise in relation to a person's skin colour, because of the food a person eats that is connected with their culture, or from racist stereotypes or slurs. Discrimination on the basis of race can also arise out of a person's visa: see e.g. *Khalid v Secretary Department of Transport Planning and Local Infrastructure (Human Rights)* [2013] VCAT 183.

45 *Equal Opportunity Act 2010* (Vic), s 7(4). The definition does not extend to other assistance animals.

- **Lawful sexual activity means engaging in, not engaging in or refusing to engage in a lawful sexual activity.** This can include adults being in a consensual sexual relationship (whether conventional or not), or working as a sex worker in a licensed brothel or escort agency, or as a private escort registered with the Business Licensing Authority working out of a client's home or a hotel room booked in the client's name.<sup>46</sup>
- **Personal association:** It is also against the law to discriminate against a person because they have a personal association with someone with one of the above characteristics. This can include being a family member, partner/spouse or friend. For example, a woman being refused accommodation because she has a son over 14 could be sex and age discrimination on the basis of personal association with a teenaged male.

For a full list of the characteristics protected by the Equal Opportunity Act, please visit our website: [humanrightscommission.vic.gov.au/discrimination/discrimination/types-of-discrimination](http://humanrightscommission.vic.gov.au/discrimination/discrimination/types-of-discrimination).

## Making a complaint

If someone believes they have been discriminated against they are able to lodge a complaint with the Commission for dispute resolution.<sup>47</sup> When a complaint is before the Commission, the parties to the dispute are assisted by an independent conciliator to work out a mutually agreeable outcome. This could include payment of compensation, an apology, or more systemic outcomes, such as re-writing of policies and procedures or implementing workforce training on discrimination.

46 *Sex Work Act 1994 (Vic) and Sex Work Regulations 2016 (Vic)*. Also see: St Kilda Legal Service *Sex Work and the Facts: A Fact Sheet for Sex Workers*, February 2017, <<http://www.skls.org.au/education/>>; State of Victoria, *Operating a licensed sex work business: Guide for licensees and approved managers*, Consumer Affairs Victoria, June 2016, <<https://www.consumer.vic.gov.au/businesses/licensed-businesses/sex-work-service-providers>>.

47 *Equal Opportunity Act 2010 (Vic)*, s 115.

If the parties cannot agree to settle the dispute, or the complaint is closed by the Commission for another reason,<sup>48</sup> then the complainant can take their dispute to the Victorian Civil and Administrative Tribunal (VCAT) for a public hearing and binding decision. A person is also able to go directly to VCAT if they do not wish to make their complaint to the Commission first.<sup>49</sup>

VCAT has the power to decide whether the person's complaint has been proven and whether there has been a breach of the Equal Opportunity Act. Following such a decision, VCAT can then make orders to remedy the discrimination, including orders that the person responsible: refrain from committing further discrimination; pay compensation and/or anything VCAT considers appropriate.<sup>50</sup>

## Requesting information

It is against the law to request or require a person to supply information that could be used to discriminate against them, unless an organisation can show that information is reasonably required for a purpose that does not involve unlawful discrimination.<sup>51</sup>

This includes making verbal or written requests, and also applies to printed and online application forms. This is relevant when:

- a service or accommodation provider is seeking information (verbally and in writing) during intake
- when a person enquires about using services or applies for accommodation
- when a service or accommodation provider seeks to obtain information from existing clients.

An organisation may have legitimate reasons for collecting demographic data about clients, which do not involve unlawful discrimination. For example, collecting information to help understand the needs of their clients and provide better services. In this case, the collection of data should be voluntary, and the client should be advised of the non-discriminatory reason for collection, how the information will be stored, who has access to the information and how it will be used.

48 The Commission has the discretion to decline to provide or continue to provide dispute resolution services. See *Equal Opportunity Act 2010 (Vic)*, s 116.

49 *Equal Opportunity Act 2010 (Vic)*, s 122.

50 *Equal Opportunity Act 2010 (Vic)*, s 125.

51 *Equal Opportunity Act 2010 (Vic)*, ss 107–108.

# Who is legally responsible for discrimination?

Legal responsibility – often described as ‘liability’ – determines who has to pay compensation or take other actions as a result of any discrimination. There are three types of legal liability under the Equal Opportunity Act: personal, accessorial and vicarious.

## Direct liability (personal)

A person who discriminates in the provision of services or accommodation can be personally or directly liable for their conduct. ‘Person’ is defined in the Act to include an individual, as well as an unincorporated association. It has also been held to include companies that provide services and accommodation which employ frontline staff who engage in discriminatory conduct.<sup>52</sup>

## Direct liability (accessorial)

A person can also be directly liable if they requested, instructed, induced, encouraged, authorised or assisted unlawful conduct of another person.<sup>53</sup> This is sometimes known as accessorial liability. For example, if a supervisor instructed a case manager to refuse services to a person because of a protected characteristic, they would be liable for proposing to treat a person unfavourably. A person can bring a claim against either or both the person who discriminates and the person who authorised the conduct.<sup>54</sup>

## Liability for employees and agents (vicarious)

Employers are legally responsible for the unlawful actions of their employees or agents, where the employee/agent is acting in the course of their employment, or is acting on the organisation’s behalf. The Equal Opportunity Act states that both the employee/agent and the employer will be taken to have breached the Act, and a person can bring a claim against either or both of them. This is known as ‘vicarious liability’.<sup>55</sup>

An employer can avoid vicarious liability if they can prove they have taken reasonable precautions to prevent unlawful conduct.<sup>56</sup> This includes taking the steps identified below as the minimum requirements to meet the positive duty (see Part 4).

# Is discrimination always against the law?

## Exceptions and exemptions

Under the Equal Opportunity Act discrimination is not always against the law. Some actions will not be against the law if:

- an *exception* in the Act applies<sup>57</sup>
- the actions are a *special measure* to address inequality
- VCAT has granted a temporary *exemption* from the law for a set period of time.<sup>58</sup>
- Exceptions and special measures apply automatically when an organisation meets the criteria in the Act. Exceptions and special measures may be used as a defence to any claim of discrimination, provided the person or organisation has the evidence to prove how the exception or special measure applies. It is not necessary to ask VCAT to declare that a special measure or exception applies.

While exceptions and exemptions may allow discrimination, service and accommodation providers do not have to use them. For many of the groups that are discussed in this guideline, there are limited services available so excluding people or limiting access can have a long-lasting impact. Service and accommodation providers are encouraged to take a human rights approach which seeks to balance the rights of those currently receiving, and those seeking to receive, support.

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52 *Christian Youth Camps Limited & Ors v Cobaw Community Health Services Limited & Ors* [2014] VSCA 75 [111], [379].

53 *Equal Opportunity Act 2010* (Vic), s 105.

54 *Equal Opportunity Act 2010* (Vic), s 106.

55 *Equal Opportunity Act 2010* (Vic), s 109.

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56 *Equal Opportunity Act 2010* (Vic), s 110.

57 For example, *Equal Opportunity Act 2010* (Vic), ss 58–62, 75, 88.

58 *Equal Opportunity Act 2010* (Vic), ss 89–90. You can find out more about exemptions, exceptions and also special measures by visiting <<http://www.humanrightscommission.vic.gov.au/discrimination/exceptions-exemptions-and-special-measures/exemptions>>.

## Welfare exceptions

### 'Special needs' services exception

It is not against the law to provide a targeted service for a particular part of the community and limit eligibility to that service, in certain circumstances that relate to supporting the welfare of those people.

Discrimination is therefore legally permissible where a person is offering special services, benefits or facilities that meet the special needs of people with a particular personal characteristic.<sup>59</sup>

In order for this exception to be relied upon, an organisation needs to identify and have evidence to show:

1. who its target client group is and what their special needs are
2. what special services, benefits or facilities will be provided, and
3. how the special services, facilities and benefits meet the special needs of the target group.

If the identified special services, benefits or facilities meet special needs, it is lawful to limit eligibility to them to persons with that characteristic.<sup>60</sup>

Organisations relying on this exception to do so should be transparent and publicise their eligibility policy.

Family violence services such as emergency accommodation for women and case management have previously been found by VCAT in the context of an exemption application to be special needs services falling under this exception,<sup>61</sup> as have legal services provided to women for family violence related proceedings.<sup>62</sup>

### Welfare accommodation exception

It is not against the law to limit eligibility for accommodation in a hostel or similar type of facility, provided it has been 'established wholly or mainly for the welfare of persons of a particular sex, age, race or religious belief' and the person being excluded is not of that sex, age, race or religious belief.<sup>63</sup> For example, this exception would allow an aged-care facility targeted at the Greek community to refuse to

accept non-Greek people.<sup>64</sup> Organisations need to carefully consider how they define their target client group, and publicise their eligibility policy.

The welfare accommodation exception is limited to specific protected characteristics: sex, age, race or religious belief. It does not allow discrimination because of other protected characteristics such as disability, sexual orientation, marital status, parental status, or lawful sexual activity. This means a provider cannot rely on this exception to refuse a person accommodation on the basis they are lesbian/gay/bisexual, are single or in a de-facto relationship, have a disability, or are a sex worker.<sup>65</sup>

### Case study: Welfare exceptions and family violence services

Georgina Martina Inc. runs a 24-hour women's refuge program and related services to women and their children, including males up to 16 or 17 years old, escaping family violence. The intention is to provide a safe, non-threatening environment, where women feel comfortable disclosing their experiences including physical and sexual assault.

Georgina Martina wished to only employ women to provide these services, so applied to VCAT for an exemption. In considering the exemption application, VCAT considered whether the services themselves were covered by any exception in the Equal Opportunity Act.

VCAT found that the evidence provided by Georgina Martina proved that its refuge was covered by the welfare accommodation exception. The refuge was established for the welfare of women, sometimes accompanied by their children, who had special needs because they were fleeing violence and needed a secure place to live. It was therefore lawful for Georgina Martina to discriminate against males over the age of 18 in providing accommodation.<sup>66</sup>

59 *Equal Opportunity Act 2010* (Vic), s 88.

60 *Whitehorse Community Health Centre Exemption (Human Rights)* [2014] VCAT 1040 [33].

61 *Georgina Martina Inc (Anti-Discrimination Exemption)* [2012] VCAT 1384 [58]–[59]; Women's Housing Association Limited Exemption Application, *Victoria Government Gazette*, No. G48, 1 December 2016, 3000–3001.

62 Women's Legal Service Victoria Exemption Application, *Victoria Government Gazette*, No. G36, 5 September 2013, 2000–2001.

63 *Equal Opportunity Act 2010* (Vic), s 60.

64 Explanatory Memorandum, *Equal Opportunity Bill 2010* (Vic), 36.

65 There is an exception relating to refusing accommodation on the basis of lawful sexual activity against a sex worker who intends to use the accommodation for commercial purposes – *Equal Opportunity Act 2010* (Vic), s 62.

66 *Georgina Martina Inc (Anti-Discrimination Exemption)* [2012] VCAT 1384 [55], [72]. Also see e.g. *Anglicare Victoria (Human Rights)* [2015] VCAT 79; Women's Housing Association Ltd Exemption Application, *Victoria Government Gazette*, No. G48, 1 December 2016, 3000–3001.

VCAT also found that the majority of the services provided by Georgina Martina were 'directed towards the needs of women who are fleeing family violence', such as emergency accommodation, case management to locate housing, and dealing with personal and legal matters. As the services are provided in the family violence context and meet the needs of Georgina Martina's clients who were women and children, VCAT accepted these as welfare services covered by the 'special needs' exception. It was therefore lawful to limit eligibility to those services to women and their children under 18 years of age.<sup>67</sup>

As a result of these findings, VCAT considered no exemption was necessary for the services to lawfully operate. However, an exemption was required and granted to employ only women in all roles (not just those working directly with clients).<sup>68</sup>

## Religious exceptions

The religious exceptions seek to balance religious freedoms with the right to equality and non-discrimination. This means that discrimination in the name of religious belief or religious freedom cannot be justified unless it falls within one of the exceptions. For service and accommodation providers there are two relevant exceptions: one for religious bodies and one for the conduct of individuals on the basis of their religious beliefs or principles. The religious exceptions only allow discrimination in relation to specific protected characteristics, not to all of them.

### 'Religious bodies' exception

Religious bodies can discriminate against a person on the basis of their religious belief or activity, sex, sexual orientation, lawful sexual activity, marital status, parental status or gender identity where either:

- the discrimination conforms to the doctrines, beliefs or principles of the religion
- the discrimination is reasonably necessary to avoid injury to the religious sensitivities of people who follow the religion.<sup>69</sup>

67 *Georgina Martina Inc (Anti-Discrimination Exemption)* [2012] VCAT 1384 [58]–[60], [73]. Also see Domestic Violence Resource Centre Victoria Inc Exemption Application, Victorian Government Gazette, No. G19, 8 May 2014, pp855–856; Women's Housing Ltd Exemption Application, Victorian Government Gazette No. F9, 27 February 2014, 351–352.

68 *Georgina Martina Inc (Anti-Discrimination Exemption)* [2012] VCAT 1384 [74]–[75].

69 *Equal Opportunity Act 2010* (Vic), s 82.

### *Discrimination to comply with religious belief*

To rely on this exception a religious body will need to show that the discrimination is required because their religion dictates that they need to act in a particular way,<sup>70</sup> or if acting in a different way will mean that matters intimately connected with, or genuinely significant to the doctrines, beliefs or practices are not respected.<sup>71</sup>

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, meaning it is not the personal view of the alleged discriminator that is relevant, but an impartial view of whether the conduct was required.

### *What is a 'religious body'?*

This exception only applies to 'religious bodies', which is defined to include:

- a body established for a religious purpose
- an entity which establishes, directs, controls or administers, an educational or other charitable entity that is intended to be, and is, conducted in accordance with religious doctrines, beliefs or principles.<sup>72</sup>

Whether an organisation meets this definition will depend on whether the organisation provides services on a commercial basis or whether they are secular services, or whether they are being provided by an organisation conducted in accordance with explicitly religious principles.

### 'Religious person' exception

The Act provides an exception for a person to discriminate on the basis of another person's religious belief or activity, sex, sexual orientation, lawful sexual activity, marital status, parental status or gender identity where the discrimination is reasonably necessary for that person to comply with the doctrines, beliefs or principles of their religion. As above, whether the conduct is 'reasonably necessary' is an objective test.<sup>73</sup>

70 *Cobaw Community Health Services v Christian Youth Camps Ltd & Anor* [2010] VCAT 1613 [311],[315]–[317]; reasoning upheld on appeal *Christian Youth Camps Limited & Ors v Cobaw Community Health Services Limited & Ors* [2014] VSCA 75 [287]; *Trkulja v Dobrijevic & Anor (Human Rights)* [2013] VCAT 925 [50].

71 *Christian Youth Camps Limited & Ors v Cobaw Community Health Services Limited & Ors* [2014] VSCA 75 [300]–[301] (Maxwell P).

72 *Equal Opportunity Act 2010* (Vic), s 81.

73 *Equal Opportunity Act 2010* (Vic), s 84.

This exception can only be used by an individual to avoid legal liability, not an organisation. This means that where a staff member discriminates against a person in order to comply with the principles of their religion, their employer can still be liable for their conduct unless they can show they took all reasonable steps to prevent the conduct (see page 14 dealing with legal liability).

## General exceptions

### Statutory authority or necessity

The Equal Opportunity Act provides a general exception for discrimination that is necessary to comply with, or is authorised by, another Victorian law, rule or regulation.<sup>74</sup> For example, it is lawful to discriminate against people on the basis of nationality in refusing access to public transport concessions, where there is an Act or regulation that states only Australian citizens are entitled to that concession.<sup>75</sup>

### Protection of health and safety

There is another general exception available that allows discrimination in the provision of accommodation or services to a person because of disability, pregnancy or physical features where it is necessary to protect the health and safety of the person being discriminated against or others, or where it is necessary to protect property.<sup>76</sup>

Whether conduct is 'reasonably necessary' to protect health and safety must be assessed impartially, and the conduct must be tailored to the level of risk.<sup>77</sup> It is also highly relevant whether there are alternative non-discriminatory measures that would also protect health and safety and could be implemented.<sup>78</sup>

## Case study: Tailored responses

In *Slattery v Manningham City Council*<sup>79</sup> a man with an acquired brain injury was issued with a blanket ban on attending any council service or building, due to behaviour problems arising because of his disability. This ban was found by VCAT to be discrimination in the provision of services, and the council could not rely on the 'health and safety' exception to justify the ban. This was because the ban was not appropriately tailored and proportionate to the risk that the man posed to staff, and there were non-discriminatory alternatives that could have been implemented with the same outcome (protecting the safety of staff). The ban was therefore against the law. VCAT indicated that the exception would apply to the implementation of 'proportionate and tailored strategies that are informed by research and training, that are regularly reviewed and that provide an appropriate and commensurate measure of protection from an identified level of risk.'<sup>80</sup>

## Exemptions

Organisations may apply to VCAT for an exemption from any provision of the Equal Opportunity Act in relation to a person or class of people, or a particular activity.<sup>81</sup> For example, where an organisation wants to limit eligibility for its service and it is not covered by one of the exceptions in the Act and where its conduct is not a special measure.

VCAT will consider whether the proposed exemption is a reasonable limitation on the right to equality and other relevant circumstances. Organisations will need to provide evidence about the following factors:

- how their services operate
- the reasons why they want an exemption
- how it is reasonable to discriminate against some people in the context of their services.

VCAT can grant exemptions from the Equal Opportunity Act for up to five years, if it is satisfied that it is appropriate to do so.<sup>82</sup>

74 *Equal Opportunity Act 2010* (Vic), s 75.

75 *Khalid v Secretary Department of Transport Planning and Local Infrastructure (Human Rights)* [2013] VCAT 1839.

76 *Equal Opportunity Act 2010* (Vic), s 86.

77 *Hall v Victorian Amateur Football Association* [1999] VICCAT 333; EOC 92–997, [79361].

78 *Ibid*, 79362, cited and applied in *Slattery v Manningham CC (Human Rights)* [2013] VCAT 1869 [127].

79 [2013] VCAT 1869.

80 *Slattery v Manningham CC (Human Rights)* [2013] VCAT 1869 [135]–[136].

81 *Equal Opportunity Act 2010* (Vic) s 89.

82 *Equal Opportunity Act 2010* (Vic), s 90.

## Case study: Conduct requiring an exemption

In August 2014 Whitehorse Community Health Centre was granted an exemption by VCAT to advertise and only employ a women of Chinese heritage, in the role of Chinese Community Engagement Officer. An exemption was required because the employee would not only be providing services to Chinese women, but also work with Chinese men and members of the broader community to build capacity within the organisation to work with diverse communities. The broad scope of the role meant that the conduct was not entirely covered by any exception and could have amounted to discrimination. VCAT granted an exemption as the conduct was a reasonable limitation on the right to equality in all the circumstances.<sup>83</sup>

## Federal anti-discrimination law

Organisations operating in Victoria need to be aware that there are other laws relating to discrimination that will apply to them, but with differing obligations.

More information about these federal laws is available on the Australian Human Rights Commission website at [humanrights.gov.au](http://humanrights.gov.au) and from the Fair Work Ombudsman website at [fairwork.gov.au](http://fairwork.gov.au).

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<sup>83</sup> *Whitehorse Community Health Centre Exemption (Human Rights)* [2014] VCAT 1040.

# Part 4: Inclusive service delivery

Every person accessing services and accommodation in the family violence context has individual needs and experiences. For service providers this means being aware that some clients will need additional support or assistance in order to receive access and full participation, because of their protected characteristics such as sexual orientation, gender identity, race, disability, age and religion.

Victorian law recognises that discrimination can cause social and economic disadvantage and that access to opportunities is not equally distributed throughout society. In response, the Act creates a positive duty to identify and eliminate the systemic causes of discrimination and promote equality.

## Eliminating discrimination – the positive duty

### What is the positive duty?

Section 15 of the Equal Opportunity Act requires all organisations covered by the law – including accommodation and service providers – to take reasonable and proportionate measures to eliminate discrimination, sexual harassment and victimisation as far as possible. This is called the ‘positive duty’.

It means instead of simply reacting to complaints of discrimination when they happen, the Equal Opportunity Act requires organisations to be proactive about discrimination and take steps to prevent it from occurring.

### What do I need to do?

The steps taken to comply with the positive duty will be different for every organisation. What is ‘reasonable and proportionate’ will depend on the size of the organisation and the resources available. Bigger organisations will be expected to do more than smaller ones.

Factors that must be considered include the:

- size of the business or operations
- resources of the business
- nature of the business
- business and operational priorities
- practicability and cost of the measures in question.<sup>84</sup>

This means there can be some flexibility in the measures taken to meet the positive duty. Smaller organisations with fewer resources can still undertake a range of practical measures to eliminate discrimination.

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84 *Equal Opportunity Act 2010 (Vic)*, s 15.

## What is needed to comply with the positive duty?

To comply with the positive duty every organisation, regardless of size, should take the following minimum steps:

- **Develop an equal opportunity policy** that outlines the legal requirements for equal opportunity in service delivery by the organisation (not just one that covers the workplace and conduct of the employer and employees).
- **Ensure the policy is communicated** to all staff at induction and through refresher training, and that staff understand their obligations and what they mean in practice.
- **Review the policy** at regular intervals to ensure it is up to date.
- **Ensure clients know** their rights to receive a non-discriminatory and inclusive service, and communicate the equal opportunity in service delivery policy to them.
- **Develop a complaints procedure** for clients and ensure that it is easily available and accessible.
- **Regularly monitor service delivery** (including provision of accommodation), any complaints received and employee knowledge of legal obligations in order to improve compliance and deal promptly with any issues that arise.

In addition, organisations need to proactively identify and eliminate specific issues or barriers relating to discrimination, including by:

- scanning the organisation's culture, environment, processes and systems to identify any issues relating to compliance or factors which may create barriers to service and lead to discrimination (including systemic discrimination and 'intersectional' discrimination because of multiple protected characteristics, for example, race and disability)
- developing a plan to address those areas of weakness that are tailored to the size and resources of the organisation, and to embed inclusive and non-discriminatory service delivery within the organisation (such as through strategic plans, reconciliation action plans, and disability action plans).<sup>85</sup> Consultation with affected members of the local community will help identify realistic and appropriate measures to eliminate discrimination
- acting on the plan by communicating it to all staff, undertaking training, and setting expectations about their behaviour
- reviewing the implementation and progress of the plan and updating it accordingly.
- For more information, see the practical tips outlined below under 'Providing a non-discriminatory and inclusive service'.

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85 This could be an Action Plan created under s 152, Equal Opportunity Act, or some other formal document.

## Case Study: Proactive steps to eliminate discriminatory practices – Women’s Information and Referral Exchange (WIRE)

The Women’s Information and Referral Exchange Inc. (WIRE) is the only Victorian women’s service that provides information, support and referral to all women on any issue, including homelessness and family violence. While transgender women have used WIRE’s services for many years, the issue of gender identity became a priority when WIRE discovered that one service user was being excluded by other service users because their gender identity was being questioned.

WIRE decided that it needed to make its service safe for all women to use. WIRE spoke with Transgender Victoria and other members of the LGBTI advocacy community for advice on how to change its policy and practice and how best to educate staff and service users.

Ultimately, WIRE decided that its gender inclusive policy would be that all people who self-identify or express their gender as a woman or girl (whether past or present), or are gender non-conforming, are eligible to use the service.

WIRE communicated its policy to staff and ensured that all service users were also made aware of the policy. For cisgender women who said they were triggered by past experience

of men’s violence by being in the same room as people they considered to be men, WIRE provided support and referral to counselling services as well as education around gender identity.

To accompany the clarification of their eligibility policy, WIRE acknowledged that it needed to develop organisational capability to turn the policy into practice. It committed time and resources to providing training to all staff, and developed ongoing relationships with LGBTI service providers and advocates such as Switchboard and Transgender Victoria.

As a result of its policy change and improved organisational capacity, WIRE now sees more women calling up, asking about its services and seeking help. It is beginning to develop a reputation as a safe space for trans and gender non-conforming people that can provide appropriate referrals, when necessary.

The changes have enabled WIRE to be more inclusive and equipped WIRE to better serve its community. Because WIRE also understands that the creation of a policy is a first step within a space where heteronormative assumptions are being actively contested and conditions are rapidly evolving, WIRE is continuing to work with the LGBTI community to ensure that its policy and practices are current and maintain best practice standards.

## Providing a non-discriminatory and inclusive service

In practice, inclusive and non-discriminatory service delivery means addressing both systemic discrimination and individual discrimination. Additional steps may need to be taken to support clients at risk of disadvantage and to address factors that might be preventing people from diverse communities from accessing the organisation’s services. Below are some practical tips to providing a non-discriminatory and inclusive service.

For service and accommodation providers that receive funding from the Department of Health and Human Services (DHHS), there is an expectation that they will provide an inclusive and non-discriminatory service, with complementary

obligations set out in existing DHHS policy and funding guidelines, and in the DHHS Human Services Standards and accreditation process. For providers who are members of peak bodies Domestic Violence Victoria (DV Vic) and No to Violence Incorporating the Men’s Referral Service (NTV/MRS) there are complementary obligations contained in the DV Vic *Code of Practice* and NTV/MRS *Minimum Standards for Men’s Behaviour Change Group Work* (NTV/MRS Minimum Standards).<sup>86</sup>

86 Wheeler, E. (2006) *Men’s Behaviour Change Group Work: Minimum Standards and Quality Practice*, No To Violence, Melbourne, available at: <<http://www.dhs.vic.gov.au/about-the-department/documents-and-resources/policies,-guidelines-and-legislation/mens-behaviour-change-minimum-standards-manual>>.

## Working with people from LGBTI communities

### Eligibility policies

One of the most important issues for LGBTI clients of family violence services is knowing they can safely access a service. It is therefore crucial that all service and accommodation providers carefully consider before deciding they want to rely on an exception or exemption to limit eligibility for their service, what justification exists in evidence to support this position.

Organisations should be transparent about their eligibility criteria and make it publicly available such as:

- on their website and information brochures
- having a sign, rainbow flag or trans-inclusive flag at the entrance to the service.

These actions will also ensure the service or accommodation is seen and understood by the community as being LGBTI inclusive.

If a service helps 'all women', this should be spelled out as whether it is inclusive of all women, including those who are trans and gender diverse, and whether people with an intersex variation are also welcome. For women-only services, or providers with religious affiliations, this is important so people experiencing family violence know what the policy is and how they will be treated before they even approach the service.

It is imperative that the safety of the victim survivor comes first, regardless of their sexual orientation or gender identity. If an organisation is not going to provide services to particular people by relying on an exception or exemption, it should create a partnership or referral relationship with an organisation that does so everyone in the community can access a service that meets their needs.

### Case study: Transparent eligibility policy

Relationships Australia Victoria (RAV) has a clear statement on its website about who can use its services.

*Our services are for all members of the community, regardless of their religion, age, gender, sexual orientation, lifestyle choice, cultural background or economic circumstances. We respect the rights of all people in all their diversity to live life fully within their families and communities with dignity and safety, and to enjoy healthy relationships.<sup>87</sup>*

In relation to its family violence services, RAV is equally clear about its inclusive eligibility policy:

*Family violence affects people from all walks of life. While family violence can happen in many different family relationships, it is overwhelmingly women and children who experience violence, and men who use it.*

*People who identify as lesbian, gay, transgender, intersex and queer (LGBTIQ) can also experience violence and abuse, include sexual assault, family violence, controlling behaviour and particular types of violence based on sexuality, gender or identity...*

*We also know that conflict in some families includes verbal and physical abuse from adolescent or adult children. It can be very difficult for parents to recognise when their adolescent is behaving violently. If parents or other family members feel scared, intimidated, manipulated or are physically hurt, this is abusive and violent behaviour.*

*Other groups of people can also experience violence, including Indigenous women, women from culturally and linguistically diverse backgrounds, the elderly and people with disabilities.<sup>88</sup>*

This example illustrates that RAV understands there are multiple and varied experiences of family violence, and makes it clear that all people are welcome to use its services.

87 Relationships Australia Victoria, <<http://www.relationshipsvictoria.com.au/about-us/our-clients/>>. Text reproduced with permission.

88 Relationships Australia Victoria, <<http://www.relationshipsvictoria.com.au/services/familyviolence/>> Text reproduced with permission.

## Asking about gender

Given that many services are gender-specific, it is common to ask on intake, as part of the organisation's risk assessment framework, what a person's gender is in order to refer them to the best service. This should involve simply asking the person an open ended question, 'what is your gender?' Services and accommodation providers should accept a person's response of their gender identity as that which is lived and identified with. In asking this question, service and accommodation providers are enabling responses that are not necessarily binary (male or female).

## Asking about medical history or treatment

There should be no reason a service provider needs to ask a trans or gender diverse person about their gender transition/affirmation and whether they have undergone medical treatment such as hormone therapy or surgery, or whether a person from the LGBTI community has any particular medical conditions (such as HIV), unless they are a health service taking relevant medical information for the purposes of that person's health care. Asking for this information might amount to requesting information that can be used to discriminate, which is against the law under the Equal Opportunity Act, unless the service or accommodation provider can prove that there is a reason for requesting the information that is reasonably required for a purpose that does not involve prohibited discrimination.<sup>89</sup>

## Requesting proof of sex or gender identity

It may be indirect discrimination for a service to request that a person provides proof of their sex or gender identity in order to access a service or obtain the benefit of a service, unless it is reasonable in the circumstances to ask. For example, it might be reasonable to ask if an organisation has serious concerns based on more than mere suspicion that a particular person is not genuine or bona fide in their gender identification and is trying to fraudulently access the service or accommodation (that is, by pretending to be a particular gender where they do not ordinarily live as that gender).

Where there is a reasonable basis for requesting evidence about a person's sex or gender identity, an organisation should accept any of the following: a letter from a medical practitioner, the person's passport, or potentially the person's birth certificate (bearing in mind that due to birth certificate laws, a person's sex identifier may be different on a birth certificate to their affirmed gender identity).<sup>90</sup>

<sup>89</sup> *Equal Opportunity Act 2010 (Vic)*, ss 107–108.

<sup>90</sup> Australian Government, *Australian Government Guidelines on the Recognition of Sex and Gender*, July 2013 (updated November 2015).

Best practice is to not be prescriptive, and to allow the client to choose which evidence they will provide.

More information about disclosure and documentation can be found in Standard 5 of the Rainbow Tick Guide to LGBTI inclusive practice (see below).

## Behaviour or safety concerns

Behaviour or safety concerns are often raised as a justification for excluding people from LGBTI communities from a service. For example, to limit eligibility for a service in order to make it safer for particular groups of people, because other users might feel uncomfortable. Service and accommodation providers must ensure that behaviour or safety are not used to cover homophobic, biphobic or transphobic approaches to service delivery.

If a service has concerns about behaviour (such as a person behaving in a way which disrupts other residents) then the provider should utilise behaviour agreements or codes of conduct to manage expectations, and removal protocols based on inappropriate behaviour. Be careful to ensure that the behaviour standards are fair and reasonable in the context of the service delivery or accommodation, and that reasonable adjustments are available to any person whose behaviour concerns may in fact be a manifestation of a disability.

## Staff training and capacity to help LGBTI clients

Training staff in relation to the experiences of people from LGBTI communities and their barriers to accessing service is important for best practice inclusive service delivery. This will ensure that mistakes are not made based on assumptions about a person's appearance or the sound of their voice. For example:

- don't assume the sex, gender identity or sexual orientation of a person, their partner or family members
- don't allow uninformed stereotypes or myths to inform the provision of service (such as whether a person's sexuality, gender expression or gender identity affects whether they can be a victim/survivor or perpetrator)
- don't address people on the phone as 'sir' or 'madam', especially if the person's gender is not known
- take care to understand the importance of not misgendering or 'dead-naming' a person (calling them by the wrong pronoun or their birth name) and the detrimental impact it can have
- know the difference between sexual orientation, sex and gender identity.

Many of these issues can be clarified at intake, through careful and sensitive collection of information, where a person's gender or sexual orientation is relevant to risk assessment or provision of services or accommodation. For example:

- intake or assessment forms (where used) should allow for a person to write their gender in. If it is necessary to have check boxes on a form, additional options to male and female are provided, such as 'gender-variant', 'non-binary' and 'other'
- forms requiring a person to select a title from a list should also include Mx as an option
- if a staff member is unsure how to address a person, it is OK to ask 'What is your name' or 'what is your pronoun'
- if necessary, any conversations with a person about their gender identity or sexual orientation should take place in a private setting, not an area open to the public or other clients.

### Resources for working with LGBTI clients:

Gay and Lesbian Health Victoria (GLHV, La Trobe University), in conjunction with Quality Innovation Performance (QIP), has developed a national service accreditation program for LGBTI inclusive practice called 'The Rainbow Tick'. This program is a world first in setting six standards by which service providers are assessed in order to receive 'Rainbow Tick Accreditation'. The six standards relate to: organisational capability, workforce development, consumer participation, being a welcoming and accessible organisation, disclosure and documentation, and culturally safe and acceptable services.<sup>91</sup>

The Royal Commission recommended that all specialist family violence service providers that receive government funding undertake this training to achieve accreditation (Recommendation 167). GLHV has also developed a training program entitled 'HOW2' which helps providers develop a systematic approach to inclusive practice and also supports those applying for Rainbow Tick accreditation.

An audit tool and a guide to LGBTI-inclusive practice are both available for downloading for free on the website [glhv.org.au/lgbti-inclusive-practice](http://glhv.org.au/lgbti-inclusive-practice).

91 Gay and Lesbian Health Victoria, <<http://www.glhv.org.au/lgbti-inclusive-practice>>.

The Victorian Government has also published the *Rainbow eQuality Guide* to assist mainstream health and community service agencies identify and adopt inclusive practices and become more responsive to the health and wellbeing needs of people from LGBTI communities: [www2.health.vic.gov.au/rainbowequality](http://www2.health.vic.gov.au/rainbowequality)

YGender and Minus18 have worked together to develop a video series and booklets about trans and gender identity, which can be used as an educational tool for staff. 'Trans 101' is available to view or download via the website [trans101.org.au](http://trans101.org.au).

### Culturally safe services

For multicultural communities and for Aboriginal and Torres Strait Islander communities, an important part of providing inclusive service delivery is providing a culturally safe, respectful and welcoming environment.<sup>92</sup>

This means having a deep understanding of how to serve local communities in a way that is sensitive and responsive to their cultural and religious needs, and with a commitment to continuing improvement and dialogue. It is not about having superficial awareness of cultural differences. It relates to the way services are provided, the knowledge and capacity of staff delivering services, as well as the physical environment and advertising or messaging of the organisation.<sup>93</sup>

To do this, service and accommodation providers need to provide education and training for its staff.<sup>94</sup>

92 The Royal Commission highlights that cultural safety is the correct term to use in relation to Aboriginal and Torres Strait Islander communities. State of Victoria, *Royal Commission into Family Violence: Report and recommendations, Vol V*, Parl Paper No 132 (2014–16), 34–35. However, the term 'cultural competency' is used by many multicultural communities. See e.g. Victorian Multicultural Commission, Submission No.0887.004 to the Royal Commission into Family Violence, 20 fn65.

93 State of Victoria, *Royal Commission into Family Violence: Report and recommendations, Vol V*, Parl Paper No 132 (2014–16), 34.

94 The need for cultural training was a key recommendation or message in many submissions to the Royal Commission into Family Violence. See e.g. Australian Greek Welfare Society, Submission No.0578.001, undated, 9; Commission for Children and Young People, Submission No.0790.001, 29 May 2015, 20–21; Ethnic Communities' Council of Victoria, Submission No.0879.001, June 2015, 2,5; Gippsland Integrated Family Violence Service Reform Steering Committee,

In the context of the family violence sector, staff need cultural safety training which incorporates messages about:

- unconscious bias<sup>95</sup>, anti-discrimination and human rights obligations<sup>96</sup>
- the prevalence and nature of family violence in multicultural and Aboriginal and Torres Strait Islander communities
- the diversity of experiences and attitudes to family violence, and their associated risk factors, to ensure that attitudes and responses to family violence do not reflect prejudice<sup>97</sup>
- accommodating religious practices, to the greatest extent. For example, food preparation

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Submission No.0691.001, 20 May 2015, 14; InTouch Multicultural Centre against Family Violence, Submission No.0612.001, undated, 54; Koori Youth Council, Submission No.0906.001, June 2015, 19; Melbourne Research Alliance to End Violence Against Women and Their Children, Submission No.0840.001, May 2015, 9; Preventing Violence Together Partnership, Submission No.0491.001, 29 May 2015, 19; Shakti Australia Inc, Submission No 0500.001, 29 May 2015, 12; St Vincent's Health Australia, Submission No.0833.001, 21; Victorian Multicultural Commission, Submission No.0887.004, 12; Youth Affairs Council Victoria, Submission No.0938.001, June 2015, 18.

- 95 Ethnic Communities' Council of Victoria, Submission No.0879.001 to the Royal Commission into Family Violence, June 2015, 1, 2, 4; Women's Legal Service Victoria, Submission No 0940.004 to the Royal Commission into Family Violence, 19 June 2015, 12–13, 59.
- 96 Note that some family violence providers may also be public authorities under the *Charter of Human Rights and Responsibilities Act 2006* (Vic), and have Charter obligations to act compatibly with and take proper consideration of their client's human rights. For example, the right to equality (s 8), the right to privacy (s 13), protection of children in their best interests (s 17(2)), and rights protecting culture, religion, and language (s 19). Note that Aboriginal and Torres Strait Islanders have specific cultural rights in s 19(2): "to enjoy their identity and culture; to maintain and use their language; to maintain their kinship ties; and to maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs".
- 97 Cathy Vaughan, et al, *Promoting community-led responses to violence against immigrant and refugee women in metropolitan and regional Australia. The ASPIRE Project: Final report*, Australia's National Research Organisation for Women's Safety, 2016, 6, <<http://anrows.org.au/anrows.org.au/publications/horizons-0/promoting-community-led-responses-violence-against-immigrant-and-refugee-women>>.

and space available for praying; being aware of religious-based communities and ensuring victim survivors are not moved to other locations away from support networks

- working effectively with language services.

## Providing services to Aboriginal and Torres Strait Islander peoples

For Aboriginal and Torres Strait Islander clients, service and accommodation providers should:

- ask clients on intake whether they are Aboriginal or Torres Strait Islander, and whether they would like to be referred to an Aboriginal or Torres Strait Islander community-controlled organisation (noting that clients may not want to respond to this question for a range of reasons)
- facilitate appropriate referrals to Aboriginal and Torres Strait Islander organisations so as to minimise any harm or trauma to the client<sup>98</sup>
- understand that Aboriginal and Torres Strait Islander people experiencing family violence may not wish to leave their families and support networks because of their cultural history and the trauma associated with policies of removal, assimilation and segregation relating, for example, to the Stolen Generations; equally, they may not wish to have their personal business spoken about publicly and so privacy is of the utmost importance in providing culturally appropriate services
- encourage Aboriginal and Torres Strait Islander people to apply for roles advertised to increase the number of Indigenous workers in the organisation, as well as having Aboriginal and Torres Strait Islander dedicated roles,<sup>99</sup> and creating a safe working environment for those employees
- undertake regular training provided by Aboriginal and Torres Strait Islander organisations, including training about the implications of colonisation and inter-generational trauma on Aboriginal and Torres Strait Islander clients, about Aboriginal and Torres Strait Islander cultural and spiritual practices
- avoid token attempts to cater for Aboriginal and Torres Strait Islander clients
- do not rely on Aboriginal and Torres Strait Islander staff to educate non-Aboriginal and non-Torres

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98 Aboriginal Family Violence Prevention and Legal Service, Submission No.0941.002 to the Royal Commission into Family Violence, June 2015, 25–26.

99 EACH Social and Community Health, Submission No.0569.001 to the Royal Commission into Family Violence, undated, 21.

Strait Islander staff about providing a culturally safe service, this is the responsibility of the service provider<sup>100</sup>

- develop working and sustainable relationships with local Aboriginal and Torres Strait Islander communities, including with local elders and respected people
- work in partnership with Aboriginal and Torres Strait Islander controlled organisations, enter into sub-contracting arrangements with them where funding is available, and create reference groups for ongoing relationship development.

## Case study: Supporting Aboriginal Clients

Orana Gunya Women's Crisis Accommodation and Support Service in Gippsland means Welcome, Place of Shelter and is part of the Victorian Aboriginal Child Care Agency, an Aboriginal Community Controlled Organisation.

Last year the service was contacted directly by a local Aboriginal woman who had recently taken on full time care of three young relatives. Each of the children's parents were experiencing family violence, and the woman herself faced escalating violence from her own siblings. The woman was wanting to keep the children in her care but was intimidated by the children's parents to keep quiet about the family violence. Her broader family didn't acknowledge the intimidation and fear she was facing.

The woman was doing everything possible to keep the children safe, and was worried that the children might be removed by Child Protection, as well as being continually afraid of the escalating violence she was experiencing from family members and which the children were witnessing.

Staff at Orana Gunya understood the family obligations and dynamics the woman was facing as an Aboriginal woman. They also recognised the importance of focusing on the woman's safety and the overall safety of the children. Once the woman contacted Orana Gunya, staff took the time to listen to her and helped her create time and space for safe reflection. Staff could see she was reluctant to access supports because of pride, shame and fear.

The staff deliberately took time and allowed her time to create pathways for trust and support, and to not worsen any feelings of shame and fear. Staff would go and sit by the water with the woman to listen, which is a culturally safe and appropriate space to meet and yarn.

The staff gave the women settling time. They identified other people – key family, community or other services – who were able to help, provide support for the woman and children and work holistically with them. Staff facilitated referrals by initially going with the women to other services, helping her to build confidence in eventually going on her own.

The service worked to turn around the feelings of powerlessness the woman had experienced because leaving her land and community to come to the service was an enormous sacrifice. Staff did not give direct instructions to the women, as this is a shaming approach.

The way staff work with women and children in crisis is through activities with the children and engaging the mother, and in doing this show them how to play with and re-engage with their children without feeling shamed.

The service focuses on Aboriginal children and their positive connection to Culture, and has an atrium filled with artwork. Each family of mums and kids paint Koori hands together on laminated paper, and the worker writes their mob on the canvas, which helps all kids feel connected without identifying anyone.

The service continues to maintain sustainable relationships with community and Elders. Support for women and children by the service is ongoing, recognising that they leave their land and communities which causes ongoing trauma.

Supporting Aboriginal Clients requires a culturally safe service, where staff and the ways they work with clients is embedded in a strong understanding of intergenerational trauma, the complex interplay of family and obligations and positively connects clients to Culture.

<sup>100</sup> State of Victoria, *Royal Commission into Family Violence: Report and recommendations, Vol V*, Parl Paper No 132 (2014–16), p35; Aboriginal Family Violence Prevention and Legal Service, Submission No.0941.002 to the Royal Commission into Family Violence, June 2015, 26.

## Providing services to multicultural communities

In practise, providing culturally safe services to multicultural communities can involve:

- giving multicultural clients the opportunity to choose mainstream services as well as specialist multicultural family violence services<sup>101</sup>
- asking clients on intake about whether they have particular needs relating to cultural or religious practices and whether they require an interpreter (noting that clients may not feel comfortable answering these questions and a service should make clear they are happy to accommodate these at any time)
- asking clients on intake whether they are comfortable with an interpreter or intake officer who is not the same gender as them and providing one that meets their needs
- only collecting relevant information about a client's race or religion in order to understand the demographic profile of clients who use the service or accommodation, and to provide a culturally appropriate service to those clients
- creating partnerships and relationships with ethno-specific services relevant to cultural diversity and faith affiliations of the client base, and arranging appropriate referrals in order to minimise any harm or trauma to the client
- employing staff from a diverse range of ethnic backgrounds and having roles to which people who are bi-lingual or multilingual are encouraged to apply<sup>102</sup>
- undertaking regular training and capacity building about culturally sensitive services by local multicultural organisations or community leaders<sup>103</sup>
- understanding clients' dietary and religious needs,<sup>104</sup> and ensuring appropriate food is provided that complies with religious dietary requirements and spaces to practise religious belief. Where building design means no permanent dedicated prayer space can be made available, consider whether a temporary space can be made available at specific times of the day

101 Ibid.

102 Ibid; Ethnic Communities' Council of Victoria, Submission No.0879.001 to the Royal Commission into Family Violence, June 2015, 1, 4, 9–10.

103 Australian Muslim Women's Centre for Human Rights, Submission No.0728.001 to the Royal Commission into Family Violence, May 2015, 17; Ethnic Communities' Council of Victoria, Submission No.0879.001 to the Royal Commission into Family Violence, June 2015, 9–10.

104 Shakti Australia Inc, Submission No 0500.001 to the Royal Commission into Family Violence, 29 May 2015, 12.

- utilising technology and multiple options where appropriate for communicating with people who speak English as a second language, including multi-language written and audio resources, storyboards, alphabet or flashcards, and Easy English. Information about services should be made available in neutral places central to daily life, such as shopping centres, health centres and public libraries.<sup>105</sup>

## Resources for using interpreters and translators

It is important that service and accommodation providers are aware of how to book and use interpreters and translators appropriately. There are a number of resources available which can assist, for example:

- The Domestic Violence Victoria *Code of Practice for Specialist Family Violence Services for Women and Children, Enhancing the safety of women and children in Victoria* (2006) contains guidance on using interpreters at Appendix 4
- The DHHS Language Services Policy and Guidelines, *How to work with interpreters and translators: a guide to effectively using language services* [dhhs.vic.gov.au/publications/language-services-policy-and-guidelines](http://dhhs.vic.gov.au/publications/language-services-policy-and-guidelines)
- The ANROWS ASPIRE Project fact sheets: [anrows.org.au/anrows.org.au/publications/horizons-0/promoting-community-led-responses-violence-against-immigrant-and-refugee-women](http://anrows.org.au/anrows.org.au/publications/horizons-0/promoting-community-led-responses-violence-against-immigrant-and-refugee-women)

## Culturally safe men's behaviour change programs

Men's Behaviour Change Programs (MBCP) are facilitated group sessions that are ordinarily run in English and must comply with the NTV/ MRS Minimum Standards. However, some men who participate may speak English as a second language or might not speak English at all. Ordinarily these participants would require an interpreter or bilingual facilitator to ensure they can participate in the program. However, interpreters are not always provided to participants when needed, and may be difficult to incorporate into the program.<sup>106</sup>

105 Vaughan, et al, *The ASPIRE Project: Research Report*, p6. JewishCare, Submission No.0761.001 to the Royal Commission into Family Violence, undated, 6.

106 State of Victoria, *Royal Commission into Family Violence: Report and recommendations, Vol V*, Parl Paper No 132 (2014–16), 116–117; Darebin Community Legal Centre,

MBCPs need to think about how they can provide culturally safe programs while still providing an effective group program. For example, employing co-facilitators from a target community; training staff in the forms of family violence that may occur in particular communities (such as dowry related violence or forced marriage); training staff in cultural understandings of masculinity and men's roles (not to justify behaviour but to understand potential causes); referrals to programs that target specific communities; using intake assessment information about a person's pre-migration history, social and cultural experiences to work with them and improve service delivery, wherever possible; or developing in-language groups with appropriate referrals. MBCP providers should also ensure that their contact services are culturally safe for the partners of their target community.

There are two MBCPs in Victoria that are run in languages other than English by qualified bilingual MBCP facilitators: one Arabic program (delivered by Kildonan Uniting Care) and one Vietnamese program (delivered by Relationships Australia Victoria). There is also one program for South Asian men run in English by facilitators of South Asian background<sup>107</sup>

In the absence of existing in-language programs, a number of men's groups have been developed by and for target communities. While they may not all meet the NTV/MRS Minimum Standards, they are an example of how culturally safe programs for men can be developed. For example, the Migrant Information Centre (East Melbourne) and the South Eastern Region Migrant Resource Centre have run a therapeutic group for South Sudanese men called the 'Round Fire' Discussion Group.<sup>108</sup>

### Partnering with community leaders

It is essential that Aboriginal and Torres Strait Islander and multicultural communities lead initiatives tailored to addressing family violence in their communities. Service and accommodation providers can partner with local communities and their leaders to guide change – whether that be the

development of new programs or initiatives to better meet the needs of their community, or by employing community leaders to provide services.<sup>109</sup> For example, services for Muslim women could be led or co-facilitated by female community leaders with expertise in family violence<sup>110</sup> or Aboriginal MBCPs led by Aboriginal facilitators.<sup>111</sup>

### Resources on Cultural Competency:

For organisations interested in improving cultural competence for Aboriginal and Torres Strait Islander and multicultural communities (including those from refugee, migrant, faith and non-English speaking backgrounds), consider looking at specific guides or conducting audits that have been developed for this purpose. For example:

- Women's Health In the North's Northern Integrated Family Violence Services toolkit 'Overcoming Barriers: A toolkit to improve responses to CALD women and children who have experienced family violence': [nifvs.org.au/resources/nifvs-resources/cald-resource](http://nifvs.org.au/resources/nifvs-resources/cald-resource)
- the Centre for Ethnicity and Health Cultural Competence Organisational Review (CORE) framework: [ceh.org.au/use-the-cultural-competence-review-tool-core](http://ceh.org.au/use-the-cultural-competence-review-tool-core)
- the 2015 research report by the Victorian Multicultural Commission *Strengthening Social Cohesion, overcoming barriers*: [multicultural.vic.gov.au/images/2016/MMC\\_SP-2015-Report\\_July2016\\_FINAL\\_LINKED.pdf](http://multicultural.vic.gov.au/images/2016/MMC_SP-2015-Report_July2016_FINAL_LINKED.pdf)
- Victorian Aboriginal Child Care Agency's guide *Building Respectful Partnerships - The Commitment to Aboriginal Cultural Competence in Child and Family Services* [vacca.readysite.website/product-category/items-for-sale](http://vacca.readysite.website/product-category/items-for-sale)

Submission No. 0931.002 to the Royal Commission into Family Violence, June 2015, 8; Ethnic Communities' Council of Victoria, Submission No.0879.001 to the Royal Commission into Family Violence, June 2015, 6.

107 Kildonan Uniting Care, Submission No.0770.001 to the Royal Commission into Family Violence, May 2015, 6, 20–21; City Of Whittlesea, Submission No.0714.001 to the Royal Commission into Family Violence, 26 May 2015, 24; InTouch Multicultural Centre against Family Violence, Submission No.0612.001, undated, 31.

108 Brotherhood of St Laurence, Submission No.0818.001 to the Royal Commission into Family Violence, May 2015, 10.

109 Vaughan, et al, *The ASPIRE Project: Research Report*, 6. JewishCare, Submission No.0761.001 to the Royal Commission into Family Violence, undated, 5.

110 Australian Muslim Women's Centre, Submission No.0728.001 to the Royal Commission into Family Violence, May 2015, 17.

111 Indigenous Men's Resource and Advisory Service, Submission No.0771.001 to the Royal Commission into Family Violence, undated, 10–11.

## Clients who are sex workers

The Equal Opportunity Act protects people from discrimination on the basis of lawful sexual activity. This includes sex workers working within the legal framework of Victoria's *Sex Work Act 1994* and its regulations.

The Vixen Collective has published a guide to 'Best Practice Solutions' to working with sex workers, available on request. In particular, Vixen Collective recommends:

- staff undertake training from peer-based (sex worker only) organisations about issues facing sex workers, how to best provide services to sex workers, and to reduce stigma and bias within the workforce towards sex workers
- using non-discriminatory language whenever talking about sex work – for example, using the terms 'sex work' and 'sex worker', not other derogatory language such as 'prostitute'
- being clear about whether it is necessary to collect a person's occupation and whether there is a non-discriminatory reason for collection
- when collecting other information from a sex worker, don't ask intrusive questions that are unrelated to the service. For example, asking how much they charge, or what kind of sex work they do
- being respectful when engaged in outreach and consider the risks of publicly identifying sex workers, as well as the impact your presence may have on a sex worker if you are in their workplace (such as the stress and loss of time it may cause)
- not making assumptions about why a person is involved in sex work, or assuming that they want to leave. Staff should manage their opinions about sex work and maintain a professional and non-judgemental relationship with clients using a service
- not offering referrals to services that aren't requested or discussed with the person. Give the client the information they need to make a request
- being honest and transparent about the organisation's approach to sex work. This way sex workers have the choice to use or to not use the service if they know it supports criminalisation of their occupation, which is lawful in Victoria
- if an organisation or staff member is wondering whether to ask a specific question of a sex worker while providing them with services or accommodation they should ask themselves, 'Would I be thinking this if the person was a plumber?' <sup>112</sup>

112 Vixen Collective, *Best Practice Solutions to working with sex workers*, 2017, 47–54.

Ultimately, providers should provide a judgement-free service, avoid decision-making based on stereotypes, and should ensure staff undertake training about the sex industry to reduce stigma.<sup>113</sup>

## Clients with a disability

There are two main aspects to working inclusively with clients with a disability:

- undertaking an accessibility audit to determine and prioritise areas for improvement
- working directly with clients with a disability to tailor services to their needs as far as possible.

### Accessibility audit

Undertaking an accessibility audit is a very important step to understanding where the gaps in service delivery are for people with a disability. When undertaking an accessibility audit, remember to cover both physical/environmental, attitudinal and communication accessibility.

Consider:

- working with people with a disability in collaboration to create accessible services and communications, or creating partnerships with disability advocacy organisations which can assist services with secondary consultation or co-facilitation
- developing a Disability Action Plan (see [humanrights.gov.au/our-work/disability-rights/action-plans-and-action-plan-guides](https://humanrights.gov.au/our-work/disability-rights/action-plans-and-action-plan-guides)) or undertaking Scope Communication Access accreditation (see [scopeaust.org.au/service/communication-access/](https://scopeaust.org.au/service/communication-access/))
- undertaking disability awareness and accessibility training for all staff
- reviewing the policies or practices of the organisation to assess whether they may create barriers for people with a disability and amount to indirect discrimination, including in relation to the equipment and therapeutic devices they might use. For example, are animals banned? This might disadvantage people who have assistance dogs. Can the service only be accessed by telephone or intercom? At what height is the intercom located? This might disadvantage people who are deaf or hard of hearing, or who are in a wheelchair and cannot reach the intercom
- proactively using technology (tablets, mobile phone applications), storyboards, and picture or

113 See also, Ada Controy, "Women in the sex industry fall through the gaps", *Domestic Violence Resource Centre Victoria: Advocate*, Autumn/Winter 2016, 23–25.

spelling boards to ensure mutual communication and understanding can occur for people with communication accessibility disabilities

- ensuring that buildings and rooms are accessible and properly maintained. Do not use accessible toilets or entryways as storage areas just because they may not be regularly used
- promoting practice leadership to develop staff expertise around disability. These staff can develop relationships with disability service providers and advocates and share what they have learned across the organisation
- creating a referral book of local disability service providers such as Auslan interpreters, brokerage groups, emergency/after-hours support workers, support workers and communication assistants. This means that whether it is planned or a crisis, all staff will know how to get specialist support for a client with a disability.

### Case study: Improving services responses for people with a disability

In 2016 Women with Disabilities Australia (WWDA) worked with 1800RESPECT to assess the adequacy and accessibility of its services for women and girls with a disability. WWDA consulted more than 100 women and girls with disability from around Australia. Participants helped evaluate the website, counselling service, marketing and advertising, information resources and capacity of frontline workers to help women and girls with a disability.

WWDA prepared a comprehensive report for 1800RESPECT with 43 recommendations for designing a more inclusive and responsive service. The recommendations covered issues such as service conceptualisation; marketing and communications; inclusive and accessible service design; service quality, monitoring and evaluation; referral and response; data collection and use, and collaboration and innovation.<sup>114</sup>

WWDA and 1800RESPECT are now working together to implement the recommendations including by upgrading the website 1800RESPECT.org.au for accessible design, functionality, and inclusive and intersectional content.

114 Women With Disabilities Australia, *Improving Service Responses for Women with Disability Experiencing Violence: 1800RESPECT*, (August 2016) <<http://wwda.org.au/papers/confpaps/confpaps2016/>>.

### Tailoring responses to individual needs

Service providers have an explicit legal obligation in the Equal Opportunity Act to provide reasonable adjustments for clients with disabilities, in order for them to participate in, access and obtain benefits from the service.<sup>115</sup>

This means service providers need to ask clients as early as possible in a sensitive manner whether there are any adjustments they need to access the service.

Reasonable adjustments might relate to physical accessibility (ramps, desk heights, use of intercoms), language and communication accessibility (Easy English, braille, video/audio, Auslan interpreters, documents that can be screen read) or providing additional supports such as support people, technology, or equipment. Adjustments might also relate to time considerations – whether a person might need additional time or rest breaks when engaging with the organisation.

If additional information about a client's disability is needed to assess what can be done within an organisation's resources, it should be done in a confidential and sensitive manner in compliance with relevant health privacy laws and with the informed consent of the client.

Don't forget that disability can be invisible – such as mental illness, HIV, or dyslexia – and the ways in which symptoms might manifest are covered by anti-discrimination law.<sup>116</sup>

115 *Equal Opportunity Act 2010* (Vic), s 45. Reasonable adjustments must be provided, unless the person could not participate or access the service even after the adjustments are made (s 45(2)).

116 It is important to note that there are many different terms used by people with disabilities, particularly those relating to mental health. Individuals may not identify as having a 'disability' but may still have a condition that falls within the Equal Opportunity Act definition. Similarly, "mental illness" may not be a term used by individuals and other terms may be preferred such as mental health condition, psychiatric disability, mental health consumer (may be preferred by people with a psychiatric disability obtaining treatment or support), and psychosocial disability. See Judicial College of Victoria, *Disability Access Bench Book*, Part 1.5 'Definitions and Terminology', (1 December 2016) <<http://www.judicialcollege.vic.edu.au/eManuals/DABB/index.htm#59210.htm>>.

## Disability Toolkits and Resources

There are a number of toolkits and resources available online which will help organisations address barriers to accessing services:

- Human Rights Toolkit for Women and Girls with a Disability (2016) developed by Women with Disabilities Australia (WWDA): [wwda.org.au/papers/toolkit/download](http://wwda.org.au/papers/toolkit/download)
- Women with Disability and Domestic and Family Violence Policy and Practice Guide (2015) developed by People with Disabilities Australia: [pwd.org.au/issues/policy-and-practice-guide.html](http://pwd.org.au/issues/policy-and-practice-guide.html)
- More than Just a Ramp (2007), A guide for women's refuges to develop disability discrimination action plans developed by Women with Disabilities Australia: [wwda.org.au/wp-content/uploads/2013/12/More\\_Than\\_Just\\_A\\_Ramp.pdf](http://wwda.org.au/wp-content/uploads/2013/12/More_Than_Just_A_Ramp.pdf)
- Women with Disabilities Victoria website, systemic advocacy, community leadership and staff training programs, fact sheets and publications: [wdv.org.au](http://wdv.org.au)
- DHHS information on communicating and consulting with people with a disability: [dhs.vic.gov.au/for-business-and-community/community-involvement/people-with-a-disability-in-the-community/communicate-and-consult-with-people-with-a-disability](http://dhs.vic.gov.au/for-business-and-community/community-involvement/people-with-a-disability-in-the-community/communicate-and-consult-with-people-with-a-disability)

## Working with younger or older clients

### Awareness of different forms of family violence

Service and accommodation providers need to be aware that family violence affects people of all ages, including older people, children and teenagers. Older people might experience family violence in the form of elder abuse or financial abuse, and younger people may experience it from their parents, siblings, or from their partner. However, these types of family violence may not be recognised as such and may be dealt with as another type of issue, such as a tenancy dispute.

When working with clients of different ages:

- consider reviewing intake or risk assessment forms to see whether they identify risk factors for people who are older or younger
- ensure staff are trained in how to identify elder, carer or sibling abuse

- always speak to the older or younger person without a family member in the room, to get their own views on their situation and safety. Don't allow family members or carers to speak on their behalf
- when providing information about services, ensure there are printed materials for people to take home in order to give them time to fully understand their rights and options. Choice of how information can be accessed is key. And don't expect that all people will access information via a website
- be mindful of language, such as 'frail' or 'aged', when talking to an older person, and don't make assumptions about a person's mental or physical capacity based on their age
- connect with specialist services such as Seniors Rights Victoria to get training and advice on improving practices and procedures for working with older people.

### Teenagers attending with a parent

Service and accommodation providers need to consider how to provide assistance to teenagers who are victim survivors of family violence in their own right, whether from their parent, from their partner or from another family member. For teenage boys who attend family violence services and accommodation with their mothers, special consideration needs to be given to whether it is appropriate to exclude them from the service and on what basis.

Refusing to provide services or accommodation to a teenager because of their age, sex, sexual orientation or gender identity is direct discrimination. Refusing the parent services or accommodation if they bring a teenage son or gender diverse child can be direct discrimination towards the parent on the basis of personal association, or on the basis of parental status. An exception or exemption will need to apply for the refusal to be lawful.

Any service or accommodation provider relying on either welfare exception discussed above at page 15 will need to be clear about:

- who its target client group is (including by reference to sex, sexual orientation, gender identity and age)
- what special needs the target client group has that justifies the limitations on eligibility
- how the eligibility criteria will contribute to the organisation delivering services or accommodation which meets those special needs.

Alternatively, if a family violence service or accommodation provider has a neutral practice or rule that results in teenage boys and their parents being disadvantaged in accessing services and accommodation (such as that children must be supervised at all times), this could be indirect discrimination. The question will be whether that rule or practice is reasonable in all the circumstances. If it is unreasonable, as above, an exception or exemption will need to apply for the refusal to be lawful.

### **LGBTI people and age discrimination**

As part of an intersectional approach to inclusive service delivery, providers should consider the experiences of older or younger people with other intersecting characteristics such as race, gender identity and sexual orientation, and ensure services can identify family violence in that context and best work with clients. The Royal Commission found, for

example, that older people from LGBTI communities face particular risks of family violence and that mainstream services may not be equipped to identify these risks.<sup>117</sup>

For example, if an older trans or gender diverse client seeks to use a service, the organisation will need to ensure there are appropriate systems in place so the client can continue to access their medical appointments or treatment (if they require it). Service and accommodation providers also need to be aware that parents of LGBTI teenagers or children of LGBTI parents may not acknowledge or accept their gender identity, sexual orientation or intersex variation. Processes need to be in place to ensure that the client receives appropriate assistance according to their individual circumstances, sometimes despite their family's views or wishes.

## **Inclusive service delivery checklist**

This checklist summarises the advice in this guideline and can help your organisation meet the positive duty and respond effectively to complaints.

- ✓ Inform yourself and your staff about the diverse experiences of people experiencing family violence, and the ways that personal characteristics can intersect to create barriers to accessing your services or accommodation.
- ✓ Educate yourself and your staff about legal obligations under the Equal Opportunity Act.
- ✓ Don't allow stereotypes or myths about particular groups of people to affect or inform your service delivery or provision of accommodation.
- ✓ Look at your organisation to understand its culture and environment (including areas which clients can access) to detect any potential problems or areas for improvement.
- ✓ Plan your organisation's approach to meeting its legal obligations.
- ✓ Make sure there is strong leadership at a senior level for improving inclusive service delivery and provision of accommodation.
- ✓ Embed inclusive and non-discriminatory service delivery within your organisation's strategic framework – including in documents such as a diversity strategy or plan, a Reconciliation Action Plan, and a Disability Action Plan
- ✓ Ensure your organisation has an equal opportunity policy for service delivery and provision of accommodation, and a complaints procedure for clients, which are communicated regularly and kept up to date.
- ✓ Place your eligibility policy and other conditions of use on your website and make it clear who can access your service or accommodation and why.
- ✓ If you are an inclusive and non-discriminatory service let your clients know in an accessible way
- ✓ Where appropriate, partner with other organisations or specialist services who can bring in expertise and advice to improve your services
- ✓ Review, monitor and update your practices regularly, to ensure any new problems or gaps in inclusive service are identified and rectified.

<sup>117</sup> State of Victoria, *Royal Commission into Family Violence: Report and recommendations*, Vol V, Parl Paper No 132 (2014–16), 146.





Victorian Equal Opportunity  
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