



**Victorian Equal Opportunity
& Human Rights Commission**

Guideline: LGBTIQA+ inclusive workplaces

**Employers' legal
duties under the
Equal Opportunity Act**

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Contact us

Enquiry Line	1300 292 153
Fax	1300 891 858
NRS Voice Relay	1300 555 727 then quote 1300 292 153
Interpreters	1300 152 494
Email	enquiries@veohrc.vic.gov.au
Website	humanrights.vic.gov.au

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Guideline: LGBTIQ+ inclusive workplaces

Employers’ legal duties under the Equal Opportunity Act

Contents

1	About the guideline	8
1.1	Purpose of this guideline	10
1.2	What is in this guideline?	10
1.3	Who is this guideline for?	11
1.4	Why should I follow this guideline?	11
1.5	Our consultation process	12
1.6	How can the Commission help me comply with my legal duties?	12
1.7	Where can I get more information?	12
2.	What do I need to know about LGBTIQA+ employees?	14
2.1	What does 'LGBTIQA+' mean?	16
2.2	How many people are LGBTIQA+?	18
2.3	How common is discrimination against LGBTIQA+ employees?	20
2.4	When does discrimination against LGBTIQA+ employees happen?	21
2.5	Why does discrimination against LGBTIQA+ employees happen?	22
2.6	What are the impacts of discrimination on LGBTIQA+ employees?	25
2.7	What is respectful and inclusive language?	27
3	The law on LGBTIQA+ discrimination at work	30
3.1	Who is protected under the Equal Opportunity Act?	32
3.2	What is discrimination?	33
3.3	What activities count as 'work' under the Equal Opportunity Act?	34
3.4	Intersectional discrimination	35
3.5	Who is legally responsible for discrimination in the workplace?	37
3.6	Complaint options	38
3.7	Other unlawful conduct under the Equal Opportunity Act	37
3.8	Is discrimination ever allowed?	43
3.9	Do federal anti-discrimination laws apply to me too?	46
3.10	Do I also have duties under Victoria's Charter of Human Rights?	47

4.	The law on LGBTIQA+ inclusion at work: the positive duty	48
4.1	Why does the law include a positive duty?	50
4.2	Who does the positive duty apply to?	50
4.3	How can I fulfil my positive duty?	50
4.4	What happens if I do not fulfil my positive duty?	51
4.5	Minimum standards to uphold your positive duty	52
	Minimum Standards	
	Minimum Standard 1: Knowledge & understanding	56
	Minimum Standard 2: Systems, policies & procedures	62
	Minimum Standard 3: Reporting & response	80
	Minimum Standard 4: Workplace culture	88
	Minimum Standard 5: Continuous improvement	98
	Key terms	104
	References	110

Acknowledgement of Country

The Victorian Equal Opportunity and Human Rights Commission acknowledges Aboriginal and Torres Strait Islander People as the First Peoples and Traditional Custodians of the land and waterways upon which our lives depend.

Our office is located on the lands of the Wurundjeri Woi-wurrung People of the Kulin Nation. We acknowledge and pay our respects to Ancestors of this Country, Elders past and present, and all First Peoples.

We recognise that First Peoples are disproportionately affected by prejudice and hate. We acknowledge the ongoing harms that colonisation causes to First Peoples communities, including entrenched and systemic racism.

We honour the tireless efforts of generations of First Peoples who have stood against racism and advanced the values of freedom, fairness and equality. It is through the continuing efforts of First Peoples leaders and communities that language, lore, custom and culture continue and flourish.

Sexual and gender diversity has existed on these lands for thousands of generations and we honour the lives of all queer, gender diverse and intersex First Peoples, past and present.

We commit to working with First Peoples to try to prevent historical injustices from continuing, including through Treaty and truth-telling.

Quick navigation

I want to understand LGBTIQ+ discrimination and why it happens	Go to <u>Chapter 2</u> : <i>What do I need to know about LGBTIQ+ employees?</i>
I want to know about employers’ duties under the Equal Opportunity Act	Go to <u>Chapter 3</u> : <i>The law on LGBTIQ+ discrimination at work</i>
I want to know how to eliminate LGBTIQ+ discrimination in my organisation	Go to <u>Chapter 4</u> : <i>The law on LGBTIQ+ inclusion at work: the positive duty</i>
I want to know the minimum standards for compliance with the Equal Opportunity Act	Go to <u>Chapter 4</u> : <i>Minimum standards to uphold your positive duty</i>
I want to know what training to implement	Go to <u>Minimum Standard 1</u> : <i>Knowledge & Understanding</i>

1. About this guideline

Chapter 1 provides background information about how and why employers should use this guideline, and how the Commission can help employers uphold their legal duties under the Equal Opportunity Act.



1.1 Purpose of this guideline

This guideline has been developed by the Victorian Equal Opportunity and Human Rights Commission (the Commission) to help employers comply with their legal duties under the *Equal Opportunity Act 2010* (Vic) (the Equal Opportunity Act).

Under the Equal Opportunity Act, employers must not discriminate against employees or job applicants on the basis of certain personal characteristics, including their gender identity, sex characteristics or sexual orientation.^a All employers in Victoria have a ‘positive duty’ to proactively prevent and respond to discrimination against lesbian, gay, bisexual, transgender and gender diverse, intersex, queer, asexual, aromantic and other people with diverse gender identities, sexual orientations and sex characteristics (LGBTIQ+)^b at work.

This guideline replaces and expands on the Commission’s 2014 *Guideline: Transgender people at work – Complying with the Equal Opportunity Act 2010 in employment*. It is broader in scope than that previous guideline as it covers discrimination based on 3 characteristics: gender identity, sex characteristics and sexual orientation.

This guideline draws on consultations (including with people who have lived experience of discrimination based on their LGBTIQ+ identities), research, and our own knowledge and expertise from receiving discrimination complaints and enquiries under the Equal Opportunity Act.

1.2 What is in this guideline?

This guideline provides:

- information to help employers **understand workplace discrimination** against LGBTIQ+ employees (**Chapter 2**)
- a **summary of the law** on discrimination against LGBTIQ+ people at work (**Chapter 3**)
- information on employers’ **positive duty** to eliminate discrimination against LGBTIQ+ employees (**Chapter 4**)
- **minimum standards** to help employers comply with the positive duty (**Chapter 4**)
- answers to some **frequently asked questions** that will help employers meet the minimum standards (**Chapter 2** and **Chapter 4**).

a The Commission has guidance on employers’ obligations under the Equal Opportunity Act for people with other protected characteristics, see ‘Equal opportunity practice guidelines’, Victorian Equal Opportunity and Human Rights Commission, <<https://www.humanrights.vic.gov.au/for-organisations/guidelines/>>.

b See **Chapter 2** for more information on what you need to know about LGBTIQ+ employees.

1.3 Who is this guideline for?

If you are an employer operating in Victoria, this guideline is for you. The guideline will also be useful for human resources (HR) professionals, recruitment consultants and employment services agencies.

Definitions under the Equal Opportunity Act	
Who is an employer?	An employer is a person (an individual or an organisation) who hires another person under a contract of service or a contract for service (on a full-time, part-time, contractual or casual basis) in exchange for payment. It does not include a person who employs unpaid workers or volunteers, except in relation to the prohibition of sexual harassment (in part 6 of the Equal Opportunity Act). ¹
Who is an employee?	An employee is a paid worker or staff member, including ongoing and fixed-term, casual and contract workers, independent contractors, consultants and paid interns. ^{c 2} It does not include unpaid workers or volunteers, except in relation to the prohibition of sexual harassment (in part 6 of the Equal Opportunity Act). ³

1.4 Why should I follow this guideline?

There are several reasons to follow this guideline:

- Regardless of the size of your organisation, as an employer you have legal responsibilities under Victoria’s anti-discrimination law – the Equal Opportunity Act. If you treat employees or job applicants unfavourably because of their gender identity, sex characteristics or sexual orientation (that is, because they are LGBTIQ+), or have a policy or practice that leads to unfair outcomes for LGBTIQ+ employees, you will be acting unlawfully, unless an exception or exemption applies (see **Chapter 3**).
- All employers hold a ‘positive duty’ under the Equal Opportunity Act. The positive duty requires employers (and other duty holders) to proactively take reasonable and proportionate steps to eliminate discrimination based on a person’s gender identity, sex characteristics or sexual orientation, as far as possible. This guideline explains how to comply with that positive duty (see **Chapter 4**).
- By ensuring that discrimination against LGBTIQ+ employees does not occur, you can retain valuable workers, enhance workplace morale and be recognised as an employer of choice.⁴
- Preventing discrimination against LGBTIQ+ employees will help your organisation cultivate strong relationships with your customers and other stakeholders, and reduce the risk of complaints, litigation and reputational damage.⁵
- While this guideline is not legally binding, a court or tribunal may consider whether an employer has complied with it when hearing a complaint of discrimination or any other unlawful conduct under the Equal Opportunity Act.^d

c This is a broader definition of employee compared to some other laws regulating employment (e.g. under some parts of the *Fair Work Act 2009* (Cth)).

d Under section 148 of the *Equal Opportunity Act 2010* (Vic) (the Equal Opportunity Act), the Commission may issue practice guidelines on any matter relating to the Equal Opportunity Act.

1.5 Our consultation process

The Commission consulted widely to ensure this guideline is accurate, relevant and impactful.⁶ We undertook 34 consultations, comprising 18 targeted interviews and 16 focus groups. We consulted with a wide variety of stakeholders, including LGBTIQ+ community members and advocacy groups, government departments and authorities, community legal centres, unions and experts in LGBTIQ+ discrimination and inclusion.

1.6 How can the Commission help me comply with my legal duties?

The Commission can work with organisations to provide **education and consultancy services** such as:

- tailored organisational reviews, including reviewing policies and practices
- compliance and best practice reviews of education programs.

For more information email enquiries@veohrc.vic.gov.au or phone **1300 292 153** (9am–5pm, weekdays).

1.7 Where can I get more information?

This guideline does not cover every situation and does not constitute legal advice.

If you need legal advice, please contact a lawyer or law firm that handles employment and/or discrimination law. You can find a lawyer or law firm with relevant expertise by contacting the **Law Institute of Victoria**.⁷

For Victorians who are LGBTIQ+, **Justice Q** and **Q+Law** provide free specialist legal assistance. People who have experienced discrimination can also contact **Victoria Legal Aid**⁸ or their local community legal centre for free legal advice.⁹

The **Fair Work Commission** and **WorkSafe Victoria** also provide information on compliance with relevant laws related to employment and workplace safety.



2.

What do I need to know about LGBTIQ+ employees?

To prevent workplace discrimination against LGBTIQ+ employees, employers need to understand LGBTIQ+ employees' experiences of workplace discrimination.

Chapter 2 provides information on LGBTIQ+ discrimination, including when and where discrimination happens at work, why discrimination happens, and how it affects LGBTIQ+ employees. It also provides guidance on respectful and inclusive language.



2.1 What does 'LGBTIQA+' mean?

We use the term 'LGBTIQA+' as an inclusive abbreviation for the diverse gender identities, sex characteristics and sexual orientations in our community. LGBTIQA+ stands for:

L	Lesbian (sexual orientation) refers to women (cisgender or transgender) who are romantically and/or sexually attracted to women. Some gender diverse people may also use this term.
G	Gay (sexual orientation) refers to people who are romantically and/or sexually attracted to people of the same sex and/or gender as themselves (often applied to men, but not exclusively).
B	Bisexual (sexual orientation) refers to people who are romantically and/or sexually attracted to people of their own gender and other genders (also referred to as bi+ or multi-gender attracted).
T	Transgender (also referred to as trans) and gender diverse (gender identity) refers to people whose gender identity does not exclusively align with their sex recorded at birth.
I	Intersex (sex characteristics) refers to people who have innate physical or biological variations in their sex characteristics including chromosomes, hormones or anatomy.
Q	Queer (gender identity or sexual orientation) is an umbrella term for people with diverse genders or sexualities.
A	Asexual and aromantic (sexual orientation) refers to people who experience partial to no sexual attraction and/or romantic attraction towards others. Asexual and aromantic people can be of any gender identity (cisgender or transgender) or sexual orientation.
+	+ includes the broad range of gender identities and sexual orientations not covered in the above list.

Key











Sexual orientation

Gender identity

Sex characteristics

Multiple possible characteristics

In addition to these terms, you might also see flags that represent the different LGBTIQA+ communities.¹⁰

Flag	Community
	Pride flag or rainbow flag , commonly used for all LGBTIQA+ communities
	Unity Pride flag , an updated version of the pride flag that incorporates the colours of the trans flag, brown and black stripes for LGBTIQA+ people of colour and the intersex flag This guideline primarily uses the unity pride flag to represent all LGBTIQA+ communities
	The Aboriginal, Torres Strait Islander and Unity Pride flags are used together in this guideline for Rainbow Mob (LGBTIQA+ First Peoples)
	Asexual flag , also used as an umbrella flag for asexual and aromantic communities
	Bisexual flag , also used as an umbrella flag for bi+ communities
	Intersex flag
	Lesbian flag ^e
	Non-binary flag
	Pansexual flag
	Trans flag

In this guideline, you will see these flags – as well as the above colours for different protected characteristics (**gender identity**, **sex characteristics**, **sexual orientation** and **multiple characteristics**) – in the case studies.

Use of the LGBTIQA+ acronym in this guideline

Sometimes academic research and other resources do not consider or cover all LGBTIQA+ communities. You may notice that different combinations of letters are used in this guideline (e.g. LGBTQ or LGB). We have done this deliberately to accurately reflect the sources referenced.

^e We note that there have been several flags for the lesbian community. This flag, sometimes referred to as the 'sunset lesbian flag', has been in use since 2018.

Using LGBTIQ+ recognises the shared legal and social marginalisation^f that members of these communities face due to social norms around sex, gender and sexuality, as well as the potential for shared strengths and solidarity.¹¹ Communities included within this umbrella term have distinct experiences and needs, which must be considered and understood by employers.

We have used contemporary inclusive language in this guideline based on the advice of the communities themselves. However, we note that the terminology and language used by and about LGBTIQ+ people is constantly evolving. We therefore recommend you keep up to date with current language by reviewing the **Victorian Public Sector's LGBTIQ+ inclusive language guide**¹² and other up-to-date best practice guidance⁹ or contacting the Commission.

For information about what language to use or avoid for LGBTIQ+ communities and employees, see **2.7 What is respectful and inclusive language?** For definitions of other key terms used in this guideline, see **Key terms.**

2.2 How many people are LGBTIQ+?

Estimates vary on how many Australians are LGBTIQ+. Researchers in 2025 reported that 9.5% of all Australians identify with a diverse sexual orientation and 0.9% identify as gender diverse or trans.¹³ The Victorian Government estimated in 2024 that around 11% of Victorian adults are LGBTIQ+.¹⁴ However, due to issues around data collection, discrimination and stigma, the actual number of LGBTIQ+ Victorians may be higher than estimates.

More young people identify as LGBTIQ+ compared with older populations: 17.7% of young Australians aged 16 to 24 identify as gay, lesbian, bisexual, asexual or pansexual, or reject a label altogether, and 2.3% identify as gender diverse or trans.¹⁵ Further, the number of young people who identify as LGBTIQ+ is increasing.¹⁶

9.5%	of all Australians identify with a diverse sexual orientation
0.9%	identify as gender diverse or trans¹³
17.7%	Australians aged 16 to 24 identify as gay, lesbian, bisexual, asexual or pansexual, or reject a label altogether
2.3%	identify as gender diverse or trans¹⁷

^f Marginalisation is when a group of people is pushed to the edge of society and given less importance or power. This can happen because of their race, gender, economic status or other characteristics. As a result, they have fewer opportunities and face more barriers in life compared to others.

^g For example, by reviewing the latest guidance from the Australian Bureau of Statistics, ‘Standard for sex, gender, variations of sex characteristics and sexual orientation variables’ (14 January 2021) <<https://www.abs.gov.au/statistics/standards/standard-sex-gender-variations-sex-characteristics-and-sexual-orientation-variables/latest-release>> or the National Health and Medical Research Council, ‘Statement on Sex, Gender, Variations of Sex Characteristics and Sexual Orientation in Health and Medical Research’ (2024) <<https://www.nhmrc.gov.au/research-policy/gender-equity/statement-sex-and-gender-health-and-medical-research>>.



2.3 How common is discrimination against LGBTIQ+ employees?

LGBTIQ+ employees today generally benefit from greater awareness and increasingly inclusive policies and practices, such as gender affirmation and family planning leave, inclusive bathroom facilities and inclusive language guidance.¹⁷ However these measures are not implemented consistently across all sectors and workplaces. LGBTIQ+ people are also more visible in leadership positions across certain sectors including politics, academia and religious institutions, and in television, news and social media.¹⁸

Despite this progress, LGBTIQ+ people continue to regularly experience discrimination at work.¹⁹ The Commission received 92 complaints^h and 334 enquiriesⁱ about workplace discrimination against LGBTIQ+ people in Victoria between 1 February 2020 and 1 February 2025. Research also demonstrates that discrimination against LGBTIQ+ employees in Australia is common; for example:

- In a 2019 survey of young LGBTQ+ Australians, 33.1% (n=1281) reported feeling uncomfortable or unsafe in the past year in their workplace due to their gender identity or sexual orientation.²⁰
- In the 2024 Australian Workplace Equality Index employee survey, 16.2% (n=10,189) of LGBTQ+ respondents reported feeling discriminated against because of their diverse sexuality and/or gender.²¹

^h In this period the Commission received the following numbers of complaints of discrimination in employment, broken down by protected characteristics: gender identity – 33; sexual orientation – 55; sex characteristics – 4 (note: the protected attribute of sex characteristics was only introduced into the Equal Opportunity Act in October 2021).

ⁱ In this period the Commission received the following numbers of enquiries, broken down by protected characteristics: gender identity – 175; sexual orientation – 147; sex characteristics – 12.

2.4 When does discrimination against LGBTIQ+ employees happen?

Workplace discrimination against LGBTIQ+ people can happen in all industries and at all stages of the employment cycle.²² The following table provides some examples of discrimination at different stages of employment:²³

Stage of employment	Example of how discrimination can occur ^j
Advertising a job	Listing only 'male' and 'female' as gender options on job-application forms (this may be discriminatory against gender diverse people).
Recruitment process	Denying a job applicant a front-facing customer service role because of their appearance (such as being a trans woman or 'butch' lesbian) .
Onboarding	Onboarding systems that deadname ^k people (e.g. by creating an email address with their deadname – which may be their legal name – rather than the name they use since affirming their gender), regardless of whether this is intentional or unintentional.
Remuneration	LGBTQ+ employees experiencing a wage gap compared to non-LGBTQ+ employees. ²⁴
Leave entitlements	Discriminatory treatment of people in diverse family structures, such as denying or limiting: <ul style="list-style-type: none">• parental leave for lesbian or bisexual women where an employer does not consider both partners to be parents• parental leave for men in a same-sex relationship after going through surrogacy to start a family• use of carer's leave to look after a sick child who is not the biological child of a person in a queer relationship• someone's access to leave for gender affirmation.^l
Development and promotion	Not promoting someone because of their gender identity, sex characteristics or sexual orientation, or restricting access to professional development.
Separation	Firing an LGBTIQ+ person for complaining about inappropriate questions or hateful comments they have received at work (this may also amount to victimisation – see 3.7.1 Victimisation) Failing to create a safe workplace for LGBTIQ+ employees so they leave the organisation.

^j These examples of how discrimination can occur may constitute discrimination depending on the circumstances.

^k Deadnaming is when someone uses a transgender or non-binary person's former name (from before they transitioned or affirmed their gender) without their consent.

^l For guidance, see 'Gender Affirmation in Victorian public sector workplaces', Victorian Public Sector Commission (12 May 2023) <<https://vpssc.vic.gov.au/workforce-capability-leadership-and-management/gender-affirmation/>>.

2.5. Why does discrimination against LGBTIQ+ employees happen?

There are many reasons why discrimination happens. Drivers or causes of discrimination can come from within organisations or from individuals. Common causes include:

Ignorance or lack of knowledge

- Some employers have little or no knowledge about LGBTIQ+ people and what being LGBTIQ+ is, their legal obligations to create inclusive workplaces or how to prevent workplace discrimination.²⁵
- Some employers are willing to be inclusive but lack the understanding and tools to take the necessary steps.
- Some employers lack awareness of the impacts of discrimination on employee health, wellbeing and job performance.
- Some employers or co-workers might try their best but inadvertently say things that are offensive or discriminatory.
- Some people believe that expressing discriminatory views is simply an exercise of their right to freedom of expression or a reflection of their personal beliefs, rather than harmful or unlawful behaviour.
- Some people hold a well-intentioned but misguided belief that treating everyone the same means that all employees will have exactly the same experience at work.

Organisational context and environment

- A lack of leadership from people in positions of authority can create an enabling environment for prejudicial attitudes and discriminatory behaviours.
- The power that others have over marginalised and vulnerable employees can lead to stress or anxiety.²⁶ For example, we heard of people on student or work visas who were fearful that their employer would 'out' and/or fire them if they spoke up about discrimination based on them being LGBTIQ+.
- We heard in consultations that power imbalances can drive discrimination. This includes power imbalances within an organisation's hierarchy, and broader social marginalisation.

Risk aversion

- When hiring LGBTIQ+ people, some employers are concerned about real risks (for example, the risk that the LGBTIQ+ employee might face abuse or harassment in certain industries²⁷) and assumed risks (for example, that an LGBTIQ+ employee will be subjected to prejudiced or discriminatory conduct from clients).

CASE STUDY: POWER IMBALANCE



Samir is a teacher at a primary school. He is in the staff kitchen with the school principal, Nick, and another teacher, Jelena. Samir overhears Nick making sexually explicit comments to Jelena about her relationship with another woman. Nick's behaviour may be both discrimination and sexual harassment.

Later that day Samir asks Jelena if she is okay and whether she wants to report Nick's behaviour to HR. Jelena confirms that she does want to report the behaviour and asks if Samir will make a statement about the behaviour that he witnessed as a bystander.

Samir is aware that Nick has used 'constructive dismissal' and bullying tactics on other colleagues who have stood up to his behaviour in the past and Samir is concerned that he will be subject to the same treatment if he makes a bystander report.

Samir chooses not to make a report because he fears that Nick's influence and power over his position make it too risky in an unstable job market.

In this scenario, the power dynamic caused Samir to feel that he could not stand up against discrimination. But if Samir had made a statement to support Jelena's complaint, he would have been protected from any reprisals under discrimination law.

See [3.7.1 Victimisation](#) to learn more about victimisation.

Outdated working practices

- Some information technology (IT) systems and HR practices are outdated and reflect LGBTIQ+ identities inaccurately (for example, pronouns on forms or non-inclusive leave policies).²⁸

Heteronormative and cisnormative expectations

- Some people think that being heterosexual and/or being cisgender is 'normal' or preferred, instead of one of many possibilities on the spectrum of human sexual orientations and gender diversities (this prejudiced view is also known as heterosexism or cissexism).
- Some people do not know – or do not accept – that children can be conceived and raised by LGBTIQ+ people. This can lead to workplace conversations that cause harm and exclude LGBTIQ+ parents or children from LGBTIQ+ families.
- In some workplaces, expectations and stereotypes around behaviour, dress, and physical and vocal presentation may discourage visibility and outward expression of LGBTIQ+ identities.²⁹

Prejudice, bigotry and normalised or accepted behaviours

- Homophobia, transphobia, biphobia and other types of prejudice, as well as tokenism and stereotyping, can underlie discriminatory behaviours.³⁰
- Some people hold negative attitudes against a specific group that they might not be consciously aware of (this is also called unconscious or implicit bias).
- LGBTIQ+ people can also hold negative (conscious or unconscious) attitudes. Due to the diversity of LGBTIQ+ experiences and identities, LGBTIQ+ people can also experience discrimination from other LGBTIQ+ people.
- Research has found that homophobic language is normalised and defended as banter or humour.³¹

Reluctance, backlash and the global context

- Unwillingness to change and embrace diversity can prevent inclusion and allow discrimination to happen. For example, employers might be reluctant to hire trans and/or gender diverse people because the employer would need to learn how to use they/them pronouns and/or change its dress code.³²
- In some organisations, there is backlash against fair treatment and inclusive employment practices from some employees. For example, people might be hostile towards managers or LGBTIQ+ people, or might actively disengage from training or information about current best practice regarding LGBTIQ+ issues. **Minimum Standard 4** includes information on how organisations can anticipate and plan for resistance or backlash.
- Globally, transphobia and other types of bigotry are increasingly featured in the media and discussed by public figures.³³ We heard in consultations that this can warp and confuse people's understanding of legal duties under Victorian and Australian law. We also heard this bigotry is negatively impacting how LGBTIQ+ people are treated in Victorian workplaces.
- A detailed discussion of the risk factors that can lead to discrimination against LGBTIQ+ people is provided under **Minimum Standard 2**.

2.6 What are the impacts of discrimination on LGBTIQ+ employees?

Contemporary research shows that discrimination has significant negative impacts on LGBTIQ+ people's wellbeing,³⁴ but the effects may not always be obvious to people around them. An LGBTIQ+ person who has experienced discrimination at work can face economic and social disadvantages, which can lead to unemployment and homelessness. Discrimination can also affect LGBTIQ+ employees' emotional and physical wellbeing.

We heard in our consultations that different communities experience discrimination and its impacts differently, including in the types of cumulative physical and/or mental health impacts.³⁵ Organisations should be aware that there is no single LGBTIQ+ experience of discrimination.

Research shows that LGBTIQ+ people face:

- lower self-rated health and a higher burden of certain health conditions than the general population
- high or very high levels of psychological distress at 4 times higher than the general population
- higher reported rates of suicidal ideation than the general population
- increased experience of homelessness compared with the general population (for reasons including family rejection and barriers to housing and/or accessing homelessness services because of their gender identity).³⁶

In the workplace, LGBTIQ+ employees' experiences of discrimination and stigma can have negative impacts on their careers and development. For example, 47% of trans and gender diverse people in the USA have experienced workplace discrimination in hiring, promotion or job retention, directly affecting their careers.³⁷ Even once trans and gender diverse people are employed, those who experience discrimination have subsequently experienced stress, had their careers derailed, or even been demoted or dismissed.³⁸ Experiences of discrimination outside of work might affect LGBTIQ+ employees and how they are in the workplace.

Employees may attempt to prevent discrimination by staying 'in the closet' (not disclosing their LGBTIQ+ identity or status).³⁹ Research has found that LGBTQ+ employees consciously assess the risks and benefits of disclosing their identity – and the fear of stigma, discrimination and exclusion significantly predicts whether they will disclose.⁴⁰

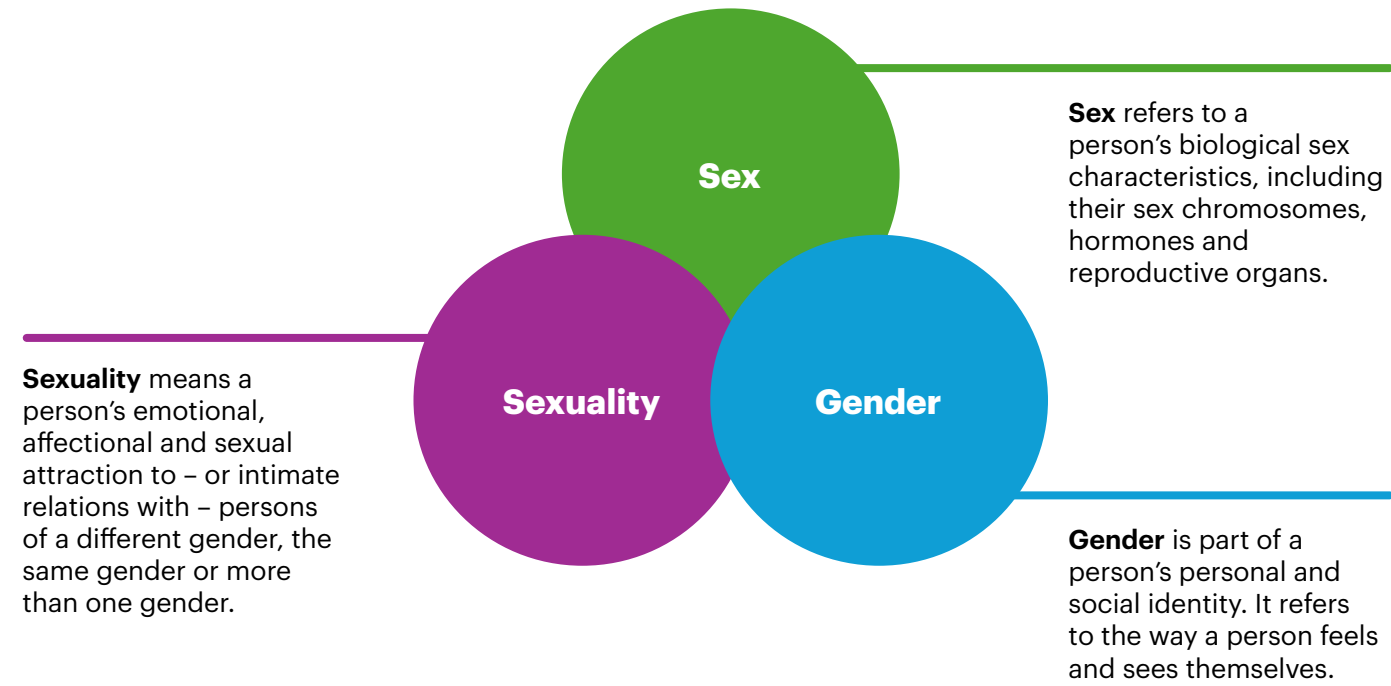
Minority stress

Members of marginalised communities, including LGBTIQ+ communities, can experience something called ‘minority stress’ – a type of ongoing stress caused by their experiences of discrimination and prejudice. Prejudice, stigma and discrimination can lead to psychological distress and other significant mental health impacts for LGBTIQ+ people,⁴¹ with evidence suggesting that stressors are internalised from an early age.⁴² Studies have also found that the effects are worse for those with intersecting characteristics or identities. For example, for multicultural and multifaith LGBTIQ+ people, repeated exposure to discrimination is a chronic stressor with a wide range of impacts (see [3.4 Intersectional discrimination](#)).⁴³

Impacts and experiences vary between communities under the LGBTIQ+ umbrella. Certain communities may face specific impacts due to stereotypes and assumptions. For example, gay, bisexual and queer men in the workplace may face expectations to work later because of their (perceived or real) lack of family commitments (affecting their work–life balance), reduced access to the same opportunities (because of stereotypes or ‘client preferences’) and experiences of more unstable employment than straight men.⁴⁴ Experiences of wage discrimination and pay inequality can also vary between and within LGBTIQ+ communities, affecting their livelihoods.⁴⁵

Defining sex, gender and sexual orientation

Understanding the difference between sex, sexual orientation and gender is fundamental to understanding LGBTIQ+ peoples’ experiences. All people have a relationship with sex, sexual orientation and gender (not just LGBTIQ+ people). Understanding your own sex, sexual orientation and gender can help you understand other peoples’ experiences.



2.7 What is respectful and inclusive language?

Respectful and inclusive language plays an important role in creating safe and supportive environments. LGBTIQ+ people’s health and wellbeing can be severely harmed when they are repeatedly subjected to language that discriminates, excludes, undermines or denies their existence or their safety at work. Research shows however, that when inclusive language is used it has a positive impact on LGBTIQ+ people’s wellbeing.⁴⁶

We understand that many people in our communities want to do and say the right thing but do not know how to go about it. No one is born an expert in inclusive language (not even LGBTIQ+ people). Everyone must do their research to understand the complexity of identity, sex, gender and sexual orientation. It is okay to make some mistakes occasionally. What matters is that you notice your mistakes, correct them and try to do better next time.

By providing your employees with simple tips on respectful conversations and things to avoid, you can help ensure that everyone is treated respectfully in your workplace. The following table provides some examples.

Example of disrespectful and non-inclusive language ^m	Impact of disrespectful language	What you can say instead
<p>Deadnaming: This is when someone uses a transgender or non-binary person’s former name (from before they transitioned or affirmed their gender) without their consent.</p>	<p>Deadnaming someone is harmful because it undermines the reality or validity of a trans or non-binary person’s gender.</p> <p>Deadnaming someone can show that you do not understand or support their true gender identity. Deadnaming someone may also ‘out’ them as transgender.</p> <p>Deadnaming can have very significant negative consequences on a trans or gender diverse person’s mental and physical health and safety.</p> <p>Persistently deadnaming a trans or gender diverse employee may constitute discrimination in some circumstances.</p>	<p>If someone has transitioned or affirmed their gender in your workplace and you do not know what their new name is (but know they have changed it), you can ask them: ‘What name should I call you?’ or ‘How would you like to be addressed?’</p>

^m These examples may constitute discrimination depending on the circumstances.

Example of disrespectful and non-inclusive language ^m	Impact of disrespectful language	What you can say instead
Misgendering: This is when someone uses the wrong pronoun for a person (e.g. calling a person ‘she’ when the person has told them they use ‘they/them’ pronouns).	Deliberately or continually misgendering a trans or non-binary person is very disrespectful and invalidating. Misgendering can cause serious harm to trans and gender diverse people in the workplace. Persistently misgendering a trans or gender diverse employee may constitute discrimination in some circumstances.	Just ask: ‘What pronouns do you use?’ You can also give your own pronouns when you introduce yourself, so someone feels comfortable telling you theirs, e.g. ‘Hi, I’m Sally, I use she/her pronouns.’ If you accidentally get someone’s pronouns wrong, that is okay – just apologise, correct yourself and move on.
Assuming someone is from a certain type of family (e.g. assuming that because a person is a woman and wears a wedding ring, they have a husband).	Families come in all shapes and sizes. They are all equally valid and important. People with ‘rainbow families’ (including families where there are two mums, two dads, parents of other genders, more than two parents, children who are LGBTIQ+ or any other LGBTIQ+ identities) are often socially isolated in workplace contexts. Social isolation at work – including not being talked to during casual encounters or not being invited to events – can impact a person’s ability to access promotions, training or other opportunities. It can also make a person feel uncomfortable and impact their ability to do their best work.	It is best not to ask about someone’s relationship status unless there is a specific job-related reason. Asking questions along these lines may be considered intrusive and discriminatory. If there is a specific reason to ask about an employee’s relationship status, keep the question neutral (e.g. if there is an incident where a next of kin needs to be contacted, simply ask ‘Is there someone we can contact?’ or for an event invitation, ‘Please provide details if you will be bringing a plus one’). Do not assume the gender of someone’s partner or the structure of their family. If you do not know the gender of someone’s spouse or partner, use ‘spouse’ or ‘partner’. Once someone has told you how they refer to their partner, use the language they have used (e.g. if your colleague tells you that they live with their husband, do not continue to refer to that person as their partner).

Example of disrespectful and non-inclusive language ^m	Impact of disrespectful language	What you can say instead
Asking inappropriate questions or making inappropriate comments about a person’s sexual relationships or body: This could include asking an asexual, aromantic or bisexual person about their sexual preferences, making comments or assumptions about a gay or lesbian person’s sexual activity, or asking a trans or intersex person about their sex organs.	This sort of questioning is highly offensive and may amount to both discrimination and sexual harassment (which are unlawful under the Equal Opportunity Act – see Chapter 3).	It is no one else’s business what someone enjoys sexually or what someone’s body looks like. There are almost no reasons to ask any questions in relation to a person’s sexual relationships or their body in a work context. If you are working in a medical context and require information for medical reasons, ensure any questions are asked respectfully and explain why you need the information.

They/them pronouns

A common objection to using they/them pronouns is that it is not ‘grammatically correct’. But this is not true! Imagine you are walking down the street with your friend and see someone ahead of you wearing a beautiful jacket. You cannot tell what their gender is from behind, so you tap your friend and say, ‘Hey, isn’t **their** jacket great?’ You have just used they/them pronouns grammatically correctly!ⁿ

ⁿ See Dennis Baron, ‘A brief history of singular ‘they’’, Oxford English Dictionary, <<https://www.oed.com/discover/a-brief-history-of-singular-they/?tl=true>>.

3.

The law on LGBTIQA+ discrimination at work

Chapter 3 provides information about workplace discrimination against LGBTIQA+ people, and other types of unlawful behaviour under the Equal Opportunity Act. It also provides information on liability and other relevant laws.



3.1 Who is protected under the Equal Opportunity Act?

The Equal Opportunity Act makes it unlawful to discriminate against a person with certain 'protected characteristics'^o at work, unless an exemption or exception applies. LGBTIQ+ people may sit within 3 protected characteristics under the Equal Opportunity Act: gender identity, sex characteristics and sexual orientation. These characteristics are defined in the Equal Opportunity Act as:

Gender identity

This means a person's gender-related identity, which may or may not correspond with their designated sex at birth and includes the personal sense of the body (whether this involves medical intervention or not) and other expressions of gender such as dress, speech, mannerisms, names and personal references.

Sex characteristics

This means a person's physical features relating to sex, including:

- genitalia and other sexual and reproductive parts of the person's anatomy
- the person's chromosomes, genes, hormones and secondary physical features that emerge through puberty.

Sexual orientation

This means a person's emotional, affectional and sexual attraction to, or intimate or sexual relations with, persons of a different gender or the same gender or more than one gender.^{p 47}

Some LGBTIQ+ people may have more than one of the characteristics listed above. LGBTIQ+ people may also have other characteristics that are protected under the Equal Opportunity Act (see **3.4 Intersectional discrimination**). For a full list of protected characteristics, you can visit the **Commission's website**.⁴⁸

- o Personal characteristics are referred to as 'attributes' under section 6 of the Equal Opportunity Act.
- p The definition of 'sexual orientation' under the Equal Opportunity Act covers both sexual attraction and romantic attraction.

3.2 What is discrimination?

Under the Equal Opportunity Act, there are two types of discrimination: direct and indirect.

Direct discrimination happens where a person treats (or proposes to treat) someone unfavourably because of a characteristic protected by law.^{q 49} It does not matter whether the person is aware of the discrimination or considers the treatment to be unfavourable. The intention of the person – or organisation – is irrelevant.⁵⁰ Unintentional discrimination and unconscious bias can also constitute direct discrimination.⁵¹

CASE STUDY: ELSA

Elsa applies for a job as a receptionist in a hospital. In her job application, Elsa discloses that she is intersex and has a physical disability that is associated with her innate variation in sex characteristics.^r She notes in her job application that she requires reasonable adjustments to her work schedule so she can attend regular medical appointments. This has been accommodated easily at her previous workplace.

Even though Elsa is the best candidate, she is not offered the job because the employer thinks Elsa's circumstances are too complicated. Another candidate who is less qualified is offered the job. This may be direct discrimination based on sex characteristics (and may also be discrimination based on disability).

Discrimination can also occur where someone with a protected attribute is treated unfavourably because of some feature or trait that they have, or that other people with that protected attribute typically have.⁵² For example, using they/them pronouns could be considered a feature of someone's gender identity – so not hiring a person because they use they/them pronouns could be discrimination.

It is unlawful to discriminate against a person who is presumed to have a protected attribute (for example, assuming someone is gay because of the way they speak or dress) even if they do not hold this attribute.⁵³

It is also unlawful to discriminate against someone because they have a personal association with someone who has one of the protected attributes in the Equal Opportunity Act.⁵⁴

q The protected characteristic only has to be a substantial reason for the discriminatory treatment (it does not have to be the only or dominant reason): Equal Opportunity Act, s 8(2)(b).

r In providing this example we note that intersex people may have medical and health needs but being intersex is not itself a health issue. See Morgan Carpenter and Dawn Hough, Employers' Guide to Intersex Inclusion (Organisation Intersex International Australia Limited and Pride in Diversity, 2014), <https://interaction.org.au/wp-content/uploads/key/Employer-Guide-Intersex-Inclusion.pdf>

CASE STUDY: JIN



Gail and Jin work together at an accounting firm. During a coffee break, Gail asks Jin how his daughter, Mei, is going. Jin tells Gail that Mei is great and is preparing for her wedding to her female partner, Indira, next month. Gail opposes same-sex marriage. After that chat, Gail stops interacting with Jin and no longer invites him to work-related networking events because she is afraid he will talk about his daughter's sexual orientation. This could amount to discrimination based on Jin's personal association with his daughter.

Indirect discrimination happens where there is an unreasonable^s requirement, condition or practice that applies to everyone but disadvantages (or is likely to disadvantage) people with a particular attribute.⁵⁵ It is irrelevant whether the person who discriminates is aware of the discrimination.⁵⁶ In workplaces, this might be a policy, practice or process that may not seem discriminatory on the surface but disadvantages LGBTIQ+ people when applied.

CASE STUDY: APPLICATION FORMS



A construction company requires all job applicants to identify their gender as either 'male' or 'female' on its electronic application form. This could disadvantage some people (whose gender identity is neither male nor female) based on their gender identity and may amount to indirect discrimination.

3.3 What activities count as 'work' under the Equal Opportunity Act?

Discrimination is unlawful at every point in the employment cycle.⁵⁷ Employees can be protected:

- at work (that is, on work premises, as well as in other common areas such as car parks, lifts, entrances and reception areas outside of the work premises)
- at work-related events, meetings or where people are carrying out work-related functions or activities outside of the physical work premises (e.g. at an end-of-year party, at a conference, or when travelling to and from work)
- in online spaces and through technologies and social media platforms where the conduct is in connection with the employment (e.g. while working remotely)
- when sharing the same workplace (e.g. contractors engaged by your organisation).

^s Whether a requirement, condition or practice is reasonable depends on all the relevant circumstances of the case, including the factors set out in section 9(3) of the Equal Opportunity Act.

CASE STUDY: CHARLOTTE



Charlotte is a bisexual employee of a law firm. Charlotte brings her girlfriend Dani to the law firm's end-of-year celebration at the local pub. Sean, one of Charlotte's colleagues, knows that Charlotte is bisexual and asks her if she and her girlfriend would be up for a threesome 'because I know that's what you bisexuals are into'.

Even though this happened outside the office, the behaviour still took place at a work-related event and could amount to both discrimination and sexual harassment under the Equal Opportunity Act.

3.4 Intersectional discrimination

Employees who experience discrimination because they are LGBTIQ+ can experience discrimination on the basis of other protected attributes under the Equal Opportunity Act at the same time (for example, sex, race, age or disability). This is known as 'intersectionality' or 'intersectional discrimination'.

Intersectionality describes how different parts of a person's identity or circumstances – such as age, class, culture, disability, gender, location or religion – can intersect and combine in the context of discrimination, harassment and other life experiences.⁵⁸ Intersectionality exists in different ways for different people, affecting the ways they experience and move through the world. It can change over time and across situations.

CASE STUDY: LAYLA



Layla is a gay woman and a practising Muslim. She left Lebanon as a refugee and came to Australia. She works as a waitress at a small, family-owned Lebanese restaurant. Many of the people who attend the restaurant are from the local Lebanese community.

One day, Layla's girlfriend picks her up after a shift. A customer sees Layla and her girlfriend kiss outside the restaurant. The customer is alarmed and asks Layla's boss, Ali, 'Why have you allowed her to work here? She is bringing shame to our community.'

Ali likes Layla and knows she is a good worker. However, he is worried about the reputation of his restaurant and the impact of Layla working there. He has hired other staff members who are gay, but they are not part of the local Lebanese Muslim community. Ali knows that some people in his community consider the Islamic faith to be incompatible with being gay. He fires Layla on this basis.

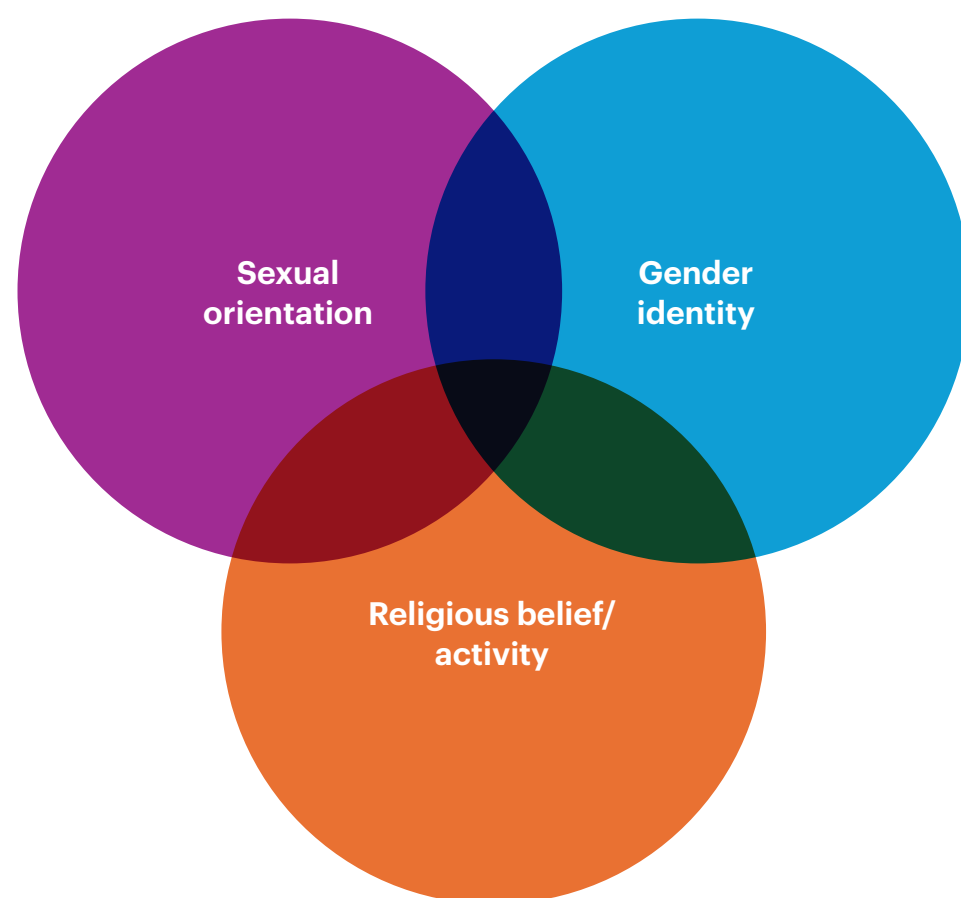
This example shows how discrimination on the basis of intersecting characteristics (in this case sexual orientation combined with religious belief) can compound the impacts of discrimination.

Intersectionality impacts how someone experiences discrimination – it can be distinct and specific for different people. For example, a queer Jewish woman might experience discrimination or harassment on the basis of:

- her religious belief or activity (Judaism)
- her gender identity (woman)
- her sexual orientation (queer).

She might also experience discrimination or harassment on the basis of a combination of any of those characteristics, for example on the basis of:

- her religious belief or activity *and* her gender identity (as a Jewish woman)
- her sexual orientation *and* her gender identity (as a queer woman)
- her religious belief or activity *and* her sexual orientation (as someone who is Jewish and queer)
- her sexual orientation *and* her religious belief or activity *and* her gender identity (as a queer Jewish woman).



These different combinations lead to different experiences in employment and other areas of life. The core of intersectionality is that the different parts of someone's identity or circumstances cannot be disentangled or considered in isolation. Intersectionality is a way of seeing the whole person and recognising the many diverse experiences within every group of society.

While the Equal Opportunity Act does not expressly mention intersectional discrimination, it is possible for a complaint to be made on the basis of multiple characteristics.

3.5 Who is legally responsible for discrimination in the workplace?

3.5.1 Individual liability

Under the Equal Opportunity Act, individuals and unincorporated associations or organisations can be held liable for discrimination, depending on the circumstances. In the case of discrimination in employment, it will generally be the employer that is liable. Employees may face disciplinary or legal consequences, including being terminated from their employment, if they engage in discrimination or sexual harassment.

While it is generally the employer that is responsible for discrimination in the workplace, individuals may be liable for authorising or assisting discrimination, for sexually harassing a co-worker or customer, or for victimisation.

3.5.2 Vicarious liability

If a person discriminates in the course of their employment or while acting as an agent for an organisation, their employer or principal (a person who contracts another person for work) can be held legally responsible for their conduct. This is known as vicarious liability.⁵⁹

To avoid vicarious liability, employers must show that they took reasonable precautions to prevent an employee or agent acting in a discriminatory way.⁶⁰ This is one reason why it is beneficial for employers to comply with the positive duty (see [Chapter 4](#)).



3.6 Complaint options

A person who believes they have been discriminated against at work on the basis of their gender identity, sex characteristics or sexual orientation can make a complaint to:

The Victorian Equal Opportunity and Human Rights Commission:

The Commission may conduct a voluntary, free, impartial and confidential conciliation process. We do not investigate or decide whether there has been a breach of the law, nor do we make findings about a matter or decisions about the outcome. Instead, our conciliators help the participants reach a mutually agreeable outcome such as:

- an apology, statement of regret or acknowledgement of distress
- changes to policies or practices
- a commitment to provide equal opportunity training to staff
- reinstating a person's job (or terms of their job) or a service (or how it is delivered)
- financial compensation.^t

The Victorian Civil and Administrative Tribunal (VCAT):

VCAT will hold a hearing to determine if discrimination has occurred. If VCAT finds that discrimination has taken place and the employer is liable, the employer could be ordered to:

- do certain things, such as pay compensation to the person who experienced discrimination
- provide some other remedy, such as reinstate the person's employment, issue an apology or undertake anti-discrimination training.^u

^t See 'Complaints', *Victorian Equal Opportunity and Human Rights Commission*, <<https://www.humanrights.vic.gov.au/complaints/>>.

^u See 'Resolve a dispute about unlawful discrimination, sexual harassment, victimisation or vilification', *Victorian Civil and Administrative Tribunal*, <<https://www.vcat.vic.gov.au/case-types/equal-opportunity/resolve-a-dispute-about-unlawful-discrimination-sexual>>.

3.7 Other unlawful conduct under the Equal Opportunity Act

In addition to discrimination, there are other types of actions that are unlawful under the Equal Opportunity Act.

3.7.1 Victimisation

Under the Equal Opportunity Act, a person must not victimise another person.⁶¹ Victimisation is subjecting (or threatening to subject) someone to a disadvantage because they made a complaint or helped someone else to make a complaint about something unlawful under the Equal Opportunity Act.⁶²

The law against victimisation also applies to protecting other people who may be involved in a complaint (for example, giving evidence in a hearing or attending a compulsory conference or mediation at VCAT).

CASE STUDY: SAM



Sam is an openly bisexual man who has been a high-performing employee at a marketing firm for 4 years. A new starter at the firm finds out that he is bisexual and tells Sam he should 'get off the fence' and 'pick a side'. Sam complains to his manager Abbie about the comments, which are prejudiced and based on inaccurate stereotypes.

After the complaint, Sam is passed over for a promotion he had been told he was on track to receive. Abbie provided feedback that 'the CEO does not want a troublemaker in the leadership team'. This could amount to victimisation as Sam is the target of detrimental treatment because he spoke up about discrimination.

3.7.2 Sexual harassment

Sexual harassment is also unlawful under the Equal Opportunity Act. Sexual harassment is unwelcome sexual behaviour that could be expected to make a person feel offended, humiliated or intimidated.⁶³ It can be physical, verbal or written, and may include:

- sexually suggestive comments or invasive questions about a person's private life, their body or the way they look
- sexually suggestive behaviour such as leering or staring
- sexually suggestive comments, notes or emails.

Sexual harassment can occur between colleagues, between managers, between employers and their employees, with a person seeking employment at that workplace, and with clients or customers interacting with the organisation.⁶⁴

Our research and consultations indicate that sexual harassment is a common issue LGBTIQ+ people face and a critical issue for inclusivity for LGBTIQ+ people at work.⁶⁵

You can read more about sexual harassment in the Commission's **Guideline: Preventing and responding to workplace sexual harassment – Complying with the *Equal Opportunity Act 2010***.^{v 66}

CASE STUDY: RUPERT



Rupert was born with XXY chromosomes (sometimes known as Klinefelter syndrome). He chooses to disclose that he has an innate variation of sex characteristics to a close friend at work and word gets out around the office that he is intersex.

Rupert's colleagues begin asking him inappropriate questions about 'what he has down there', which Rupert finds intimidating and offensive. This may be sexual harassment as well as direct discrimination.

CASE STUDY: AMARI



Amari is an asexual employee at a graphic design company. During a work lunch, Amari's manager asks her some inappropriate questions about Amari's relationship with her partner, including 'If you don't have sex, aren't you just roommates?' Amari feels very uncomfortable and upset by her boss's intrusive and inappropriate questions. This may be sexual harassment as well as direct discrimination.

v See also 'What is sexual harassment?', WorkSafe Victoria, <<https://www.worksafe.vic.gov.au/what-sexual-harassment>>.

3.7.3 Vilification

The **Justice Legislation Amendment (Anti-vilification and Social Cohesion) Act 2025 (Vic)** was passed by Parliament in April 2025. This law expands Victoria's hate speech laws to protect people from vilification based on gender identity, sex characteristics and sexual orientation (among other personal characteristics^w).

Under the new law, vilification is unlawful when a person engages in 'public conduct'⁶⁷ that would be reasonably likely to be considered hateful, seriously contemptuous of, reviling or severely ridiculing another person or group on the basis of their protected attribute (for example, being LGBTIQ+).⁶⁸ The test for whether the conduct is reasonably likely to cause harm is objectively assessed through the perspective of a reasonable person with the protected attribute – in other words, 'What would a reasonable person with that protected attribute think?'.⁶⁹

An act could also amount to vilification under the new law if a person does something that is 'likely to incite hatred against, serious contempt for, revulsion towards or severe ridicule of' a person or a group who have a protected attribute (for example, LGBTIQ+ people).⁷⁰

The new law includes both criminal and civil offences. The criminal provisions will come into force by September 2025, while the civil protections will be introduced into the Equal Opportunity Act by 30 June 2026.

Discrimination in employment could also amount to vilification in some circumstances.

CASE STUDY: VICTOR



Victor works part time as a personal trainer at a gym and performs as a drag queen at night. He decides to keep his drag performing a secret from his colleagues because the gym is a very masculine workplace and he is concerned his colleagues might respond badly.

Victor's colleague Lee sees a photograph of Victor in drag on social media. Lee reposts the image on an online work forum and makes a derogatory comment that 'I didn't know we allowed paedophiles to work here'. Lee encourages others in the forum to leave derogatory comments and threatens to tell Victor's clients at the gym they are being trained by a 'paedophile'. This is 'public conduct' for the purposes of vilification, even though Lee posted online while working from home, because it is visible to his co-workers. Lee's comment could be considered both vilification^x and discrimination due to the employment relationship between Victor and Lee.^y

w It also prohibits vilification on the basis of disability, race, religious belief or activity, sex and personal association with someone who has one of these attributes. Note that not all attributes protected from discrimination are protected from vilification.

x The civil provisions of the *Justice Legislation Amendment (Anti-vilification and Social Cohesion) Act 2025 (Vic)* will commence on 30 June 2026, unless proclaimed earlier.

y This example is based on a Queensland case in which vilification was found: *Peters v Constance* [2005] QADT 9 (23 May 2005).

3.7.4 Authorising or assisting discrimination

It is also against the law for employers to request, instruct, induce, encourage, authorise or assist someone to discriminate against another person.⁷¹ This may occur when a manager chooses to not do anything to stop discrimination that they know is happening and the perpetrator also knows that the manager is aware of the discrimination but is doing nothing to stop it from happening.^z

CASE STUDY: SAVANNAH



Savannah is a transgender woman working at a large bank. Savannah's colleague Will repeatedly misgenders her in conversations and emails. Savannah's manager, Imogen, is in these email chains and is copied into Savannah's emails where she corrects Will for misgendering her. Savannah also raises Will's behaviour with Imogen during their weekly meetings.

Imogen tells Will that complaints have been raised about his conduct but does not direct him to stop misgendering Savannah and takes no further action. Will continues to misgender Savannah.

Imogen could be liable for authorising or assisting discrimination.

3.7.5 Discriminatory requests for information

It is against the law for a person to request information from someone that could be used to discriminate against them unless the person can show they need that information for a legitimate purpose.⁷² For example, it is against the law for an employer to ask someone what their gender identity is as part of deciding on a job application, except if it is allowed by law or reasonably required for some other purpose. It may be legitimate to ask about gender identity, for example, if:

- a role involves significant engagement with trans and gender diverse people, and lived experience is relevant
- the employer is collecting demographic data to identify trends in recruitment, as long as the employee is only required to provide this information voluntarily.

^z For example, see *Oliver v Bassari (Human Rights) [2022] VCAT 329*.

3.8 Is discrimination ever allowed?

There are some situations where discrimination is considered lawful under the Equal Opportunity Act.

3.8.1 Special measures

The Equal Opportunity Act recognises that sometimes when everyone is treated the same, the outcome can be unfair for some people because of their personal characteristics (for example, being LGBTIQ+).⁷³ Where groups have been disadvantaged by systemic inequality and past discrimination, they may require assistance to achieve 'substantive equality'. Substantive equality means recognising that some groups may need special assistance to address disadvantage, rather than simply being treated the same.

To help create substantive equality, the Equal Opportunity Act allows people and organisations to treat people differently in certain situations through 'special measures'. Special measures are not considered discrimination provided they are:

- undertaken in good faith to help promote or achieve substantive equality for members of the group
- reasonably likely to achieve this purpose
- a proportionate means of achieving this purpose
- justified because the members of the group have a particular need for advancement or assistance.⁷⁴

A common example of a special measure is a 'designated role' or 'identified position' – a job that is to be filled by a person with a particular attribute.

CASE STUDY: DAN



Melinda is the CEO of an art gallery in Melbourne's south-east. She wants to feature LGBTIQ+ First Peoples art in a series of exhibitions throughout the year, in line with the gallery's strategic plan to increase representation of First Peoples and LGBTIQ+ people in its programming. Melinda consults with the local LGBTIQ+ First Peoples community and understands they identify with the term 'Rainbow Mob' and support the gallery's strategic approach.

Melinda wants to hire a Rainbow Mob community member for the role of lead curator for the exhibition series. Melinda knows that Rainbow Mob have experienced disadvantage, systemic inequality and discrimination since Australia was colonised, that Rainbow Mob are under-represented in the arts curator industry and that creating a senior role for a Rainbow Mob community member can help promote substantive equality.

Melinda is unsure whether she must apply to VCAT to create the designated role. Her HR team assures her that she can create this designated role without applying to VCAT because it is for the purpose of promoting or realising substantive equality for Rainbow Mob and is therefore a 'special measure'. It does not amount to discrimination under the Equal Opportunity Act. Melinda designates the lead curator position for a Rainbow Mob community member. She interviews Dan, a proud gay Wurundjeri and Dja Dja Wurrung man. He seems perfect for the job due to his background and experience. He is hired for the lead curator role.

3.8.2 Exceptions

There are some situations where discrimination under the Equal Opportunity Act is allowed.⁷⁵ The following table provides examples of exceptions that may be relevant to LGBTIQ+ people at work.

Exception	Description	Example
Discrimination authorised by a court or law ⁷⁶	Discrimination will not be unlawful if it is necessary to comply with an order of a court or tribunal, or is authorised by legislation (also known as the ‘statutory authority exception’).	In certain circumstances, an employer may argue that their actions are authorised under the <i>Occupational Health and Safety Act 2004</i> (Vic).
Discrimination authorised in domestic or personal services ⁷⁷	An employer may discriminate in determining who should be offered a job in domestic or personal services (including the care, instruction or supervision of children) either in the employer’s home or at the request of the person whose home it is.	<p>A provider of in-home nanny services has a family ask if they could replace their nanny with another. They have no complaints about the nanny’s professional abilities, only that they learned the nanny is non-binary, which does not align with their beliefs.</p> <p>The provider of the service knows that because this service is being provided in the family’s home, they can discriminate in this way.</p>
Welfare services ⁷⁸	Where an employer is providing welfare services that are special measures or that meet the needs of people with a particular characteristic, they may discriminate in order to select employees who meet the needs of the clients.	An intersex-focused mental health service could use the welfare services exception to hire an intersex peer support worker to support intersex people experiencing mental health issues because this will meet the needs of its intersex clients.

Exception	Description	Example
Religious exceptions ⁷⁹	<p>Religious bodies and schools can discriminate against employees (and potential employees) based on the person’s religious belief or activity (not on the basis of other attributes such as gender identity, sex characteristics or sexual orientation) where:</p> <ul style="list-style-type: none">• conformity with religious beliefs is an inherent (i.e. core, essential or important) requirement of the job• the person cannot meet that inherent requirement because of their religious belief or activity, and• the discrimination is reasonable and proportionate in the circumstances. <p>Additionally, religious bodies can discriminate in relation to:</p> <ul style="list-style-type: none">• ordaining or appointing priests, ministers of religion or members of a religious order• training or educating people seeking to be ordained or appointed as priests, ministers of religion or members of a religious order• selecting or appointing people to perform functions relating to, or participating in, any religious observance or practice.⁸⁰	<p>A teacher who is openly queer and an atheist applies for a pastoral carer position at a Catholic high school. While the school cannot discriminate against her on the basis of her sexual orientation, it may be lawful discrimination for the school to choose not to hire her on the basis that she does not hold religious beliefs that are essential to the pastoral carer role, if the discrimination is considered to be reasonable and proportionate in the circumstances.</p>
		<p>A woman who sings in her Anglican church’s choir has let a few of her friends know that she is now in a same-sex relationship. She applies for a role as a lay minister at the church, a position which would involve providing occasional sermons when the minister is unavailable. In response to her application, the church tells her that she was unsuccessful because her sexual orientation does not align with its beliefs and teachings.</p> <p>This may be lawful discrimination because religious bodies can discriminate in selecting or appointing people to perform functions relating to, or participating in, any religious observance or practice.</p>

3.8.3 Exemptions

You need to apply to VCAT if you want an exemption from specific parts of the Equal Opportunity Act and there is no applicable exception and/or the proposed action does not amount to a special measure.⁸¹

CASE STUDY: COMMUNITY LEGAL CENTRE



A community legal centre in the outer eastern suburbs of Melbourne provides legal advice and support to trans and gender diverse people in the area. The legal centre wants to employ only trans or gender diverse people for both client-facing staff and staff who do not have contact with clients. The legal centre considers that this will be important for its service delivery, and provide employment opportunities for trans people in the outer suburbs of Melbourne.

The legal centre may not be able to rely on the welfare exception under the Equal Opportunity Act, because not all its staff are providing welfare services (e.g. its finance and HR staff). On that basis, the legal centre applies for an exemption to VCAT, so it can advertise and employ only trans or gender diverse people for all roles within the organisation.

3.9 Do federal anti-discrimination laws apply to me too?

Yes, employers in Victoria hold duties under both Victorian and federal law. Under the *Sex Discrimination Act 1984* (Cth) (the Sex Discrimination Act), like under the Equal Opportunity Act, people are protected from discrimination based on their sexual orientation, gender identity and sex characteristics. However, there are a few differences between the federal Sex Discrimination Act and the Victorian Equal Opportunity Act in relation to:

- the areas of employment
- tests for discrimination
- certain exceptions.

In some circumstances, Victoria's equal opportunity laws may be stricter than federal laws. Employers must ensure they comply with *both* Victorian and federal law – you cannot choose which one to follow.

Even if an exception under the Equal Opportunity Act applies or you have an exemption under the Equal Opportunity Act, you must still comply with federal law. Therefore, employers should check what specific obligations you may have under the Sex Discrimination Act and other federal laws.

Find out more about federal anti-discrimination laws by contacting the Australian Human Rights Commission: humanrights.gov.au/about/contact.

3.10 Do I also have duties under Victoria's Charter of Human Rights?

If you are an employer that is a 'public authority', you will also hold duties under the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (the Charter). Under the Charter, public authorities, such as Victorian state and local government departments and agencies, along with people delivering services on behalf of government, must act compatibly with the human rights set out in the Charter and give proper consideration to these human rights when making decisions.⁸²

The Charter sets out 20 basic human rights that belong to everyone regardless of their background, personal characteristics and beliefs. Charter rights that may be relevant to LGBTIQ+ discrimination include:

- the right to equality
- the right to privacy
- the right to be free from inhuman, cruel and degrading treatment.

Complaints about a breach of Charter rights can be made to the Victorian Ombudsman. The courts and VCAT can hear cases relating to breaches of Charter rights where those claims are attached to other proceedings, such as a complaint of discrimination based on gender identity, sex characteristics or sexual orientation.



4.

The law on LGBTIQA+ inclusion at work: the positive duty

All employers in Victoria have a 'positive duty' to take active steps to prevent discrimination in their workplace.

Chapter 4 provides information on the positive duty and outlines the 5 minimum standards employers must meet to prevent and respond to LGBTIQA+ discrimination in the workplace.



4.1 Why does the law include a positive duty?

The positive duty exists because equal opportunity is about more than just reacting to complaints and incidents when they happen. Employers should strive to create a working environment where unfair treatment and discriminatory behaviour do not happen in the first place.

The positive duty is aimed at protecting people from harm, including employees and customers. It helps organisations create healthy workplaces, just as occupational health and safety laws require employers to take appropriate steps to ensure injuries do not occur.

4.2 Who does the positive duty apply to?

All Victorian employers are required to take reasonable and proportionate measures to eliminate discrimination against LGBTIQ+ people at work, as far as possible.⁸⁴ The duties of employers extend to cover all full-time, part-time and casual workers, agents and contractors, trainees and apprentices, and job applicants.

Organisations also have an obligation to prevent and respond to discrimination in their interactions with the community. In other words, employers have an obligation to their LGBTIQ+ clients or customers to prevent and respond to discrimination.

4.3 How can I fulfil my positive duty?

Every employer in Victoria must take positive steps towards eliminating discrimination. The Equal Opportunity Act recognises, however, that some organisations have more resources than others. Therefore, employers are required to take 'reasonable and proportionate' actions for their organisation.

Reasonable and proportionate actions for your organisation will depend on several factors, including the:

- size of the organisation or operations
- nature^{aa} and circumstances of the organisation or operations
- resources and budget available
- organisational and operational priorities
- cost of the actions and whether they can be put into place effectively.⁸⁵

aa Where the employer is a public authority, the positive duty applies in addition to the duty under section 38 of the Charter to act compatibly with and give proper consideration to the human rights set out in the Charter. See Equal Opportunity Act, s 15(5)(b).

4.4 What happens if I do not fulfil my positive duty?

If you do not fulfil your positive duty, there may be consequences for you and your organisation.

You may be held vicariously liable for discrimination

If a complaint of discrimination is lodged at VCAT and you have not upheld your positive duty, you are more likely to be held vicariously liable for discrimination.

You may be required to provide a remedy to the person who has been discriminated against (for example, paying compensation). See further discussion on liability in [3.5 Who is legally responsible for discrimination in the workplace?](#)

VCAT may consider whether you have upheld the minimum standards in this guideline when considering whether you are liable for discrimination.⁸⁶

The Commission may investigate your organisation

The Commission may conduct an investigation to see whether you have complied with your positive duty.⁸⁷ An investigation can be started, for example, if we receive multiple reports of discrimination about your organisation that meet the threshold of seriousness set out in the Equal Opportunity Act. The Commission can also investigate where complaints of discrimination have not been made but there are other grounds to suspect that you have not taken sufficient steps to comply with the positive duty.^{ab}

As part of this investigation function, the Commission can ask any party for relevant information or apply to VCAT for an order requiring a person to provide information or documents.⁸⁸ When conducting investigations, the **minimum standards** in this guideline will be used to help assess whether you have complied with your positive duty.

ab For example, in 2022 the Commission investigated the adequacy of Bakers Delight Holdings' frameworks to prevent and respond to sexual harassment in its company-owned workplaces and franchise network: 'Investigation: Preventing sexual harassment in retail franchises', Victorian Equal Opportunity and Human Rights Commission <<https://www.humanrights.vic.gov.au/legal-and-policy/research-reviews-and-investigations/retail-investigation/>>.

4.5 Minimum standards to uphold your positive duty

The Commission has identified **5 minimum standards** that employers must uphold to comply with your positive duty. Organisations that comply with these minimum standards will build inclusive workplaces where everyone is treated fairly.

Each minimum standard includes 3 elements:

- 1. **Expectations:** these are the outcomes of employers’ actions that are required for an organisation to comply with the minimum standard.
These outcomes are important as they can be used by the Commission to evaluate whether you have upheld your positive duty.
- 2. **Suggested actions you can take:** these are practical suggestions about what you can do to achieve the expectations for the minimum standard.
These actions build on each other and should be actioned progressively, to create inclusive workplaces.
The suggested actions are tailored for small, medium and large organisations to help you choose which actions might be reasonable and proportionate for your organisation.

In this guideline:

A small organisation = less than 20 employees
A medium organisation = between 20 and 199 employees
A large organisation = 200 or more employees

- 3. **Record keeping:** these are suggestions for records you can keep to show that your organisation is complying with the minimum standard.
These records can be helpful:
 - to provide evidence that your organisation took reasonable precautions to prevent discrimination if vicarious liability is an issue in proceedings at VCAT (see **3.5.2 Vicarious liability**).
 - to demonstrate compliance with the minimum standards if your organisation’s compliance is investigated by the Commission
 - to identify potential risks of discrimination and ensure that actions to prevent discrimination are fair and informed.

The record-keeping suggestions are not grouped into small, medium and large organisations. Organisations should assess what is reasonable and proportionate for them.

For each minimum standard, we also provide answers to frequently asked questions. These will help you take action and comply with the positive duty.

Key terms used in the minimum standards	
Organisation	An organisation is a group of people who work together in an organised way for a shared purpose (e.g. a business).
Employee	An employee is a paid worker or staff member, including ongoing and fixed-term, casual and contract workers, independent contractors, consultants and paid interns. ⁸⁹ It does not include unpaid workers or volunteers, except in relation to the prohibition of sexual harassment. ⁹⁰
Employer	An employer is a person (an individual or an organisation) who hires another person under a contract of/for service on a full-time, part-time, contractual or casual basis, in exchange for payment. It does not include a person who employs unpaid workers or volunteers, except in relation to the prohibition of sexual harassment. ⁹¹
Leader	A leader is an employee who is responsible for guiding and directing the development of systems, processes, procedures and workplace culture to achieve the goals of the organisation.
Manager	A manager is an employee who is responsible for overseeing and directing at least one person within an organisation. Their duties may include making decisions about allocation of tasks, conducting performance reviews and responding to personnel issues.



Minimum standards



The actions under each minimum standard build on each other:

- SMALL ORGANISATIONS** should complete the first tier of actions.
- MEDIUM ORGANISATIONS** should complete the first and second tier of actions.
- LARGE ORGANISATIONS** should complete all actions.





Minimum Standard 1: Knowledge & understanding

Organisations understand their obligations under the Equal Opportunity Act, have up-to-date knowledge about discrimination against LGBTIQ+ people at work and know how to eliminate it.

Key terms	
Causes	These are the motivations or factors that cause discrimination, sometimes referred to as ‘drivers’ (e.g. homophobia, biphobia and transphobia).
Risk factors	These are the factors or elements that increase the risk of discrimination happening.
Impacts of discrimination	These are the effects of discrimination on a person or group.

Expectations

- Organisations are appropriately and regularly educated to identify discrimination against LGBTIQ+ people at work, and understand the causes, risk factors and impacts of discrimination.
- Organisations understand what constitutes discrimination under the Equal Opportunity Act and their positive duty.
- Leaders and managers know how to prevent and respond to discrimination against LGBTIQ+ people at work.

Type of organisation	Suggested ways you can take action
<div>SMALL ORGANISATIONS</div> <div>MEDIUM ORGANISATIONS</div> <div>LARGE ORGANISATIONS</div>	<ul style="list-style-type: none">• Read this guideline and related resources to understand:<ul style="list-style-type: none">– what workplace discrimination against LGBTIQ+ people is (including the causes, risk factors and impacts of discrimination)– how discrimination is regulated under the Equal Opportunity Act– what your organisation’s positive duty is and how to uphold it– how to identify and respond to discrimination if it happens.• Incorporate information on preventing discrimination towards LGBTIQ+ people at work into staff induction materials (e.g. by providing this guideline and related resources).• Circulate this guideline and its related resources to employees annually to remind them of the organisation’s duties and their rights.

<div>MEDIUM ORGANISATIONS</div> <div>LARGE ORGANISATIONS</div>	<ul style="list-style-type: none">• Provide periodic training so all staff know how to identify and respond to discrimination against LGBTIQ+ people at work (including the causes, risk factors and impacts of discrimination).• Deliver additional periodic training for leaders, managers, staff in support roles and staff involved in complaint handling, including how to:<ul style="list-style-type: none">– prevent and respond to discrimination against LGBTIQ+ people at work– identify unconscious bias (also known as implicit bias) that might impact responses to discrimination– respectfully discuss complaints and reports of discrimination with LGBTIQ+ people.• Survey your staff periodically to assess their understanding of what constitutes discrimination against LGBTIQ+ people at work and identify where further training is required.• Subscribe to updates from regulators and peak bodies to keep on top of updates to the law and best practice.
	<ul style="list-style-type: none">• Hold dedicated meetings or information sessions to encourage staff to familiarise themselves with the anti-discrimination prevention actions contained in these minimum standards.• Establish systems to monitor developments in anti-discrimination, equal opportunity law, the positive duty to eliminate discrimination against LGBTIQ+ people at work and best practice across the workplace – and communicate these developments with your staff (e.g. provide updates at staff meetings).
Record keeping	<p>Records of compliance with this minimum standard might include:</p> <ul style="list-style-type: none">• organisation-specific examples of workplace discrimination against LGBTIQ+ people included in staff training materials• emails to your staff or meeting notes communicating information on LGBTIQ+ discrimination• attendance records for training sessions• information available on your organisation’s intranet about discrimination• position descriptions or work plans with mandatory learning requirements relating to LGBTIQ+ discrimination• staff surveys that assess understanding of LGBTIQ+ discrimination.

How can I identify discrimination?

If you understand discrimination, you can spot it. To understand it, you need to know:

- when it can happen
- why it happens
- what makes it likely to happen (that is, risk factors)
- how it affects your people.

Chapter 2 of this guideline covers what you need to know about LGBTIQ+ people in the workplace. Some of this information might change over time, and your industry might face specific challenges that are different to those faced in other industries. Therefore, you should keep up to date with developments by doing your own research or seeking assistance from discrimination and inclusion experts (including the Commission).

What should training include?

When developing a training program for your workplace (or reviewing the content from an external training provider), remember that:

- Training alone will not make your workplace inclusive for LGBTIQ+ people. Instead, training should be part of a range of measures designed to drive systemic change.⁹²
- The best approach and format of training for your organisation will depend on your circumstances and learning objectives. Some organisations will benefit from in-person training, while online training will be more effective for others (for example, to ensure that people working remotely or in different parts of Victoria have equal access).
- It should be the responsibility of leaders – not LGBTIQ+ staff – to organise and implement the training.

The following table lists some best practice elements that LGBTIQ+ inclusion training should include:

Best practice elements of inclusive workplace training	
Learning objective	The organisation and participants have a clear understanding of what the training is intended to achieve from the outset (e.g. increased awareness of the needs of LGBTIQ+ employees).
Context	Training should be integrated into the organisational context, including strategic priorities, along with broader inclusion measures and policies to achieve long-term outcomes.
Commitment	Training should be underpinned by an organisation-wide commitment to prevent LGBTIQ+ discrimination and create an inclusive workplace.
Leadership	Leaders should model and encourage meaningful participation in training.
Trainers	Trainers should be highly skilled and diverse, and hold expertise. The organisation should avoid overburdening LGBTIQ+ staff. Trainers with their own experience of discrimination (sometimes referred to as ‘lived experience’) bring unique perspectives to training that heterosexual, cisgender and/or endosex ^{ac} people cannot provide.
Respect and empathy	Training should encourage respectful and empathetic interaction among people with different experiences, to create curiosity and learning.
Safety	Training must be safe for LGBTIQ+ employees to engage in open and frank discussion. This may involve the trainer being clear at the outset about what is going to be asked of LGBTIQ+ employees and letting them know that they can leave at any time.
Openness	Subject to psychological safety considerations, there should be open conversations wherever possible and participants should be encouraged to reflect on how discrimination impacts their identity, privilege or marginalisation and their attitudes and prejudices.
Frequency	Training is more effective when delivered iteratively (allowing time in between sessions for reflection) and periodically instead of via one-off sessions. ⁹³ The Commission recommends annual training with ad hoc sessions also available if needed.

ac Endosex refers to someone who is not intersex (i.e. whose sex characteristics meet medical and social norms for typically male and female bodies).

Best practice elements of inclusive workplace training	
Method	Multiple methods should be used, including organisation-specific, scenario-based examples informed by lived experience. Blending learning methods and including an in-person component is ideal to enable participants to interact and cater to different learning preferences, flexibility and accessibility needs.
Participation	All employees within the organisations should participate in training, with tailored sessions for staff in specialised and management roles.
Evidence-based	Training should be based on up-to-date research and best practice.
First Peoples specific	Organisations should have training that specifically discusses the unique issues faced by Rainbow Mob. ^{ad} Try to choose a local First Peoples training provider that has knowledge of local history and culture. Organisations can contact their local Traditional Custodians or local Aboriginal community-controlled organisation to discuss training options.
Intersectionality	Training should consider how people's lives are made up of – or influenced by – multiple intersecting and layered identities or experiences (e.g. gender, race, socioeconomic background, disability) and how the discrimination they may experience is specific and layered (see 3.4 Intersectional discrimination). ⁹⁴
Unconscious bias	Training should consider strategies for assessing and mitigating unconscious bias regarding LGBTIQ+ employees. This may include educational programs promoting positive contact and socialisation with LGBTIQ+ individuals or programs focusing on recognising and reducing unconscious bias. ⁹⁵
Feedback	Participants should be given the opportunity to provide feedback after training sessions, ideally with the option to provide it anonymously.
Evaluation and improvement	Training outcomes should be monitored and evaluated for increases in workplace inclusion and safety, and improvement should be acknowledged and celebrated.

ad Organisations should also consider racial literacy training and First Peoples-specific training as part of their positive duty to prevent and respond to race discrimination in the workplace. For more information see the Commission's *Guideline: Race discrimination in the workplace* (August 2024) <<https://www.humanrights.vic.gov.au/resources/guideline-workplace-race-discrimination/>>.

How can I respectfully learn from people who are LGBTIQ+ (people with lived experience)?

One valuable way of learning about LGBTIQ+ experiences is to hear from LGBTIQ+ people in a training context. This can inform your workplace's understanding of issues that LGBTIQ+ people commonly face and help you identify how your workplace could be a safer and more inclusive place for LGBTIQ+ employees.

However, providing insights into lived experience comes at an emotional and physical cost to the person providing this training or feedback. Anyone providing lived experience training or feedback should be adequately compensated for their time and expertise. In addition, any training provided by people with lived experience should be supported with wellbeing supports (for example, an LGBTIQ+-informed employee assistance program (EAP)).

What are examples of effective discrimination prevention strategies?

This guideline provides numerous examples of effective discrimination prevention strategies – see the suggested actions you can take listed under each minimum standard. We recommend you provide this guideline to your employees (especially leaders and managers), so that they also know some options for effective prevention strategies.





Minimum Standard 2: Systems, policies & procedures

Organisations have systems, policies and procedures to eliminate discrimination against LGBTIQ+ people at work.

Key terms	
System	This is a way of working, organising or doing something which follows a fixed plan or set of rules. It can also be a tool for doing something in an organisation (e.g. an IT system).
Policy	This is a set of ideas or a plan of what to do in a particular situation.
Procedure	This is a process or method used to accomplish a task.

Expectations

- Organisations’ systems, policies and procedures contain measures to eliminate LGBTIQ+ discrimination.
- Measures to eliminate discrimination are informed by:
 - consultations with relevant employees and stakeholders
 - risk assessments.
- Employees and other affected people (e.g. contractors) know about and can easily access organisational policies and procedures relating to inclusive workplace practices.



Type of organisation	Suggested ways you can take action
<div>SMALL ORGANISATIONS</div> <div>MEDIUM ORGANISATIONS</div> <div>LARGE ORGANISATIONS</div>	<ul style="list-style-type: none">Complete and document an annual risk assessment of workplace discrimination against LGBTIQ+ people and plan how to address the risks identified (see What should a risk assessment involve?).Develop (or adapt) an equal opportunity policy that addresses discrimination against LGBTIQ+ people and promotes inclusion of LGBTIQ+ people in your workplace (see What should I include in my equal opportunity policy?).Create (or adapt) procedures and systems to support your equal opportunity policy.Speak with your employees and relevant employee representatives (e.g. pride groups^{ae}) when identifying risks and developing systems, policies and procedures (as appropriate, considering the size of your organisation and other relevant factors).Communicate relevant systems, policies and procedures with your employees so they understand and know how to access them.
	<ul style="list-style-type: none">Develop an LGBTIQ+ discrimination prevention plan to record the preventive actions identified in the risk assessment and embed prevention in day-to-day practice (see What should be in my LGBTIQ+ discrimination prevention plan?).
	<ul style="list-style-type: none">Strengthen your LGBTIQ+ discrimination prevention plan by including evaluation measures, accountabilities and outcomes.Publicly report against the evaluation measures in your LGBTIQ+ discrimination prevention plan (e.g. in your annual report or on your website).
Record keeping	<p>Records of compliance with this minimum standard might include:</p> <ul style="list-style-type: none">documentation of systems, policies, prevention plans and/or other policies and proceduresemails to staff or meeting notes regarding systems, policies and procedurestools and resources, including records of how they were distributed to staffa strategy or action plan and related frameworks.

ae See [Minimum Standard 4](#) for information about pride groups.

What should a risk assessment involve?

A risk assessment should review the ways in which your organisation’s systems, policies and procedures could risk discrimination against, exclusion of, or other harm to LGBTIQ+ employees. The assessment should be proportionate to the size, resourcing and nature of your organisation. Usually a risk assessment will include:

- an assigned value to the level of risk (for example, low, medium or high) for each risk identified
- measures to mitigate or reduce the risk of that situation causing workplace discrimination against LGBTIQ+ people.

Below we list some common systems, policy and procedural risks identified through our research and consultations, alongside some measures for mitigating these risks.

This is not an exhaustive list and every workplace is different. Employers should consult with their staff to understand specific risk factors in their organisation.

What are some common systems risks for LGBTIQ+ employees?

System	Risk	Mitigation methods
Information technology (IT) systems	IT systems, including data trackers, algorithms and online communication tools, can risk discrimination against LGBTIQ+ employees in a range of ways (e.g. limiting a new employee’s ability to accurately record their gender when filling out online onboarding forms, or forcing someone to out themselves as gender diverse when they do not wish to do so).	Update existing IT systems to (and ensure that new systems) provide inclusive options that are up to date with contemporary practice and language. Consider consulting with LGBTIQ+ employees and incorporating inclusive criteria when testing new and reviewing old IT systems. Ensure your organisation has clear behavioural standards on appropriate behaviour and language usage on shared communication platforms. Ensure information can be updated across all platforms and systems used by an employee (e.g. if someone has updated their name and gender on your organisation’s IT system, put systems in place so that it is also updated in HR and payroll systems) (see also Record-management procedures).

System	Risk	Mitigation methods
Human resources (HR) systems	HR systems that do not offer inclusive options for gender identities or relationships risk exclusion of LGBTIQ+ employees. Online HR systems often store sensitive information about employees, including their sexual orientation and gender identity. If these systems lack robust security measures, there is a risk of data breaches that could expose LGBTIQ+ employees to discrimination and harassment.	Consider whether your organisation’s HR systems meet the needs of your workforce (e.g. is everyone’s gender identity and sexuality represented in the demographic options? Can people list more than one gender identity or update their gender identity if it changes in the future?). Ensure your security software is updated and fit for purpose to reduce the risk of potential data breaches. Let your employees know why this information is collected and where it is stored.
Employee assistance program (EAP)	EAP providers that do not provide support which is both safe and relevant can fail to meet the unique mental health and wellbeing needs of LGBTIQ+ employees.	Ask your EAP providers if they have knowledge and experience to be able to assist LGBTIQ+ employees, or can provide specific LGBTIQ+-informed practitioners for LGBTIQ+ people to request (including whether the EAP provider can safely support Rainbow Mob employees).
Payroll systems	Like HR and IT systems, payroll systems often handle sensitive information, including gender identity and sexual orientation. If this data is not protected properly, it can lead to privacy breaches and discrimination.	Educate all staff on the importance of data security and confidentiality. Ensure relevant software protections are in place.

What are some common policy risks?

Policy	Risk	Mitigation methods
Bathroom and changeroom facilities	<p>Inadequate policies on bathroom and changeroom facilities and their usage may discriminate against trans, gender diverse and intersex employees who require the use of an all-gender bathroom or changeroom.</p> <p>Research shows that trans and gender diverse people are generally at high risk of being victimised, assaulted or harassed in toilets and changerooms.⁹⁶</p> <p>Failing to set clear expectations to your employees that trans and gender diverse people are entitled to use the bathroom that accords with their gender identity may put them at risk of uncomfortable, hostile or dangerous situations from others.⁹⁷</p>	<p>Follow current best practice guidance on bathroom and changeroom facilities, e.g. from WorkSafe Victoria.⁹⁸</p> <p>Consider installing bathroom signage that describes what is in the room, not the gender of the person using the room (e.g. 'Bathroom with urinal' or 'Bathroom without urinal'). This should be done in a way which maintains separate accessible facilities where possible.</p> <p>Also consider that some employees may not feel comfortable if <i>only</i> all-gender facilities are available.</p> <p>If all-gender bathrooms cannot reasonably be provided, consider whether accessible bathrooms can be updated to all-gender bathrooms.</p> <p>Provide clear and explicit instruction to all employees that trans and gender diverse employees can use the bathroom that aligns with their gender identity (e.g. a transgender woman is entitled to use the women's bathrooms and failure to allow her to do so is likely to constitute unlawful discrimination).</p>
Data collection	<p>Data collection policies that do not adequately cover LGBTIQ+ identities, including through pronoun and gender-affirmation recognition, may risk discrimination (see Minimum Standard 5).</p>	<p>Collection of data on staff characteristics should be done anonymously and semi-regularly (e.g. through annual staff surveys).</p> <p>Ensure that data collection and protection are best practice (see also Privacy and data protection and Minimum Standard 5: How can we collect data about LGBTIQ+ people's experiences at work respectfully?).</p>

Policy	Risk	Mitigation methods
Hiring and retaining staff	<p>Policies that require certain roles to be filled by a 'male' or 'female' employee will explicitly exclude trans and non-binary people may be discriminatory.</p>	<p>Examine whether there is a need for employees to identify with a specific gender to fulfil the inherent duties of the role.</p> <p>If there is a need for an employee to be a specific gender, make sure you define the gender in an inclusive way (e.g. a role designated exclusively for women is inclusive of trans women).</p> <p>Consider whether your organisation requires an exemption under the Equal Opportunity Act or whether the role would fit within the criteria for a special measure (see 3.8 Is discrimination ever allowed?).</p> <p>Provide options for respondents to describe multiple characteristics, allowing them to select multiple options for gender identity and sexuality. This approach promotes transparency, inclusivity and accuracy in data collection.</p>
Language	<p>Policies that use non-inclusive language or fail to acknowledge diverse gender identities can alienate LGBTIQ+ employees and create a non-welcoming environment.</p>	<p>Use gender-neutral language in position descriptions.</p> <p>Use gender-neutral terms for family leave options (e.g. 'parental leave' instead of 'maternity leave').</p>
Leave	<p>Policies that do not provide equal benefits for all employees, such as carer's leave for same-sex partners or leave for gender affirmation may be discriminatory.</p>	<p>Provide access to adoption/surrogacy/parental leave, family violence leave,^{af} leave for gender affirmation and other leave such as sick leave and bereavement leave (e.g. for the death of the parent of an employee's same-sex partner even if the couple is not married).^{ag}</p>

af LGBTIQ+ people are at risk of family violence, with research indicating that most LGBTIQ+ people have experienced or will experience some form of family violence in their lifetime. See for example, 'Family, Domestic and Sexual Violence: LGBTIQ+ People', *Australian Institute of Health and Welfare* (12 April 2024) <https://www.aihw.gov.au/family-domestic-and-sexual-violence/population-groups/lgbtqa-people>.

ag Employers are legally required to provide certain leave entitlements to *all* employees. Other leave entitlements may not be legally required but will be best practice in fostering inclusive workplaces. Employers should obtain legal advice if they are unsure about what leave entitlements they must provide to their employees.

Policy	Risk	Mitigation methods
Privacy and data protection	Inadequate privacy and data protection measures can lead to breaches of sensitive information, including sexual orientation and gender identity, which can expose LGBTIQ+ employees to workplace discrimination and harm.	Ensure you are only collecting data that is necessary to your needs (see also Data collection). Clearly explain the purpose of the data collection and how the data will be used. Take steps to ensure anonymity by disaggregating the data.
Travel (particularly international travel)	<p>Some LGBTIQ+ employees may face difficulties or experience discrimination (including unnecessary questioning or discomfort) when travelling. This can be due to security procedures at airports (e.g. body scans or questions about medications) or due to the societal and legal environments of other countries (e.g. where it is criminalised or disapproved to be LGBTIQ+ or have particular relationships).</p> <p>Another risk is that LGBTIQ+ employees might not be given the opportunity to travel overseas for work because of the organisation's concerns about the risk of discrimination. This may have negative consequences for their professional development and career opportunities.</p>	<p>Ensure your travel policy acknowledges that some employees may face difficulties or barriers while travelling but that your organisation supports all employees to travel for work.</p> <p>Provide information to employees who might have the opportunity to travel for work (e.g. information from the Australian Government's Smartraveller webpage for LGBTIQ+ travellers).⁹⁹</p> <p>Give your employees the opportunity to discuss any concerns or individual mitigation planning with you. Do not assume that this will be a risk or concern for all your LGBTIQ+ employees.</p> <p>Provide an EAP service for your LGBTIQ+ employees which can be accessed while overseas.</p>
Uniforms and dress codes	Uniforms and dress codes that require strict conformity with certain gender identities or bodies without being relevant for workplace safety might make some employees (including some LGBTIQ+ employees) feel uncomfortable or vulnerable to misconduct.	<p>Consider introducing a gender-neutral dress code to the workplace.</p> <p>At minimum, allow staff to wear the uniform that they feel most comfortable in.</p> <p>Ensure staff are familiar with the dress code and set clear expectations that it is not appropriate to comment on how others dress.</p>

Policy	Risk	Mitigation methods
Rostering	Rostering policies can be discriminatory where shift allocation is based on assumptions regarding LGBTIQ+ families and caring responsibility or there is a lack of flexibility for staff who require time off for health and wellbeing reasons (e.g. gender-affirmation processes or medical appointments).	<p>Consider introducing unconscious bias education to HR, payroll and rostering staff.</p> <p>Consider how processes can be amended to ensure that discriminatory decision-making cannot be hidden or justified by someone saying that they were 'following protocol'.</p>



What are some common procedural risks?

Procedure	Risk	Mitigation Methods
Record-management procedures	<p>Record-management procedures can give rise to discrimination where incorrect or outdated information is recorded on LGBTIQ+ identities.</p> <p>Confidentiality is also a risk for record management.</p>	<p>All data collected on your employees should be confidential.</p> <p>Ensure that you regularly update your records to accommodate changes (e.g. to gender or title) and that any changes in an employee’s records are promptly replicated into all other records (e.g. an update in the payroll system is also reflected in people-management systems, booking systems, emails and calendars, rosters, task or project management systems) (see also IT systems).</p>
Onboarding and recruitment	<p>Procedures that do not actively acknowledge and mitigate biases among HR staff and hiring panels can lead to unfair treatment of LGBTIQ+ individuals during recruitment.</p>	<p>Consider introducing unconscious bias training for employees.</p> <p>Consider reviewing decisions and outcomes of recruitment processes for trends regarding LGBTIQ+ recruitment (and retention; see People management).</p> <p>Ensure recruitment panels understand their obligations under the Equal Opportunity Act and, where possible, have a representative from LGBTIQ+ communities.</p> <p>Avoid collecting personal information that is irrelevant (or could be used in a discriminatory way) without a legitimate purpose in the application process.</p> <p>Follow clear selection criteria to make the process as objective as possible and less susceptible to unconscious bias or discriminatory decision-making.</p>

Procedure	Risk	Mitigation Methods
People management	<p>Procedures that do not actively acknowledge and mitigate biases among supervisors and managers can lead to unfair treatment of LGBTIQ+ individuals during development and promotion opportunities.</p>	<p>Consider introducing unconscious bias training for employees, particularly for managers and leaders.</p> <p>Consider reviewing decisions and outcomes of recruitment processes for trends regarding LGBTIQ+ retention (and recruitment; see Onboarding and recruitment).</p> <p>Consider conducting and reviewing responses to exit interviews.</p> <p>Monitor reports and complaints involving LGBTIQ+ employees and specific managers.</p>
Reporting and complaint mechanisms	<p>Reporting and complaint mechanisms that are not sensitive to the unique needs of LGBTIQ+ employees create the risk of exclusion.</p>	<p>See guidance in Minimum Standard 3.</p>



CASE STUDY: POSITIVE DUTY IN PRACTICE



Stephanie manages Eden, a young non-binary person with dyslexia who recently joined the graphic design team of a medium-sized real estate agency with 190 employees. Stephanie has been impressed with Eden's ability to think outside the box and quickly identify solutions to complex problems, and has seen that they are settling into the team well.

During a supervision meeting, Eden asks Stephanie whether the organisation has considered the accessibility and inclusivity of its recruitment practices. Eden explains that they had difficulty understanding whether they were required to disclose their gender identity and dyslexia during recruitment, and that these concerns almost stopped them from applying for the job.

Stephanie informs Eden that people are not obliged to disclose their disability or gender identity during recruitment and that requests for this information may amount to discriminatory requests for information under the Equal Opportunity Act.¹⁰⁰ Stephanie obtains Eden's consent to speak with the HR team about the recruitment issues they raised.

Stephanie is aware of the organisation's positive duty to eliminate discrimination and considers that amending the organisation's recruitment procedures and online application forms is proportionate to the size and resourcing of the organisation.

Stephanie speaks with Anashe from the HR team about the feedback from Eden. Stephanie and Anashe review the online recruitment form and change it to show pronouns as optional. They also include a statement in the online application form about the applicant's ability to choose whether to disclose gender identity or disability during recruitment.

Stephanie tells Eden about these changes to the recruitment procedure and online recruitment form in their next supervision meeting and Eden is pleased to have helped to make the organisation more inclusive.

Following this positive experience, Eden recommends the business as an inclusive and responsive place to work to their online network of LGBTIQ+ neurodivergent graphic designers. Stephanie reports to her manager on the success of the changes, and how they have improved recruitment processes and widened the diversity of the pool of applicants for future recruitment.

How can I respectfully consult with LGBTIQ+ staff?

With consent, you should speak with LGBTIQ+ employees when developing, reviewing or updating systems, policies and procedures to ensure they promote inclusivity.

The simplest way to get guidance and feedback from LGBTIQ+ staff is to go to your pride group or LGBTIQ+ advisory group (see **Minimum Standard 4**). If your organisation does not have a pride or advisory group, you can seek feedback from all employees (as you may not know which employees identify as LGBTIQ+).

When asking for your LGBTIQ+ employees' views, be mindful of your staff's needs and preferences – for example:

- Consider whether your organisation is too small to confidentially gather employees' views without unintentionally outing someone.
- Recognise the emotional burden on LGBTIQ+ employees when seeking their input. Discussing discrimination can be difficult and your LGBTIQ+ employees may not want to engage. Always ask for their permission and ask how much they would like to be involved.
- Respect the choices of employees who are open about being LGBTIQ+ and want to assist, as well as those who prefer to maintain their privacy or do not want to contribute.
- Do not expect LGBTIQ+ employees to volunteer their time or knowledge for reviews. Ensure their contributions are recognised, compensated^{ah} and conducted during business hours. Consider including this work as a key performance indicator for performance reviews and promotions.
- Support LGBTIQ+ employees through this work by providing access to an LGBTIQ+-informed EAP or other professional support.

^{ah} Compensation could come in various forms, including financial compensation, additional opportunities such as professional development training, and increased workload flexibility.

What should I include in my equal opportunity policy?

While every organisation’s equal opportunity policy will be tailored for the organisation, there are some key features of equal opportunity policies:

Key Feature	Description
Purpose and scope	<ul style="list-style-type: none">• a clear opening statement committing to equal opportunity and stating that discrimination (and other unlawful behaviour) based on personal characteristics protected by the Equal Opportunity Act is against the law and will not be tolerated by your organisation.• a statement on the purpose of the policy – why it exists and what its intended outcomes and benefits are.• a statement on the policy’s scope – who the policy covers (for example, employees, contractors and potentially volunteers and/or stakeholders) and when it applies (for example, in recruitment, promotion, training, compensation, leave access).
Background on key terms and concepts (including workplace misconduct)	<ul style="list-style-type: none">• an explanation of what discrimination and other workplace misconduct (for example, sexual harassment, victimisation) are under the Equal Opportunity Act.• clear definitions of gender identity, sex characteristics, sexual orientation and other key terms based on the law.• case studies or examples of how workplace discrimination based on a person’s gender identity, sex characteristics and sexual orientation might arise in your organisation.
Consultation	<ul style="list-style-type: none">• an outline of how the policy was designed, including which roles, groups, unions or stakeholders were consulted and how (for example, workshops, surveys, interviews).
Staff rights and responsibilities	<ul style="list-style-type: none">• information on staff entitlements under the policy and what employers are required to provide, including substantive equality in recruitment and promotion, a safe and positive workplace without discrimination, and processes for complaints and reports without fear of victimisation.• information on staff responsibilities and behavioural expectations under the policy, including to prevent discrimination in the workplace, treat others with respect regardless of their gender identity, sex characteristics and sexual orientation (as well as other protected attributes), manage respectful relationships, follow the standards and processes in this policy, and cooperate fully with complaint procedures.

Key Feature	Description
Manager responsibilities	<ul style="list-style-type: none">• information on the responsibilities of managers and leadership under the policy, including to inform staff of their rights and responsibilities, respond swiftly to incidents of alleged discrimination, model positive and professional behaviour, and communicate transparently about complaint processes and progress.
Prevention	<ul style="list-style-type: none">• information about how your organisation plans to prevent discrimination and other unlawful conduct under the Equal Opportunity Act.
Reporting and response	<ul style="list-style-type: none">• information about your organisation’s informal and formal complaint options and processes, and where individuals can get help and advice or make a complaint.• the consequences for employees if they breach the policy.
Other relevant policies	<ul style="list-style-type: none">• an outline of other relevant policies and procedures (for example, code of conduct, recruitment, procurement, flexible work, health and safety) and the key relevant laws (for example, the Equal Opportunity Act, the Sex Discrimination Act).
Review and governance	<ul style="list-style-type: none">• information about the review of and the governance framework for the policy, including the timelines for review and evaluation of the policy, who is responsible for the policy and how changes to the policy are made.



What should be in my LGBTIQ+ discrimination prevention plan?

All organisations need to think about prevention; however, to comply with the positive duty only medium and large organisations are required to develop a formal prevention plan.

Your prevention plan will map how your organisation will proactively prevent and address LGBTIQ+ discrimination within its systems, policies and procedures.

A prevention plan should:

- assess the causes, risks and gaps in responses to LGBTIQ+ discrimination
- be based on a risk assessment, with input from employees, their representatives and other stakeholders
- set out clearly articulated and measurable actions, with a clear line of accountability for what the employer needs to do to prevent discrimination
- include contributions from employees, their representatives and other stakeholders.

Employees need to understand the prevention plan and know where to find it. Leaders within the organisation should be clear on their responsibilities and accountabilities in implementing the plan. Determining the content of the plan will require consideration of both the prevention and the response measures that the employer will adopt, including those described in these standards.

How can I ensure my employees are aware of my organisation's policies and procedures?

In addition to ensuring knowledge and understanding (see [Minimum Standard 1](#)), organisations are also responsible for ensuring employees are aware of policies and procedures. Regular updates should be provided to employees so they know about and can access organisational policies and procedures. Things to consider include:

- **How you communicate:** Communication about policies and procedures should be clear and easy for all employees to understand. If you communicate online, ensure new policies and procedures are clearly linked to their locations. For in-person announcements, provide employees with hard copies or clearly indicate their physical locations. All communication should be directed at all employees, not just the employees you know or believe to be LGBTIQ+.
- **How you conduct employee surveys:** Ask if employees are aware of policies on LGBTIQ+ inclusion, non-discrimination and equal opportunity. Consider how you might also test employee knowledge and understanding of the content of these policies (for example, who the contact officers are, ways to report workplace misconduct) to help you identify and address gaps in staff awareness.



How do I support an employee who is affirming their gender (sometimes referred to as transitioning)?

Planning is essential to a successful gender affirmation at work.

Each employee's experiences and circumstances will differ, so a **workplace affirmation plan** can be helpful to create a shared understanding of the employee's needs and wishes. All planning must be done with the consent and involvement of the employee concerned.

Key considerations include:

- **Does the employee want to develop a gender-affirmation plan?** You should check whether the employee wants a plan, and a support person involved in any discussions.
- **What are the timeframes?** Consider discussing how to manage things like workload and leave in the context of these timeframes.
- **What details are changing?** Check with the employee whether their name and/or pronoun will change and when these will change. Keep in mind that some people's pronouns may be context specific – they might choose not use certain pronouns in a particular environment or around particular people because they do not feel safe or comfortable to do so.
- **What records and systems need to be updated?** Consult with HR about how to update documentation, forms and other records to ensure they contain correct gender markers, names, pronouns and titles. Be sure to discuss privacy, confidentiality and disclosure with the employee. Ensure that all systems are promptly updated (e.g. HR, IT, payroll, email, any other relevant systems).
- **Should staff be informed and how?** It is up to the employee who is affirming their gender to decide whether they wish to communicate information about their gender affirmation with other staff or not and what role the organisation will play in supporting any communications. You should support your employee's choice and discuss the details of their wishes with them (e.g. if they want support to communicate with other staff, discuss who should be responsible for communications, when and in what context). Some employees may prefer a team meeting, an all-staff email or to inform others themselves; others may prefer no communications at all.
- **Which toilets and facilities are appropriate for the employee?** Discuss which facilities the employee would feel most comfortable using, as well as any timeframes involved. Let them know that this is their decision, that they are entitled to use the bathrooms that align with their gender identity and that you will support them.
- **What training does your staff need?** You can informally gauge your team's knowledge and awareness of trans and gender diverse people, and discuss with HR and the employee what kind of training they think would be appropriate for your workplace.
- **What ongoing support might the employee need?** Advise the employee of your pride group (if you have one) and the LGBTIQA+-specific support available through the EAP.

You may not feel certain about how you can assist your staff through a gender-affirmation process. If someone approaches you about affirming their gender, be honest, open and respectful. Some key things you can do are:

- **Be sensitive to their situation.** An employee who is affirming their gender may feel vulnerable about disclosure and what lies ahead of them. Take the time and give them the space to explain and discuss their needs.
- **Keep an eye on other people's reactions.** You can help set the tone for an inclusive and supportive workplace culture, and address inappropriate or discriminatory behaviour promptly.
- **Encourage staff to raise any questions with you privately.** This helps protect your employee who is affirming their gender from being placed in an uncomfortable or harmful position.
- **Be mindful of names and pronouns.** Make it clear to staff that there is a difference between an unintentional slip-up and deliberate or frequent use of the wrong name or pronoun. Ask your employee whether they would like you to gently remind or correct others who have made a mistake – either in the employee's presence or when they are not around.
- **Remind all staff that discrimination is not tolerated in any form.** All staff have obligations under anti-discrimination and workplace laws, as well as any codes of conduct your workplace has. Set clear expectations about what behaviour will constitute discrimination.





Minimum Standard 3: Reporting & response

Responses to complaints and reports of discrimination support impacted people and hold perpetrators to account.

Key terms	
Complaint of discrimination	This is a formal allegation that requires follow-up action.
Report of discrimination	This is an informal allegation or concern that may not require follow-up action (unless action is required by under the Equal Opportunity Act or the Occupational Health and Safety Act e.g. the report identifies a risk of psychological or physical harm).

Expectations

- Organisations have inclusive reporting and complaint procedures that:
 - are informed by consultation with employees (particularly those who are LGBTIQ+)
 - are communicated effectively
 - have options to report anonymously (where possible).
- Responses to reports and complaints of discrimination are fair, timely, trauma-informed, victim-centred and confidential.
- Complaints of discrimination and steps taken in response are recorded.



Type of organisation	Suggested ways you can take action
<div>SMALL ORGANISATIONS</div> <div>MEDIUM ORGANISATIONS</div> <div>LARGE ORGANISATIONS</div>	<ul style="list-style-type: none">Develop a complaint and reporting procedure with input from your LGBTIQ+ employees (and/or relevant representatives) (see Minimum Standard 2 on respectful consultation practices).Write your complaint and reporting procedure in plain and inclusive language, and provide translations (where necessary).Communicate your complaint and reporting procedure to all staff, so they understand how to make a complaint or report through multiple avenues (including external options).Confidentially record complaints and reports of discrimination, and the responses you provide.Recognise when your organisation is too small to impartially manage complaints (e.g. if the owner of a family-owned and operated small business receives a complaint about their own behaviour or that of a family member). Where this is the case, contact external services for support to respond to complaints (see When should a complaint be referred to an external organisation?).
	<ul style="list-style-type: none">Provide specialised training to your staff in support roles, including those handling complaints, so they can manage complaints and reports in a victim-centred and trauma-informed way.Support the wellbeing of your staff who handle complaints (e.g. via an LGBTIQ+-informed EAP).Reflect on and learn from all complaints you receive (e.g. have a standing agenda item at senior management meetings to review and discuss complaint trends, risks and what can be done to prevent further incidents).
	Establish anonymous reporting pathways to address power imbalances within the workplace (see What should I know about anonymous reporting processes?).
Record keeping	<p>Records of compliance with this minimum standard might include:</p> <ul style="list-style-type: none">your complaint and reporting procedurerecords of your communication of complaint pathways to staff (e.g. emails or posters)attendance records for equal opportunity contact officer training sessionsa complaints and reports register, including the response taken and the outcome (that is kept confidentially and securely stored).

Why are reporting and complaint mechanisms important?

Ineffective reporting and complaint processes erode trust and cause employees to lose confidence in the organisation. This can lead to employees being less likely to report discrimination, which in turn increases the potential for discrimination to continue unchecked.

Research shows that poor complaint handling is a major reason matters escalate to legal proceedings.¹⁰¹ Failure to respond appropriately to reports and complaints of discrimination can result in an employer being found legally responsible (vicariously liable) for the unlawful conduct of employees, unless it can prove that it took reasonable precautions to prevent the conduct from happening in the first place (see 3.5.2 Vicarious liability).¹⁰²

What barriers stop LGBTIQ+ people from reporting discrimination?

Research suggests that workplace discrimination is significantly under-reported and there are a range of barriers that prevent people coming forward.¹⁰³ During consultations we heard that that barriers to reporting for LGBTIQ+ people include:

- fear of reprisals (i.e. victimisation – see **3.7.1 Victimisation**) or negative career consequences
- unclear or inadequate complaint policies and procedures
- concern that confidentiality will not be maintained
- psychologically unsafe and unsupported reporting procedures
- a lack of trust and confidence in internal reporting and response systems
- non-inclusive attitudes towards and prejudiced commentary about LGBTIQ+ people within the workplace
- not wanting to be perceived as a troublemaker
- self-blame, shame or lack of understanding of what constitutes discrimination
- not feeling that a formal report can be made because the discrimination is subtle.¹⁰⁴

What are the features of a good internal complaint process?

To maintain a respectful and high-performing workforce, workplaces should respond effectively to and learn from complaints.

The following table lists features of a good complaint process. These features can be applied to any workplace and are not specific to complaints from or about LGBTIQ+ employees.¹⁰⁵

Your workplace may also have an enterprise agreement in place that contains further requirements around complaint-handling/dispute resolution.

Features of good complaint processes	
Flexible	<ul style="list-style-type: none">• A range of reporting and response options are available, including self-management (where the complainant resolves the matter on their own), informal or formal internal management and external management, and options to report anonymously (see What should I know about anonymous reporting processes?).• Complaint procedures outline a range of contact people in different roles who can receive reports or complaints (e.g. managers, HR personnel, equal opportunity contact officers, work health and safety representatives, union representatives).
Fair	<ul style="list-style-type: none">• Both the complainant (the person who experienced the discrimination) and the respondent (the person who allegedly engaged in the discriminatory conduct) can present their version of events, provide supporting information and respond to potential negative decisions.• Both the complainant and the respondent are listened to without judgement.• Complaint processes are applied consistently and impartially, regardless of the position or seniority of the respondent or complainant.• Actions and outcomes are proportionate and hold respondents to account appropriately.
Confidential	<ul style="list-style-type: none">• Information about a complaint is only provided to those people who need to know about it.• Confidential records are made and stored securely.
Transparent	<ul style="list-style-type: none">• The complaint process, the average or expected timeframes of the process, and the possible outcomes of the complaint are clearly explained before someone lodges a complaint.• The complainant and the respondent are kept informed at key stages and about the reasons for any decisions.

Features of good complaint processes	
Accessible	<ul style="list-style-type: none"> The complaint process is easy to access and understand, and everyone can participate equally.
Timely	<ul style="list-style-type: none"> The complaint process is conducted without unnecessary delay.
Supportive	<ul style="list-style-type: none"> Processes are designed to minimise harm to complainants (e.g. limiting how many times they must tell their story) and take into consideration any cultural or accessibility requirements. Processes include the right to a support person for both the complainant and the respondent, as well as referrals for additional support. Processes support First Peoples' cultural safety.
Protective	<ul style="list-style-type: none"> Employees are protected from victimisation because they made a report or complaint (see 3.7.1 Victimisation and How can leaders and managers prevent victimisation?). Employees are protected from misuse of the complaint system, including through unreasonable or malicious complaints (e.g. through effective triaging procedures). Complainants, respondents, bystanders and complaint handlers are provided with information on mental health and wellbeing support during the complaint process.
Continuously improved	<ul style="list-style-type: none"> Methods for improving complaint systems and processes are regularly considered by management, using complaint data and employee feedback about the complaint process.

How can leaders and managers prevent victimisation?

We heard in consultations that many LGBTIQ+ people do not report workplace discrimination because they are afraid that they will be punished for ‘being difficult’ or ‘causing trouble’. Being punished for making a report or complaint of unlawful behaviour can be victimisation, which is unlawful under the Equal Opportunity Act (see [3.7.1 Victimisation](#)).

To prevent victimisation, employers should ensure that, once a complaint or report has been made:

- leadership sends a clear message that victimisation is unlawful and will not be tolerated
- parties are reminded at the beginning of a complaint process that victimisation will not be tolerated
- a victim-centred approach to resolving complaints is taken
- there is monitoring for victimisation, including by having open, regular communication with the complainant and other employees
- employees are encouraged and supported to report victimisation
- swift and decisive action is taken to discipline workers engaging in victimisation.

When should a complaint be referred to an external organisation?

In some circumstances, especially for small organisations, handling a complaint internally may be impractical, counterproductive or irresponsible. For example, it may not be appropriate to handle a complaint internally where:

- the complainant does not want the matter dealt with internally
- the employer does not have the capacity or expertise to effectively manage the complaint internally
- the organisation is too small to be able to maintain all parties trust and confidentiality as well as remain impartial (for example, where the investigator has a personal connection to the parties and cannot objectively consider the evidence)
- there are multiple allegations or multiple respondents, revealing a systemic or complex issue at the organisation
- the respondent is the manager, CEO or another senior leader
- there are allegations that the employer has not managed complaints properly in the past, which mean the parties and/or broader workforce do not trust the process or outcomes
- the matter involves criminal behaviour and/or the employer has legal obligations to report it externally.

External agencies such as the Commission (for civil matters) or Victoria Police (for criminal matters) can receive complaints and referrals.

Employers may also choose to engage a reputable independent specialist investigator to gather evidence objectively before managing the complaint themselves. Alternatively, where appropriate, employers can seek expert advice to assist them to deal with matters themselves.

Referring a complaint externally does not mean the employer has discharged their positive duty. Employers must still carefully consider any further actions or risks to address within the workplace more broadly.

What should I know about anonymous reporting processes?

For large organisations, anonymous reporting processes are an important element of leading practice.¹⁰⁶ They are a powerful way of encouraging reporting, addressing power imbalances and barriers to reporting, and understanding the true nature and scale of unlawful conduct within an organisation that may otherwise remain hidden.¹⁰⁷

Anonymous reporting processes are useful because some people:

- might feel more comfortable reporting unlawful conduct anonymously
- might not want to lodge a complaint
- might not be seeking a direct outcome for themselves but want to help the organisation improve its systems, processes, procedures or culture
- might want to alert the organisation to unlawful conduct without drawing attention to or outing themselves.

It may not always be reasonable or possible for an organisation to provide an anonymous reporting process. For example, if an organisation is small, it may be difficult to keep a report anonymous.

Where an organisation has an anonymous reporting option, it is important to provide clear information to employees about:

- how anonymous reports will be responded to
- the limitations of organisational responses to anonymous reports (for example, where insufficient information is provided in an anonymous report, and it is not practical to investigate).

Some simple examples of anonymous reporting options include:

- a locked box
- an online form (that is not tied to staff email or IT accounts).





Minimum Standard 4: Workplace culture

Responses to complaints and reports of discrimination support impacted people and hold perpetrators to account.

Key terms	
Workplace culture	The values, beliefs and attitudes that outline and influence employee behaviour within an organisation, which affect how employees, customers and stakeholders experience the organisation.
Allies	These are people who support and advocate for LGBTIQ+ people but are not necessarily LGBTIQ+ themselves.
Active bystander	This is someone who witnesses discrimination at work (but is not directly involved in it) and takes action.

Expectations

- Leaders and managers have set clear expectations that discrimination against LGBTIQ+ people at work will not be tolerated.
- Leaders and managers model respectful behaviour and support the wellbeing of their LGBTIQ+ staff.
- Leaders and managers are accountable for organisational change to prevent and respond to discrimination against LGBTIQ+ people at work.

Type of organisation	Suggested ways you can take action
<div>SMALL ORGANISATIONS</div> <div>MEDIUM ORGANISATIONS</div> <div>LARGE ORGANISATIONS</div>	<ul style="list-style-type: none">• Leaders and managers demonstrate commitment to equality, safety and respect at every opportunity (e.g. in your organisation's values, employee contracts, codes of conduct, induction processes and resources on noticeboards).• Leaders and managers communicate to all employees (e.g. by speaking directly, sending emails, displaying posters, notices or brochures in the workplace) about:<ul style="list-style-type: none">– clear expectations that discrimination against LGBTIQ+ people will not be tolerated in the workplace– what constitutes discrimination and unacceptable behaviour with clear examples.• Leaders and managers demonstrate they are allies by modelling inclusive behaviour and keeping informed on current and best practice.

<div>MEDIUM ORGANISATIONS</div> <div>LARGE ORGANISATIONS</div>	<ul style="list-style-type: none">• Leaders and managers support active bystanders to act if they witness discrimination against LGBTIQ+ people at work and model active bystander behaviour themselves (see Active bystanders).• Leaders and managers are held accountable for implementing the LGBTIQ+ inclusion policy and other systems, policies and procedures (see Minimum Standard 2) designed to eliminate discrimination against LGBTIQ+ people at work (e.g. via contractual requirements or performance targets).
	<ul style="list-style-type: none">• Leaders and managers anticipate and plan for resistance to any organisational changes.• Visually show that your organisation is an inclusive workplace by displaying LGBTIQ+ symbols of support (e.g. on your website, in job descriptions, in marketing materials, displaying pride flags, and using rainbow lanyards).• Create a pride group so your LGBTIQ+ staff can connect and support each other.^{ai}• Celebrate LGBTIQ+ days of significance (see How can my organisation celebrate LGBTIQ+ identities respectfully?), after consulting with your LGBTIQ+ staff (e.g. via the pride group) on the appropriate content of these celebrations.^{aj}
	<ul style="list-style-type: none">• In consultation with your pride group, consider establishing a separate LGBTIQ+ advisory group, which can provide:<ul style="list-style-type: none">– feedback on systems, policies and procedures– support for HR or people and culture teams– feedback on leadership behaviour and culture (and hold leadership accountable).^{ak}• Include obligations about discrimination and respectful workplace behaviour in job descriptions, performance goals, key performance indicators, bonus structures and promotion processes.
Record keeping	<p>Records of compliance with this minimum standard might include:</p> <ul style="list-style-type: none">• emails to staff or meeting notes about expectations of respectful workplace behaviour• leadership position descriptions, performance plans and work plans• policies, codes of conduct and employee contracts• terms of reference for your pride group or LGBTIQ+ advisory group.

ai This should only be done where appropriate (e.g. according to the size of your organisation and the interest of your LGBTIQ+ staff).

aj Celebrations of LGBTIQ+ identities should always be accompanied by substantive work to ensure inclusive workplace practices (i.e. by fulfilling all minimum standards in this guideline).

ak Alternatively, the above roles can sit with the pride group (if the members are willing to take on these responsibilities and their contributions are recognised).



What are allies? How can they help create inclusive workplaces?

Allies are people who support and advocate for LGBTIQ+ people but are not necessarily LGBTIQ+ themselves.¹⁰⁸ Informed allies are essential to creating inclusive workplaces for LGBTIQ+ people.¹⁰⁹ Allyship is not about 'treating everyone the same' but about embracing and celebrating our differences.

The diversity of and within LGBTIQ+ communities means that LGBTIQ+ people can be allies for other LGBTIQ+ people (for example, bisexual people being allies for intersex people, and gay men being allies for trans and gender diverse people).

Some actions that allies can take to support LGBTIQ+ co-workers include:

- introducing your pronouns, so others feel welcome to do the same (e.g. 'Hi, my name is Elliot. I use he/him pronouns.')
- calling someone out (gently) if they misgender someone, provided you are sure the affected person would want this to happen (e.g. 'Taylor uses they/them pronouns')
- role modelling inclusive behaviour (e.g. including people with rainbow families in conversations about their kids)
- including LGBTIQ+ people in your communications (e.g. including images of LGBTIQ+ people in marketing or promotional materials)
- learning more about LGBTIQ+ identities through your own research
- standing with your LGBTIQ+ colleagues by:
 - showing them you noticed discriminatory behaviour and asking them if they are okay; this helps LGBTIQ+ employees know they are supported by allies at work
 - speaking up if you hear someone say something inappropriate (for example, making a transphobic comment, asking an inappropriate question, misgendering a co-worker), unless the affected LGBTIQ+ person has asked you not to say anything
 - supporting the affected LGBTIQ+ person to report the incident or make a complaint (but also respecting their wishes if they do not).

What can leaders and managers do to create an inclusive workplace culture?

Leaders and managers in organisations of all types and sizes can help create an inclusive workplace culture. For example, you can:

- **clearly explain that discrimination is not tolerated at your workplace:** Explain to your staff that there are limitations on ‘bringing your whole self to work’ – any discriminatory, disrespectful or hateful behaviour will not be tolerated.
- **use inclusive language in your communications:** For example, use gender-neutral language in group emails and team meetings.
- **support (but do not force) staff to be ‘out’ at work:** LGBTIQA+ people do not have an obligation to tell you about their gender identity, sex characteristics or sexual orientation. However, leaders and managers are obliged to make the workplace safe if an LGBTIQA+ employee wishes to be open about their identity/ies at work.
- **remember that you may not know whether your staff are LGBTIQA+:** Take action to create safety and inclusivity even if you are not aware of any LGBTIQA+ employees in your organisation. People may be LGBTIQA+ and not ‘out’ at work.
- **have LGBTIQA+ leaders and role models:** It is helpful for LGBTIQA+ employees to see other LGBTIQA+ people in leadership roles. This may give a sense that the workplace is inclusive and that there are career-progression opportunities in your organisation.

Active bystanders

When an active bystander calls out discrimination, they help create a safer workplace by demonstrating that discriminatory behaviour is not acceptable.¹¹⁰

Research has found that organisations should support employees to take the following active bystander actions:

- identify behaviours that require action
- decide to act (including by emphasising active bystander action as a norm)
- determine what action/s to take
- be confident in taking the identified action/s
- take the identified action/s.¹¹¹

To support bystanders to act, employers should equip them with knowledge and understanding of LGBTIQA+ communities (see **Minimum Standard 1**) and ensure a workplace culture that is supportive and prevents victimisation (see **Minimum Standard 3**).

How can leaders and managers anticipate and plan for resistance to organisational change?

Some of your employees may not like the changes you put in place to ensure your workplace is inclusive. That is okay – resistance is a normal part of change.

Resistance and backlash can look like a range of defensive behaviours, including:

- denying that discrimination against LGBTIQA+ people is a problem
- diminishing the merit of someone’s appointment to a role (on the basis that they are LGBTIQA+)
- negative comments, either online or in person.

Leaders and managers can prepare for and reduce the risk of negative or hostile responses, for example by:

- engaging with staff early in the process to reduce the risk that people will be alarmed or feel threatened by changes
- communicating the purpose and extent of any changes, and providing avenues for constructive feedback
- ensuring that all leaders are on board with the change process
- gathering information about the attitudes of staff to understand how ready the organisation is to implement change
- collecting data, resources and information to respond to staff questions and concerns.

If resistance does occur, leaders and managers should take steps to respond, for example by:

- protecting LGBTIQA+ employees from being the target of resistance
- acknowledging resistant staff members’ concerns and responding to their questions
- ensuring all staff understand the overall organisational and societal benefits of preventing discrimination
- looking for common ground and using any information prepared beforehand to remind resistant staff of the importance of this work
- making time for self-reflection on discussions with resistant staff
- where policies have been breached or where discrimination, bullying or harassment has occurred, ensuring that expectations about workplace behaviour are reinforced and taking corrective action as required
- contacting the Commission for assistance where needed.

Challenging discriminatory comments

Think about how you may want to respond to discriminatory comments in the workplace. Some possible responses are:

- 'I don't think that person's gender identity/intersex variation/sexual orientation is relevant here.'
- 'Our organisation has an anti-discrimination policy. I follow it and I expect you to follow it too.'
- 'I'm not okay with this kind of humour, it's discriminatory against LGBTIQ+ people. I would prefer that you don't say that again.'
- 'You can have a sense of humour without belittling other people.'
- 'That's a weird thing to say. What do you mean by that?'
- 'Yeah, that's not cool' while walking away.

If you are a manager or a leader, be aware that you may have legal obligations to take proactive action in response to discriminatory comments.



What are pride groups?

A pride group (also known as an LGBTIQ+ peer support network) is a social group within the workplace, which enables LGBTIQ+ employees to connect and support each other. Research shows that positive social experiences at work can contribute to feelings of inclusion, belonging and career development for LGBT people.¹¹² Pride groups can provide an opportunity for this connection and support LGBTIQ+ employees' wellbeing.

When setting up a pride group, there are a few key things to remember:¹¹³

- **Invite everyone:** Every employee should be invited to the group, regardless of whether you know that they are part of the LGBTIQ+ communities. This is important as you may not know the gender identity, sex characteristics or sexual orientation of all your employees. You should make clear that the group is only open to LGBTIQ+ people and remember that not all LGBTIQ+ will want to join.
- **Recognise & compensate participation:** The time and effort of members of the LGBTIQ+ pride group and the advisory group should be recognised (e.g. in work plans, performance reviews, and promotion considerations).
- **Meet during work hours:** Regardless of the group's self-identified purpose, the meetings should take place in work hours, as the existence of the group is beneficial to the organisation. In some instances, the group may feel more comfortable meeting off-site, particularly if there are sensitive discussions.
- **Support wellbeing:** The wellbeing of the members should be supported (e.g. via an LGBTIQ+-informed EAP).
- **Purpose and scope:** The group itself should decide its purpose and scope, including:
 - what sort of issues it wishes to discuss and whether anything is off-limits
 - whether it wants to assist in organising celebrations of LGBTIQ+ identities
 - whether it is willing to undertake an advisory role or wishes to keep the group for a purely social purpose; both options are valid and should be supported by leadership
 - if, how and when allies can participate in the group.

If the pride group does not wish to perform an advisory role, leadership could appoint a pride champion or set up a separate LGBTIQ+ advisory group (subject to the size and nature of the organisation) to provide feedback on systems, policies and procedures, support the HR team and hold leadership accountable.

How can my organisation celebrate LGBTIQ+ identities respectfully?

Celebrating LGBTIQ+ identities is a great way to demonstrate that your organisation supports your LGBTIQ+ employees. It is essential, however, that these celebrations do not take place without doing substantive work to improve LGBTIQ+ people’s experiences of your workplace (for example, by fulfilling the minimum standards in this guideline).

Good ways to demonstrate that you are an LGBTIQ+-inclusive employer include:

- signalling on your website and in your job advertisements that you value diversity and welcome LGBTIQ+ applicants
- displaying visual signals of welcome for LGBTIQ+ people in your workplace, such as hanging rainbow flags, wearing rainbow lanyards or wearing a badge identifying yourself as an ally
- recognising and celebrating LGBTIQ+ memorial dates, events and anniversaries.

The following table lists some key dates of LGBTIQ+ celebration, awareness and reflection.¹¹⁴ Discuss with your pride group or LGBTIQ+ advisory group which of these dates they would like recognised and how they would like to mark the date.



What	Flag of celebrated community	When	Where
Midsumma Festival		Varies (typically January to February)	Melbourne
Midsumma Pride March		Varies (typically February)	Melbourne
Trans Day of Visibility		31 March	International
International Asexuality Day		6 April	International
Lesbian Visibility Day		26 April	International
International Day Against Homophobia, Biphobia and Transphobia (IDAHOBIT)		17 May	International
Pansexual Visibility Day		24 May	International
LGBTQ Domestic Violence Awareness Day		28 May	International
Pride Month		June	International
NAIDOC Pride Night	  	During NAIDOC Week each July	Australia
International Non-Binary People’s Day		14 July	International
Wear It Purple Day		Last Friday in August	International
Bi Visibility Day		23 September	International
International Lesbian Day		8 October	International
National Coming Out Day		11 October	International
International Pronouns Day		Third Wednesday of October	International
Ace Week (formerly Asexual Awareness Week)		Late October	International
Intersex Awareness Day		26 October	International
Transgender Awareness Week		Second week of November	International
Transgender Day of Remembrance		20 November	International
World AIDS Day		1 December	International



Minimum Standard 5: Continuous improvement

Organisations regularly review, evaluate and improve systems, policies and procedures to eliminate discrimination against LGBTIQ+ people at work and promote an inclusive workplace culture.

Key terms	
Review	This is a structured examination of your organisation’s systems, policies and procedures at planned intervals which considers how they are working, including the risks of discrimination for specific groups (e.g. LGBTIQ+ people).
Systemic issues	These are cultural norms, ideologies, systems, policies and procedures that directly or indirectly discriminate against, exclude or disadvantage certain groups (e.g. LGBTIQ+ people) and maintain inequality.

Expectations

- Organisations use feedback, reporting and complaint data, and other relevant information to assess trends and risk factors.
- Organisations regularly review and change systems, policies and procedures in response to feedback, data and other information.
- Organisations communicate trends, risk factors, lessons learned, and improvements made with employees and key stakeholders (where appropriate).



Type of organisation	Suggested ways you can take action
SMALL ORGANISATIONS	<ul style="list-style-type: none">• Review your systems, policies and procedures relevant to workplace discrimination against LGBTIQ+ people at planned intervals. Reviews should consider complaints, feedback, and identified trends and risks of discrimination (see Minimum Standard 2).• Speak with your LGBTIQ+ employees regularly about how your systems, policies and procedures are working and what improvements can be made (e.g. via your pride group or anonymous feedback).• Inform your employees and key stakeholders (where appropriate) about:<ul style="list-style-type: none">– trends, risk factors and lessons learned from reviews– changes made in response to reviews.
MEDIUM ORGANISATIONS	<ul style="list-style-type: none">• Implement a process where complaints trigger a review of workplace systems, policies and procedures to uncover any systemic issues.• Interview departing staff to hear their views on the organisation’s compliance with anti-discrimination policies and risks of LGBTIQ+ discrimination.• Conduct anonymous, confidential surveys periodically to assess your staff’s knowledge about discrimination against LGBTIQ+ people at work, their experiences of discrimination (if any) and their willingness to report discrimination.
LARGE ORGANISATIONS	<ul style="list-style-type: none">• Integrate anti-discrimination practices into your monitoring and evaluation frameworks and implementation plans.• Audit your organisation’s compliance with the Equal Opportunity Act, this guideline and internal anti-discrimination policies and procedures at planned intervals.
Record keeping	<p>Records of compliance with this minimum standard might include:</p> <ul style="list-style-type: none">• meeting notes• survey results and data reports• reporting and complaint registers• monitoring frameworks and evaluation reports• your revised LGBTIQ+ inclusion policy or LGBTIQ+ discrimination prevention plan (and/or other relevant updated systems, policies and procedures).

How is continuous improvement different from risk assessment?

Risk assessment is about anticipating and mitigating potential issues (for example, risk of legal proceedings, risk to reputation, and risk to staff wellbeing if discrimination happens).

Continuous improvement is about monitoring actions and making consistent, incremental changes to build a responsive and inclusive workplace.

CASE STUDY: CONTINUOUS IMPROVEMENT VS RISK ASSESSMENT



A **risk** was identified in a leave policy that did not provide for surrogacy leave. The organisation amended the policy. This mitigated the risk.

Separately, as part of a **continuous improvement process**, the organisation identified a lack of LGBTIQ+ managers and leaders. The organisation addressed this by changing advertising templates, reviewing recruitment, onboarding and progression policies over time, and monitoring the numbers.

What should a review of systems, policies and procedures include?

PHASE 1: MONITOR

Collect data that helps you understand whether your systems, policies and procedures are working to prevent workplace discrimination against LGBTIQ+ people. Relevant data could include:

- complaints and reports of discrimination
- employment data (e.g. whether you have any leaders who are LGBTIQ+, whether there are wage discrepancies between LGBTIQ+ employees and non-LGBTIQ+ employees)^{al}
- employees' understanding of their rights and obligations (via periodic surveys)
- feedback from employees about workplace culture (e.g. through exit interviews and periodic surveys)
- feedback from other stakeholders (e.g. customers or clients) about service delivery.

al Note that there will likely be limitations to this data, as some LGBTIQ+ staff may choose not to disclose that they are LGBTIQ+ for a variety of reasons.

PHASE 2: EVALUATE

Considering the data collected in phase 1, reflect on how your systems, policies and procedures are working to prevent workplace discrimination against LGBTIQ+ people and whether change is required.

Consider, for example, whether your systems, policies and procedures are up to date with:

- the needs of your employees, customers and clients
- contemporary language and LGBTIQ+ identities
- evolving technology
- best practice guidance.

PHASE 3: PLAN FOR CHANGE

Considering the reflections you made in phase 2, plan how to address any issues or out-of-date systems, policies or procedures.

While making your plan for change, seek input from relevant parties, including your pride group or LGBTIQ+ advisory group and other stakeholders.

Consider how these changes might affect different stakeholders, especially your LGBTIQ+ employees.^{am}

PHASE 4: MAKE A CHANGE

Implement the changes you identified in phase 3.

PHASE 5: COMMUNICATE THE CHANGES

After the changes have taken place, it is important to communicate these changes to stakeholders, including anyone who contributed during the review stage.

The best way to communicate the changes will depend on the nature of the change and your organisation; for example, you could:

- hold an all-staff meeting
- send out an email
- post on an internal intranet site
- put up a poster
- provide training, either in person or online.

Maintaining openness and transparency about trends and lessons learned from the review process helps build trust, demonstrates that the organisation listens to its workforce (and customers/clients or other stakeholders where relevant) and encourages ongoing engagement in improvement initiatives.

am Remember that changes may affect LGBTIQ+ staff and other marginalised staff differently. Collaborating and communicating with these staff will help ensure diverse perspectives are considered and unintentional negative impacts are avoided.

Planned intervals

Reviews should take place at planned intervals. How frequently you should conduct these reviews depends on what is reasonable for your organisation. You should consider factors such as your organisation's size and resources. If in doubt, you can contact the Commission for assistance.

How can we collect data about LGBTIQ+ people's experiences at work respectfully?

Data collection can help to improve awareness and identify risks of discrimination based on gender identity, sex characteristics or sexual orientation.¹¹⁵

The processes and practice for collecting and storing data about LGBTIQ+ identities and workplace experiences should consider the specific needs of different groups within LGBTIQ+ communities.¹¹⁶

Data collection methods will be impacted by the nature of your organisation, including the industry and the size of your organisation. There is guidance available for some sectors; for example:

- **Victorian public sector organisations** have access to sector-specific data collection standards and guidelines such as the [Victorian family violence data collection framework](#)¹¹⁷ and [LGBTIQ+ inclusive language guide](#).¹¹⁸
- **Faith-based organisations** may consider peer resources such as the Good Shepherd Australia New Zealand's [LGBTIQ+ inclusive practice and data collection guide](#).¹¹⁹
- **Health and research organisations** may utilise the extensive guidance on data collection for LGBTIQ+ communities from the [National action plan for the health and wellbeing of LGBTIQ+ people 2025-2035](#)¹²⁰ or the Victorian Department of Health's [guidance note on inclusive collection and reporting of sex and gender data](#).¹²¹

For other organisations, some basic best practice principles for respectfully collecting data about LGBTIQ+ people's experiences at work are:

- Ensure that the data collected is confidential (and anonymous where possible) to the best of your organisation's and system's capability (see also [Minimum Standard 2: What are some common policy risks?](#)). This helps to build trust among your LGBTIQ+ employees and ensure they feel safe sharing their experiences.
- Use language that is inclusive and respectful of all gender identities, sex characteristics and sexual orientations. Avoid assumptions and be mindful that you are using up-to-date language. If in doubt, ask politely.
- Consider how to collect data in a way that centres the dignity of LGBTIQ+ people and minimises how much information you are asking people to disclose (see also [3.7.5 Discriminatory requests for information](#)). For example, it is unlikely that a workplace would be able to demonstrate a need to ask about someone's sex assigned at birth.
- Ensure that data collection would not result in unintended consequences that may amount to discrimination (see also [Minimum Standard 2: What are some common systems risks for LGBTIQ+ employees?](#) and [What are some common procedural risks?](#)).
- Always seek informed consent from anyone you are collecting data from (including employees) before collecting their data.
- Ensure that you clearly explain the purpose of the data collection, how the data will be used, who will have access to it and that the employee can withdraw from the process at any time.
- Be aware of cultural differences and sensitivities. This includes understanding the specific challenges faced by multicultural and multifaith LGBTIQ+ people.
- Provide access to LGBTIQ+-specific support services for participants if they feel distressed or need assistance as a result of sharing their experiences (see [Minimum Standard 2](#)).
- Regularly review and update data collection practices in accordance with your continuous improvement framework.¹²²

Key terms

Language and terms for LGBTIQ+ communities and identities – as well as understandings of those terms – evolve over time. The following terms and definitions draw from Victorian laws, the Victorian Government’s **LGBTIQ+ inclusive language guide**,¹²³ relevant reports¹²⁴ and language guides developed by LGBTIQ+ communities.¹²⁵

Term	Definition
Allies	These are people who support and advocate for LGBTIQ+ people but are not necessarily LGBTIQ+ themselves.
Aromantic	This refers to a person who experiences little to no romantic attraction. Aromantic people can be of any gender or sexual orientation and may or may not also be asexual.
Asexual	This refers to a person who experiences little to no sexual attraction. Asexual people can be of any gender or sexual orientation and may or may not also be aromantic.
Biphobia	This is a hatred, fear, prejudice or hostility directed towards bisexual/bi+ people (or people who are perceived to be bi+). It encompasses negative attitudes and behaviours that marginalise, stigmatise or invalidate multi-gender-attracted individuals and their experiences.
Bisexual	This refers to a person who is romantically and/or sexually attracted to people of their own gender and other genders. The terms bi+ or multi-gender-attracted are sometimes used to describe communities of people who are attracted to multiple genders.
Bullying	This is repeated unreasonable behaviour directed at an employee that creates a risk to their health and safety.
Cisgender (cis)	This refers to a person whose gender is the same as their sex recorded at birth. Not all cisgender people will be aware of this term or use it to describe themselves.
Cisnormative	This is the assumption or belief that being cisgender is normal and right, and all other people are not. ¹²⁶
Cissexism	This is discrimination or prejudice based on the belief that cisgender people’s gender identities, expressions and embodiments are more natural and legitimate than those of trans or gender diverse people.
Contact officer	This is a staff member trained as a point of contact in the workplace to provide information for a colleague who thinks they may be experiencing or witnessing discrimination, sexual harassment or victimisation in their workplace.
Deadnaming	This is when someone uses a transgender or non-binary person’s former name (from before they transitioned or affirmed their gender) without their consent.

Term	Definition
Discrimination	Under the Equal Opportunity Act, discrimination is when a person is treated unfairly because of certain personal characteristics (known as ‘attributes’) in an area of public life. ¹²⁷
Employee	Under the Equal Opportunity Act, an employee is a paid worker or staff member, including ongoing and fixed-term, casual and contract workers, independent contractors, consultants and paid interns. ¹²⁸ This is a broader definition than in some other laws regulating employment (e.g. under some parts of the Fair Work Act).
Employer	This is a person (an individual or an organisation) who hires another person under a contract of/for service on a full-time, part-time, contractual or casual basis in exchange for payment. Under the Equal Opportunity Act, it does not include a person who employs unpaid workers or volunteers, except in relation to the prohibition of sexual harassment. ¹²⁹
Endosex	This refers to someone who is not intersex (i.e. whose sex characteristics meet medical and social norms for typically male and female bodies).
Gay	This refers to a person who is romantically and/or sexually attracted to people of the same sex and/or gender as themselves. This term is often used to describe men who are attracted to other men, but some women and gender diverse people may also describe themselves as gay.
Gender	Gender is part of a person’s personal and social identity. It refers to the way a person feels and sees themselves.
Gender diverse	This is an umbrella term for a range of different genders. There are many terms gender diverse people may use to describe themselves. Language in this area is dynamic. Some examples are: agender, bi-gender, genderfluid, gender non-conforming, genderqueer and non-binary.
Gender identity	Under the Equal Opportunity Act, gender identity means a person’s gender-related identity, which may or may not correspond with their designated sex at birth. Gender identity includes: <ul style="list-style-type: none"> • the personal sense of the body (whether this involves medical intervention or not) • other expressions of gender (including dress, speech, mannerisms, names and personal references).¹³⁰
Heteronormative	This is the assumption or belief that only heterosexual relationships are normal or right and that men and women have naturally different roles.
Heterosexism	This is discrimination or prejudice based on the belief that sexual orientations other than heterosexuality are unnatural.

Term	Definition
Heterosexual	This is a term used to refer to men who are attracted to women, or women who are attracted to men.
Homophobia	This is a hatred or fear of people who are not heterosexual.
Intersectionality	This refers to how a person’s life can be made up of or influenced by multiple intersecting and layered identities (e.g. gender identity, sex characteristics, sexual orientation, race, disability, age and class). These different identities can combine to compound and impact a person’s experience of discrimination. ¹³¹
Intersex	This is an umbrella term for people born with natural variations to sex characteristics. It includes physical features relating to sex such as genitalia and other sexual and reproductive parts of a person’s anatomy. It might also refer to a person’s chromosomes, hormones and secondary physical features emerging as a result of puberty.
Lesbian	This refers to women (cis or trans) who are romantically and/or sexually attracted to women. Some gender diverse people may also use this term.
Misgendering	Misgendering is when you use language that does not match someone’s gender.
Non-binary	This refers to a person whose gender sits outside of the spectrum of man/woman or male/female. A person who is non-binary might have a mix of genders or have no gender at all. They might identify solely as non-binary or relate to non-binary as an umbrella term. Other terms they may use to describe themselves include: genderfluid, genderqueer, trans masculine (trans masc), trans feminine (trans fem), agender or bi-gender.
Pansexual	This refers to a person who is romantically and/or sexually attracted to people of all genders and regardless of gender.
Pronouns	These are the words we use instead of someone’s name when we talk about them, such as she/her, he/him, or they/them. Some people use more than one set of pronouns, such as she/they or he/they.
Queer	This is an umbrella term for diverse genders and sexualities. Some people use queer to describe their own gender or sexuality, as an identity that does not correspond to heterosexual norms. For some people, especially older people, ‘queer’ has negative connotations because in the past it was used as a discriminatory term.

Term	Definition
Rainbow families	<p>Rainbow families come in all shapes and sizes. They can include families where there are:</p> <ul style="list-style-type: none"> • two mums • two dads • parents of other genders • more than two parents • children who are LGBTIQ+. <p>A rainbow family may include donors and surrogates. Rainbow family members may live in one or more homes.</p>
Rainbow Mob	<p>This is a term used to describe Aboriginal and Torres Strait Islander people who are LGBTIQ+, sistergirls or brotherboys. Some (but not all) Aboriginal and Torres Strait Islander people prefer this term to LGBTIQ+ (or LGBTIQASB+).</p>
Sex	<p>This is a term referring to a person's biological sex characteristics, including their sex chromosomes, hormones and reproductive organs.</p>
Sex characteristics	<p>Under the Equal Opportunity Act, sex characteristics mean a person's physical features relating to sex, including:</p> <ul style="list-style-type: none"> • genitalia and other sexual and reproductive parts of their anatomy • their chromosomes, genes, hormones and secondary physical features that emerge as a result of puberty.¹³²
Sexual orientation	<p>Under the Equal Opportunity Act, sexual orientation means a person's emotional, affectional and sexual attraction to – or intimate relations with – persons of a different gender, the same gender or more than one gender.¹³³</p>
Sistergirl and brotherboy	<p>These are terms used to refer to trans people within some Aboriginal or Torres Strait Islander communities. Sistergirls are people assigned male at birth who identify as a woman or have a female spirit. Brotherboys are people assigned female at birth who identify as a man or have a male spirit.</p> <p>Sistergirls and brotherboys have distinct cultural identities and roles. These terms can differ between locations, Countries and Nations. Not all First Nations trans and gender diverse people identify with these terms, but many do.</p> <p>In broader Aboriginal and Torres Strait Islander communities, the terms 'sistagirl' and 'brothaboy/bruthaboy' are used as terms of endearment, for women and men respectively, with no reference to gender diversity.</p>
Systemic discrimination	<p>This refers to the ways that discrimination is upheld by systems, policies and practices that harm or marginalise communities while they inform and direct the functioning of society.</p>

Term	Definition
Transgender (trans)	<p>This refers to a person whose gender does not exclusively align with their sex recorded at birth. Not all trans people will use this term to describe themselves.</p>
Transphobia	<p>This is a hatred or fear of people who are transgender.</p>
Trauma-informed approach	<p>This is a strengths-based service-delivery approach that is grounded in understanding of and responsiveness to the impact of trauma, that emphasises physical, psychological and emotional safety for both providers and survivors, and that creates opportunities for survivors to rebuild a sense of control and empowerment.</p>
Unconscious bias (implicit bias)	<p>Unconscious (or implicit) bias refers to the influence of mental processes the individual does not have conscious control over. Unconscious biases may be based on preconceived attitudes or impressions, stereotypes or social perceptions. They can influence how an individual interprets information and thereby can impede their ability to make objective decisions and accurate assessments.</p>
Victim	<p>This refers to a person who has experienced a form of unlawful behaviour such as discrimination, vilification or victimisation.</p>
Victim-centred approach	<p>This is a way of engaging with victims that prioritises listening, avoids re-traumatisation and systematically focuses on their safety, rights, wellbeing, expressed needs and choices. The purpose is to give back as much control to victims as feasible and ensure the empathetic delivery of services in a non-judgemental manner.</p>
Victimisation	<p>This is where a person is treated badly or unfairly because:</p> <ul style="list-style-type: none"> • they have made a complaint • it is believed they intend to make a complaint; or • they have helped someone else to make a complaint.¹³⁴
Vilification	<p>Under the <i>Justice Legislation Amendment (Anti-vilification and Social Cohesion) Act 2025</i> (Vic), vilification is unlawful when a person engages in 'public conduct'¹³⁵ that would be reasonably likely to be considered hateful, seriously contemptuous of, reviling or severely ridiculing another person or group on the basis of their protected attribute (e.g. being LGBTIQ+).¹³⁶ An action could also amount to vilification if a person does something that is 'likely to incite hatred against, serious contempt for, revulsion towards or severe ridicule of' a person or a group who has a protected attribute (e.g. LGBTIQ+ people) (see 3.7.3 Vilification).¹³⁷</p>

References

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- 7 See ‘Find Your lawyer referral search’, *Law Institute Victoria* <https://www.liv.asn.au/web/for_the_public/find_a_lawyer_referral_service/web/content/for_the_public/referral/referral_search.aspx>.
- 8 See ‘Helping Victorians with their legal issues’, *Victoria Legal Aid* <<https://www.legalaid.vic.gov.au>>.
- 9 See ‘Find a Community Legal Centre’, *Federation of Community Legal Centres* <https://www.fclc.org.au/find_a_community_legal_centre>.
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Contact us

Enquiry Line	1300 292 153
Fax	1300 891 858
NRS Voice Relay	1300 555 727 then quote 1300 292 153
Interpreters	1300 152 494
Email	enquiries@veohrc.vic.gov.au
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