Victorian Equal Opportunity
& Human Rights Commission

Guideline for General Practices

> Complying with the Equal Opportunity Act 2010 when providing services

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& Human Rights Commission

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Guideline for General Practices: complying with the Equal Opportunity Act 2010 when providing services

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Acknowledgements

The Commission would like to thank everyone who gave generously of their time during consultations, interviews and research to develop this guideline.

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The Commission complies with Victorian privacy laws and the confidentiality provisions of the Equal Opportunity Act. Our privacy policy is available online at humanrightscommission.vic.gov.au/privacy or by contacting us.

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About the guideline

Equality in health services is a legal obligation.

It is important that all people who work within general practices are aware of their legal rights and responsibilities when it comes to equal opportunity.

The Victorian *Equal Opportunity Act 2010* makes discrimination, sexual harassment and victimisation against the law in many of areas of public life, including employment and the provision of goods and services. It also requires employers and service providers to make reasonable accommodations for people with disabilities.

Failure to comply with the law could lead to a complaint against you, your staff or your employer, and you may be ordered to make changes to your practice and/or pay compensation if the matter proceeds to a court or tribunal.

The Equal Opportunity Act also includes a positive duty, which focuses on eliminating the causes of discrimination, sexual harassment and victimisation, not just responding to complaints that arise.

Unfortunately, some Victorians do experience discrimination in health care. This can range from expressions of bias and prejudice among health workers, to barriers preventing access to health care. These may not be intentional but they still represent a failure to deliver non-discriminatory health care.

General practices are well placed to help overcome barriers to health care and we know that they are committed to providing quality services to all patients. This guideline is designed to support general practice staff by explaining their obligations as service providers under the Equal Opportunity Act.

Who is this guideline for?

This guideline is relevant to all staff who work in general practice clinics, including general practitioners (GPs), practice managers, practice nurses, allied health professionals, and reception and administration staff. Staff who do not provide direct services also need to understand their role in preventing discrimination.

For information on obligations as an employer, please refer to the Commission's website and the following publications:

- Right Smart Employers Toolkits
- *Guideline for the recruitment industry and employers*
- *Guideline: Transgender people at work*
- *Guideline: Sexual harassment*.

Why do I need to follow this guideline?

As a GP or member of a general practice team, it is important to apply this guideline for the following reasons:

- You have a legal responsibility to comply with Victoria's anti-discrimination law – the Equal Opportunity Act. If you treat patients unfavourably because of personal attributes such as age, race, sex, disability, marital status, gender identity or sexual orientation, your actions are against the law. This could lead to a complaint against you or your employer and you may be ordered to pay compensation if the matter proceeds to a court or tribunal.
- You also have a professional and ethical responsibility not to discriminate. The Australian Health Practitioner Regulation Agency and Health Services Commissioner can assist you to understand your other legal and ethical obligations.
- Discrimination has a negative effect on health. In particular, if a patient experiences discrimination in a health setting, they may not seek help in the future.[1]
- You may also be an employer and are responsible for ensuring your staff understand their role in preventing discrimination.
- While this guideline is not legally binding, a court or tribunal may consider whether a person has complied with it when hearing a complaint of discrimination.

Where can I find more advice or information?

This guideline does not cover every situation that you will encounter as a GP or member of a general practice team.

For more information, contact the Commission or visit our website.

Enquiry Line	1300 292 153 or (03) 9032 3583
Email	enquiries@veohrc.vic.gov.au
Website	humanrightscommission.vic.gov.au

Other specialist organisations can help you with specific issues. Refer to the Appendix on page 23.

If you are responding to a complaint, you might also consider seeking legal advice.

Training and consultancy

Our education, training and consultancy services conduct in-house and on-site training to help service providers and employers understand their rights and responsibilities.

For more information or to register in a course, visit humanrightscommission.vic.gov.au/training or call (03) 9032 3415.

1 For example, see Australian Government, Department of Health and Ageing, *Fourth report against the Aboriginal and Torres Strait Islander Health Performance Framework* (2012) 135; National Centre in HIV Social Research, *Stigma and discrimination around HIV and HCV in healthcare settings: research report* (2012) 18.

Part A: Understanding the law

1 Discrimination

1.1 What attributes are protected?

The *Equal Opportunity Act 2010* protects people from discrimination based on 17 personal attributes:

- age
- breastfeeding
- carer or parental status (having someone who depends on you for care)
- disability (covering a broad range of temporary and ongoing conditions, including physical disability, intellectual disability, mental illness[2] and HIV or Hepatitis C status, and including behaviour that is a manifestation of the disability)
- employment activity
- gender identity (including identifying as transgender)
- industrial activity
- lawful sexual activity
- marital status
- physical features
- political belief or activity
- pregnancy
- race (including colour, nationality, ethnicity and ethnic origin)
- religious belief or activity
- sex
- sexual orientation (meaning homosexuality, including lesbianism, bisexuality or heterosexuality)
- personal association with someone who has, or is assumed to have, any of these personal attributes.

1.2 What is discrimination?

Discrimination may be direct or indirect.

Direct discrimination is treating someone unfavourably because of an actual or assumed protected attribute. In general practices, this could include refusing to provide a service, providing a poor quality service or providing a service in a way that makes the patient feel humiliated because of a personal attribute, such as their race, sexual orientation or disability.

2 The term mental illness is used in this guideline. We have used this term because it is commonly used in the community and appears in the Equal Opportunity Act. However, we recognise that other terms, such as mental health disability or psychosocial disability, may be preferred by people with disability.

Examples of direct discrimination

Samir is a new patient at a rural general practice. After a few visits, he tells his new GP that he has Hepatitis C. The GP responds angrily, telling Samir that he has put other patients at risk by not disclosing his condition immediately. The GP asks Samir if he is injecting drugs. When Samir says no, the GP accuses Samir of lying. The GP's hostile response to Samir's disclosure could represent unfavourable treatment based on a disability, which includes the presence of Hepatitis C.

Marco has Tourette syndrome and obsessive-compulsive disorder. When attending a GP clinic to make an appointment, he experiences involuntary tics. The receptionist refuses to listen to his request and asks Marco to leave. The receptionist is discriminating against Marco based on his disability, which includes the behaviour that is a symptom or manifestation of a disability.

Firas attends the GP because he has not had a screen for sexually transmitted infections (STIs) since his relationship with Danielle ended. He explains to the GP that he does not want to risk passing on an STI to his new boyfriend. The GP informs Firas that the practice does not conduct this type of screen and suggests that he attend a clinic for gay men. The GP may be discriminating against Firas by creating a hostile environment and refusing a service based on his sexuality.

Indirect discrimination can happen when you treat all patients the same way, but this treatment has the effect of disadvantaging someone because of a protected attribute. For example, patients who are not proficient in English or who have a hearing, sight, intellectual or communication-related disability may have particular verbal and written communication needs. Failing to address these needs by adapting your communication styles, accommodating alternative or assisted communication modes, working with interpreters or providing health information in a range of formats may constitute indirect discrimination against these patients.

Example of indirect discrimination

Phuong has a learning disability that affects her reading ability. When she visits a general practice for her first appointment, the receptionist asks her to fill in a registration form. When Phuong says that she would prefer not to, the receptionist insists that she do so because it is the clinic's policy that all patients must complete the form before their first appointment. Phuong is embarrassed because she does not want to discuss her disability in the reception area. The clinic's policy requiring all patients to complete a form before their appointment regardless of the patient's wishes may constitute indirect discrimination because, although it applies to all patients, it disadvantages patients that are unable to complete the form because of a personal attribute (disability).

Discrimination will also occur if service providers fail to make reasonable adjustments to allow people with disabilities to use their services. Reasonable adjustments are discussed in Part A, 1.6 on page 7.

1.3 Where can discrimination happen?

The Equal Opportunity Act protects people from discrimination and harassment in areas of public life such as workplaces, schools, clubs, shops or places that provide services.

The Equal Opportunity Act defines services broadly and includes services that are free, which would include bulk-billed health services.

Most activities that general practices perform for patients are likely to fall within the Act's definition of services. For example, reception staff provide services to patients when they handle telephone calls, appointments and payments, and interact with patients at reception and in waiting areas. Clinical staff provide services to patients during consultations, when providing treatment and making referrals. General practices also provide services such as waiting room facilities and health information.

It is against the law to discriminate against a person when providing a service. This can mean:

- refusing to provide a service
- putting terms or conditions on a service
- subjecting someone to a disadvantage.

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

As employers, general practices also have responsibilities to provide a work environment free from discrimination, sexual harassment and victimisation.

This guideline focuses on your obligations in service provision. You should also be aware that you have obligations regarding employment and access to premises.

1.4 Asking discriminatory questions

It is against the law to request or require a person to supply information that could be used to discriminate, unless you can show that the information is reasonably required for a legitimate purpose that does not involve discrimination. This applies to asking questions when booking appointments, during consultations or on forms.

This means that if your general practice asks about protected attributes (such as racial background, gender identity or sexual orientation) on patient record forms, at reception or during consultations, there should be clear, non-discriminatory reasons for asking these questions. For example, you might seek information to inform appropriate clinical decisions or improve the quality of service for that patient. Staff members who ask these questions should be able to explain these reasons to the patient.

More information about how to avoid asking discriminatory questions can be found in Part B, 3.1 on page 14.

Example of discriminatory questions

Dana is a transgender woman. While on holiday, she wakes up with a high temperature, sore throat and blocked nose. She makes an appointment at a GP clinic. During her consultation, the GP asks Dana lots of questions about her gender, when she transitioned and why. Dana leaves feeling very uncomfortable because the questions seemed invasive and unrelated to her illness. The GP appears to have asked discriminatory questions, unless they can demonstrate that the information they requested was reasonably required for a clinical purpose.

1.5 Discrimination in advertising

It is against the law for you to publish or display (or for you to authorise someone else to publish or display) an advertisement that intends to discriminate. You could be liable for the actions of others if you cannot show that you took reasonable precautions to prevent a discriminatory advertisement from being published.

You'll find specific advice in the Commission's *Guideline for the recruitment industry and employers* on how to avoid discriminating when you advertise.

1.6 Making reasonable adjustments for patients with disabilities

The law requires you to make reasonable adjustments to allow people with disabilities to access your service.

Some examples might include:

- equipment to assist patients with mobility disabilities, such as adjustable beds and hoists
- providing car spaces in parking lots that are accessible to people with disabilities
- providing toilets that are accessible to people with disabilities
- ensuring that corridors, waiting areas and consulting rooms are accessible for people using wheelchairs, assistance dogs or mobility aids
- providing health information in a range of formats (such as Easy English, electronic versions, large print or DVDs)
- facilitating the use of technology and aids, such as electronic speech devices, communication boards or books or tablet computers, with patients who have communication disabilities
- allowing for extended consultations where communication may be slow or require extra care
- arranging for Auslan interpreters or other communication supports during consultations if requested by the patient.

The duty to provide reasonable adjustments is a 'stand-alone' provision in the Equal Opportunity Act. A person making a complaint of discrimination because a service provider did not make reasonable adjustments only needs to show that reasonable adjustments required by the person to access the service, or derive any substantial benefit from it, were not made for them (they do not have to show that they suffered any disadvantage).

The adjustments you need to make to ensure that patients with a disability are able to access your service and derive benefit from it, are those that are reasonable. This means that you must make adjustments unless they will cause major difficulty or unreasonable cost to you, or if the adjustment would be ineffective at providing access to your service. When thinking about an adjustment, you need to balance the need for change and the impact on the patient with the expense or any other potential disadvantages that might result from the change.

Examples of reasonable adjustment

Rebecca has a vision impairment and is diagnosed with a chronic illness. On her first visit to a medical centre, Rebecca is offered a range of printed materials about her condition. She asks for the materials in an audio or electronic format. The medical centre refuses, saying that it is too expensive to provide materials in different formats. After Rebecca makes a complaint of discrimination, the centre agrees to provide the material in an accessible format. This may mean providing materials in a rich text format on a USB drive or via email. If in doubt, ask your patient what is best for them, or contact an organisation such as Vision Australia for assistance.

James has a disability. He is tall, has a loud voice, and can come across as aggressive when in a stressful situation. On a few occasions James has yelled at the receptionist. On one visit he yells at the receptionist and throws some brochures across the reception desk. While his behaviour might trigger some safety concerns, James has a right to access health services without discrimination. James's GP talks to James and his support person to find out what triggered James's response to see if there are strategies to support him. The GP finds out that James felt anxious and became upset when the receptionist tried to talk about payments and future appointments. After the conversation, James agrees to bring a support person to his next appointment to reduce his anxiety and the GP agrees that James can arrange payments and bookings after he returns home. The GP tells the reception staff about these strategies. The GP chose the non-discriminatory approach of taking other reasonable steps to protect staff and patients, rather than simply refusing the service to James.

1.7 Are there any exceptions to the law?

Yes. Under the Equal Opportunity Act, it is not against the law to:

- take *special measures* to promote equality for groups of people with one or more of the 17 protected attributes
- make *exceptions* in the specific circumstances where Parliament has decided that treating people differently is lawful. These exceptions are contained in the Equal Opportunity Act
- apply to the Victorian Civil and Administrative Tribunal (VCAT) for *exemptions* from the law for a set period of time.

Also, general practices may lawfully refuse treatment for a number of reasons that are not affected by the Equal Opportunity Act, such as if a GP does not have the expertise to provide the appropriate medical care to a patient and needs to refer them to another GP who can meet the patient's requirements. Generally speaking, this would not be considered discrimination if the refusal applies to all patients.

1.7.1 Take special measures

If an action is a special measure, it is not discrimination. This means that you can legally limit that service to people with a particular attribute.

To determine if an action is a special measure you must consider whether the measure is **necessary**, **genuine** and **justifiable** given the needs of the group you are targeting. It is essential that special measures are:

- undertaken in good faith for the purpose of promoting or achieving substantive equality for members of the group
- reasonably likely to achieve this purpose
- a proportionate way of achieving this purpose – that is, the benefits of the action are proportionate to the negatives
- justified because the members of the group are disadvantaged and have a particular need for advancement or assistance.

If your target group does not want or need the action you are proposing, then it is unlikely to be a special measure. Therefore, being able to show that you have consulted with the target group can add weight to your argument that an action is a special measure, as well as assisting you to deliver a better service.

Examples of special measures

A clinic recognises that people from the Somali refugee community lack awareness of GP services. Partnering with other health services in the region, the clinic consults with the local community association and runs an information session where people can meet GPs and other health professionals and learn about the clinic's services. Following this session, attendance rates by members of the Somali community increase.

Following consultation with the local Aboriginal Community Controlled Health Organisation, a practice manager learns that Aboriginal and Torres Strait Islander women are not attending GP appointments because family and childcare roles mean that they can not attend the clinic during opening hours. The practice's policy of only conducting home visits for patients with disabilities has resulted in indirect discrimination against Aboriginal and Torres Strait Islander women, who are experiencing disadvantage and poorer health outcomes as a result. In order to target this discrimination, the general practice takes a special measure and establishes a home visit service for Aboriginal and Torres Strait Islander women.

1.7.2 Exceptions to discrimination

You may find that when taking a particular action or making a decision, one of the exceptions that renders the discrimination lawful under the Equal Opportunity Act applies. Some relevant exceptions might include:

Things done with statutory authority or to comply with court or tribunal orders are not discriminatory.

Supervision of children: You can require a child to be accompanied or supervised by an adult if they are going to cause a disruption or cause a risk to their own or someone else's safety.

Religious exceptions apply to discrimination on the basis of a person's religious belief or activity, sex, sexual orientation, lawful sexual activity, marital status, parental status or gender identity. Discrimination by a person or religious body based on these attributes may not be against the law if it is necessary to conform to the doctrines of their religion or is reasonably required to avoid injury to the beliefs of followers of the religion.

This does not mean that you can simply refuse or withdraw medical care, such as a referral for assisted reproductive technology services, based on your religious beliefs. Discrimination based on a conscientious objection will only be lawful if the doctrines of your religion require or oblige it, and there is no law which otherwise compels you to provide care or treatment.[3]

For example, if a woman seeks your advice or treatment on a termination of pregnancy and you have a conscientious objection to this, the law says that you must advise them of your objection and inform them of another registered practitioner that you know does not have a conscientious objection.[4] Your Medicare Local, women's health service or Royal Women's Hospital Victoria may be able to assist you to locate a service that does not have a conscientious objection.

Whether religious exceptions may apply will depend on the particular facts and circumstances, including whether your religion requires the discrimination, the nature of your organisation and the services it delivers.

Legal capacity or the age of majority: The Equal Opportunity Act does not affect other laws that govern the legal capacity or incapacity of a person or the age of majority. It is against the law to give someone medical treatment without informed consent (an exception to this is emergency situations where it may not be possible to get a person's consent). You may discriminate by refusing treatment to someone because of a person's age or disability but only where those attributes mean they lack the legal capacity to give consent in accordance with the laws that govern legal capacity.

You should not assume that because a person has a cognitive disability they lack the capacity for decision making and to give consent to medical care. The refusal to provide medical care to a person because of their disability, rather than based on a lawful assessment of their legal capacity, would amount to unlawful discrimination.

If a person does not have the capacity to consent to treatment, you should follow the laws and professional and ethical standards that relate to legal capacity, medical consent and refusal of medical treatment. If you are questioning an adult patient's capacity to give consent, you can seek information from the Office of the Public Advocate by phoning 1300 309 337 or visiting publicadvocate.vic.gov.au.

3 See *Cobaw Community Health Services v Christian Youth Camps Ltd & Anor (Anti-Discrimination)* [2010] VCAT 1613 (8 October 2010), [308]-[323].

4 *Abortion Law Reform Act 2008* (Vic), s 8(1).

Protection of health, safety or property: You can limit or refuse a service on the basis of disability, physical features or pregnancy if it is reasonably necessary to protect the health or safety of any person. If someone makes a discrimination complaint, you will be responsible for demonstrating that the refusal of service was reasonably necessary.

Because general practice clinics are workplaces subject to occupational health and safety considerations that protect staff from exposure to unsafe work conditions, a general practice may have a policy of refusing service where it is necessary to ensure the health and safety of practitioners, staff and patients, such as a zero tolerance policy to verbal abuse and violence.

General practices should ensure that such policies apply equally to all patients and do not disadvantage patients with different attributes. Sometimes challenging behaviour that is a manifestation of a disability may be seen to be verbal abuse or amount to aggressive or violent behaviour.

Special needs: You can establish special services, benefits or facilities to meet the needs of people with a particular personal attribute and limit eligibility to people with that attribute. The exception specifically includes rights or benefits granted to women in connection with pregnancy or childbirth.

Example of special needs

A GP Super Clinic recognises the special health needs of same-sex attracted and gender diverse young people within their community and establishes a support group for these young people.

1.7.3 Apply for exemptions

You need to apply to VCAT to be exempted from particular parts of the Equal Opportunity Act if you for any other reason intend to discriminate. You will only need to seek an exemption if the action you are taking is not a special measure or is not covered by one of the exceptions in the Equal Opportunity Act. VCAT will only grant an exemption if it is a reasonable limitation on the right to equality under the *Charter of Human Rights and Responsibilities Act 2006*.

If VCAT has granted an exemption for a job to be offered only to people with a certain attribute, you need to give information about the exemption and provide the VCAT reference number in any advertisement.

Examples of advertising for staff members with particular attributes

The only female doctor at a medical clinic is about to go on extended leave. Around half the clinic's patients are female and many specifically request a female doctor. The clinic seeks an exemption to advertise for a female doctor as a replacement. VCAT grants the exemption, taking into account the personal nature of medical treatment and the possible disruption to female patients. See *Rawling* – (Exemption) [2000] VCAT 433.

A health service wants to employ an Aboriginal and Torres Strait Islander person as an Allied Health Assistant Trainee. This is both to provide employment and training to an Aboriginal and Torres Strait Islander person and to increase the use of allied health services by the Aboriginal and Torres Strait Islander community. VCAT finds that the action is a special measure because it is necessary, genuine, objective and justifiable. Because the action is a special measure, no exemption is necessary. See, for example, *Stawell Regional Health (Anti-Discrimination Exemption)* [2011] VCAT 2423 and *Cummeragunja Housing & Development Aboriginal Corporation (Anti-Discrimination Exemption)* [2011] VCAT 2237.

In March 2013, VCAT granted a health service an exemption from the Equal Opportunity Act to: (1) advertise for and employ four females only as Health Education and Support Workers to work with female, male and transgender sex workers across all areas of the sex industry; and (2) advertise for and employ a female only as a Support Worker for women aged 15–25 who are homeless, at risk of homelessness or involved in sex work. The Tribunal considered that the exemption will enable the people who are the intended recipients of the services to access them most effectively. See *Inner South Community Health Service (Anti-Discrimination Exemption)* [2013] VCAT A28/2013.

2 Sexual harassment

Sexual harassment is unwelcome sexual behaviour that could be expected to make a person feel offended, humiliated or intimidated. Sexual harassment can be physical, verbal or written. It may include a range of behaviours such as:

- clinically irrelevant comments or questions about a patient's sexual history, relationships or appearance
- sexually suggestive behaviour, such as leering or staring or making suggestive comments or jokes
- touching, fondling or hugging
- requests for sex or repeated requests to go out
- sexually explicit emails, text messages or posts on social networking sites.

Sexual harassment is against the law when it occurs in the course of providing or receiving a service. In a general practice clinic, this includes services provided by reception staff as well as during consultations with GPs or allied health staff. It also includes behaviour directed toward general practice staff by patients or other service users.

GPs will encounter situations where they need to touch patients, conduct intimate examinations or talk to patients about sexual matters. This requires good communication skills, including being able to adapt explanations for different communication needs, being able to test understanding of difficult concepts and giving patients the chance to ask questions.

In some circumstances, such as if your patient is of a different gender, has a mental illness, or has religious or cultural sensitivities, you may want to ask the patient if they would like someone with them, particularly during intimate physical examinations.

The Medical Board of Australia has issued the *Sexual Boundaries: Guidelines for Doctors*, which will help you to avoid sexual harassment.

Sexual harassment is also against the law in employment and you may be liable for both your own behaviour and the behaviour of your staff should harassment occur. Some forms of sexual harassment may constitute a criminal offence. For more information, see the Commission's *Guideline: Sexual Harassment*.

3 Victimisation

Victimisation is treating a person unfairly because they spoke up about their rights, made a complaint of discrimination or helped someone else to make a complaint. Victimisation is against the law.

For example, if you refuse to see a patient because they have made a discrimination or sexual harassment complaint in the past, that patient could make a complaint of victimisation against you and/or your employer.

4 Obligations and liability

4.1 Who is liable and what are they liable for?

4.1.1 Individuals can be liable

If a person discriminates against another person, they may be individually liable for their actions. This means they can be held responsible for their conduct and may be ordered to pay compensation to the person they discriminated against if the matter proceeded to a court or tribunal.

An individual can also be liable if they requested, instructed, induced, encouraged, authorised or assisted unlawful conduct of another.

The law applies to all individuals who provide a service. This includes GPs, reception staff and other health professionals.

4.1.2 Employers can be liable for actions of employees

Employers will generally be responsible for the unlawful actions of their employees, if the employee is acting in the course of their employment or acting on the organisation's behalf. An employer or principal will not be vicariously liable for the unlawful conduct of its employers or agents if they can show they have taken reasonable precautions to prevent unlawful conduct. Part B: 'What do I need to do?' sets out the kinds of things employers should implement to establish reasonable precautions.

Example of individual and vicarious liability

Denise has a vision impairment and uses an assistance dog to help her get around. When she attends her GP, the receptionist asks her to leave the dog outside. Denise explains the role of her assistance dog and the receptionist tells Denise that she will also have to leave if she will not take the dog outside. Although the receptionist is not employed directly by Denise's GP, both the GP and the receptionist may be liable for this discrimination.

4.2 The positive duty – eliminating discrimination before it occurs

Section 15 of the Equal Opportunity Act requires that general practices take reasonable and proportionate steps to improve their procedures, policies and practices to prevent discrimination, sexual harassment and victimisation against patients. This 'positive duty' focuses on eliminating the causes of discrimination, not just responding to complaints that arise.

It is important to remember that discrimination is not always intentional. Sometimes it occurs because of a lack of knowledge or understanding of the needs of individual patients. Part of the positive duty is ensuring that you and other staff take time to reflect on your practice. This is already a strong ethos among health professionals, and includes developing your self-awareness and understanding that your own experiences, age, religion or cultural background, sexuality and gender have an impact on your professional practice.

4.2.1 Who does the positive duty apply to?

The positive duty applies to all people or organisations that have obligations under the Equal Opportunity Act, including service providers. This means that general practice organisations, general practitioners and general practice teams have a positive duty to eliminate discrimination, sexual harassment and victimisation as far as possible.

4.2.2 What are reasonable and proportionate measures?

Determining if something is reasonable and proportionate requires balancing the need for change with the expense or effort involved in making this change. A measure that is reasonable and proportionate for one clinic may not be achievable in another and depends on all the relevant circumstances, including:

- the size of your organisation
- the resources of your organisation
- the nature of the health services you provide
- the practicability and cost of the measures.

Where it can be shown that a measure or adjustment requires a disproportionately high expenditure or disruption, a court or tribunal will likely determine that the measure is not reasonable. In cases where the best measure to eliminate discrimination is not reasonable and proportionate, your practice should still eliminate discrimination to the best of your ability. This may mean developing a staged plan toward achieving the goal, or seeking a smaller-scale solution.

Examples of the positive duty in health services

A clinic employs a small group of GPs and support staff. They hold a staff meeting to discuss an equal opportunity action plan. It is clear that staff are confused about how to work with an interpreter. They decide to designate one staff member to coordinate interpreter bookings. They find a best practice guide to working with interpreters and look at ways to put it into practice within their organisation, such as using the Translating and Interpreting Service and the National Auslan Interpreter Booking and Payment Services, which are free for GPs. After six months, they find that both the number of interpreters used and the number of patients with low English proficiency and deaf patients attending the clinic has increased.

A clinic is located in an area with a large Aboriginal and Torres Strait Islander population and wants to work better with these patients. Staff members meet with the local Aboriginal organisations, including an Aboriginal Women's Service and the local Aboriginal Community Controlled Health Organisation. In response to concerns raised by these organisations, the clinic develops referral protocols that are based on patient preference, rather than assumptions about Aboriginal and Torres Strait Islander patients. The clinic could also make their service more welcoming to Aboriginal and Torres Strait Islander patients by encouraging employment of an Aboriginal and Torres Strait Islander person, displaying information to welcome Aboriginal and Torres Strait Islander patients to the clinic, providing cross-cultural and cultural safety training to staff and celebrating community celebrations, such as NAIDOC week.

A large community health service employs a number of GPs, allied health professionals and support staff. To meet the positive duty, the health service surveys all staff about their knowledge of equal opportunity laws and any challenges they face in meeting their obligations. The survey identifies that some staff feel uncertain about their obligations working with same-sex attracted and sex and gender diverse patients. In response, the service schedules training aimed at addressing key knowledge gaps. The service reviews available health resources for staff and patients and looks at ways to develop a better relationship with a local advocacy group.

5 Federal anti-discrimination law

Discrimination is also prohibited under these federal laws:

- *Age Discrimination Act 2004* (Cth)
- *Disability Discrimination Act 1992* (Cth)
- *Racial Discrimination Act 1975* (Cth)
- *Sex Discrimination Act 1984* (Cth)
- *Australian Human Rights Commission Act 1986* (Cth)
- *Fair Work Act 2009* (Cth)

You can find out more about these federal laws on the Australian Human Rights Commission website at humanrights.gov.au and fairwork.gov.au.

Part B: What do I need to do?

This section identifies actions that staff in general practices can take to prevent discrimination and so assist in taking reasonable precautions to prevent unlawful conduct and meet the positive duty.

Remember that both an individual and the employer or practice manager may be liable if discrimination occurs.

You could use the following list as a starting point to implement or update the equal opportunity program at your practice.

1 Review policies

1.1 Equal opportunity policies

Do you have policies about discrimination and diversity? If you do not have an equal opportunity policy, you should develop one for your practice.[5]

- Include a clear opening statement that sexual harassment, discrimination on the basis of personal attributes protected by the *Equal Opportunity Act 2010* and victimisation are against the law and will not be tolerated in your practice.
- The policy should address the obligations to patients as well as to other staff.
- Provide details about how to get more information or raise any concerns or complaints under the policy.

Other areas where general practices may need to adapt their policies to prevent discrimination include:

- processes for booking appointments, including home visits, and booking interpreters
- length of appointments
- referrals to inaccessible specialist clinics.

1.2 Privacy and confidentiality

General practices must comply with legislation that deals with health records and information privacy.

Some patients may have particular concerns about privacy and the confidentiality of their information. For example, they may have concerns about privacy around their sexual orientation, gender identity or illnesses such as Hepatitis C, HIV and mental illness. These may be heightened if a practice is operating in a small rural community. General practices should be able to reassure patients that there are processes in place to protect their information. These processes should be applied without discrimination.

You should:

- update your policies around collecting information to refer to protected attributes. For example, your policies should address how information about racial background, sexual orientation or gender identity should be collected; patient consent to record information; referral letters; and the importance of responding positively and respectfully to disclosure
- include a guide to sensitive care for lesbian, gay and bisexual people attending general practice with suggestions about facilitating disclosure and discussing sexual orientation.[6]

5 Download template policies from the Right Smart Employers Toolkits on the Commission's website at humanrightscommission.vic.gov.au/employerstoolkits.

6 Associate Professor Ruth McNair, *A guide to sensitive care for lesbian, gay and bisexual people attending general practice* (University of Melbourne, General Practice and Primary Health Care Academic Centre, 2012) 3.

2 Review forms and documentation

Regularly review admission forms and health information brochures:

- Do forms ask for discriminatory information without a legitimate purpose?
- Do they make assumptions about gender identity or sexual orientation through language or images?
- Are they available in a range of languages and formats?
- Is your website accessible?

3 Review practices

3.1 Prevent discriminatory questioning

There are times when you will need to ask sensitive questions, such as:

- when you have a clinically-relevant reason
- when there may be an opportunity to provide a better or more targeted service or referral.

In these situations you can avoid a question appearing stigmatising or discriminatory by explaining the reason why you are asking and identifying the way in which the patient may benefit. The timing of sensitive questions is also important. Some information is best requested on intake forms during the reception process, where it is clear that all patients are being asked the same questions and that privacy and confidentiality is respected. In other instances, waiting for a private moment is recommended.

Example of asking sensitive questions in a non-discriminatory manner

Henry has been visiting a general practice throughout his transition to living as a man. The receptionist feels uncomfortable as he no longer knows how to address Henry, both in person and also when sending mail. The receptionist chooses a moment when no-one else is in the waiting room and asks Henry how he would like to be addressed, explaining that he wants to give Henry the best possible service and make him feel welcome at his appointments. The receptionist then asks for Henry's permission to inform other staff at the clinic of Henry's preference.

Sometimes it will be necessary to ask questions in order to ensure that discrimination does not occur, or in order to provide an appropriate service. For example, to make an appropriate referral.

Example of non-discriminatory questions

Belinda attends a GP appointment because she is pregnant. While completing the patient intake form in reception, Belinda ticks the box identifying herself as Aboriginal or Torres Strait Islander. The practice asks this question to all new patients using the form so that patients are not asked personal questions in the public reception area. During the appointment, the GP advises her that the local maternity hospital has a specific program for Aboriginal and Torres Strait Islander women who are pregnant. The GP has a non-discriminatory reason for asking about Belinda's background – that is, offering an effective and appropriate referral. In this case, Belinda wishes to stay with the GP and the GP continues to treat her throughout her pregnancy.

Encouraging identification

Identifying Aboriginal and Torres Strait Islander patients is an important step in ensuring the best possible quality of care and health outcomes, by matching patients with appropriate services and providing important health data that can lead to policy change.

However, Aboriginal and Torres Strait Islander patients may be reluctant to identify because of past discrimination, strong negative experiences of being monitored or because staff fail to ask or make assumptions about Indigenous status based on appearance.[6]

To overcome these barriers, staff should communicate the positive reasons for identifying, explain people's rights in relation to accessing their information and provide a culturally safe environment for disclosure. However, people should not be pressured or forced to identify as Aboriginal and Torres Strait Islander. Staff should accept when a person does or does not identify as Aboriginal or Torres Strait Islander and not question or doubt a person's self-identification. It may also help to display a poster that explains the benefits of identifying as Aboriginal or Torres Strait Islander, the reasons why identification is important and patients' rights and confidentiality of the information provided.

For more information, see advice from the Australian Institute of Health and Welfare in *Taking the Next Steps: identification of Aboriginal and Torres Strait Islander status in general practice*.

7 Bree Heffernan, Dulce Iskandar and Jane Freemantle, *The history of Indigenous identification in Victorian health datasets, 1980–2011: Initiatives and policies reported by key informants* (The Lowitja Institute, 2012) 2.

3.2 Effective communication

Good communication is the foundation of good health services. Some patients with low English proficiency or patients with disabilities experience barriers to communication.

Your practice should be able to:

- provide health information in a variety of formats, to the best of your means. This could include information in community languages, Easy English, pictures or diagrams, models, audio, DVDs or websites
- work with a qualified interpreter when the patient needs or requests an interpreter. This includes being able to assess a person's need for an interpreter, knowing about options for on-site, telephone and online interpreting, and being able to work with an interpreter effectively
- modify communication approaches in order to meet the needs of patients. This includes taking time, talking directly to the person and providing a quiet and well-lit environment for conversations. Staff should be able to use augmented or alternative communication methods (such as an electronic speech machine or a communication book), read and explain written information, point to objects and pictures, use gestures, simplify language and ask yes/no or open questions where appropriate.

The Appendix lists some organisations that produce advice about working with interpreters and provide health information in different formats. Scope Victoria can assist with assessing your service's communication access.

Using family members to interpret

Research suggests that the majority of patients prefer a professional interpreter be engaged.[8] Using family members can:

- increase the risk of miscommunication as family members may not have the skills to interpret effectively
- compromise your patient's privacy and ability to speak openly and honestly about their health conditions
- place stress on family members and have an adverse impact on their other commitments, such as work or school.

In some cases, a patient may prefer to use a family member to interpret, particularly if they are concerned about speaking about private issues in front of a stranger. Do not assume this will be the case, but instead offer to engage a professional if an interpreter is required.

The use of children, including family members, as interpreters is not acceptable. In addition to increasing the risk that information will not be interpreted accurately, information discussed during a GP consultation may traumatise children.

Example of the risk of failing to use a professional interpreter

A woman arrived in Australia to join her husband; within weeks she was taken to a GP where her husband and mother-in-law acted as interpreters. She later presented to the Immigrant Women's Support Service because of family violence and in the assessment she showed the worker what happened at the GP: she had been implanted with a contraceptive device – IMPLANON – without her knowledge or consent.[8]

Free interpreting services available to GPs

Translating and Interpreting Service (TIS), an on-site interpreting service with a Doctors Priority Line (available at all times) – tisnational.gov.au or 131 450.

National Auslan Interpreter Booking and Payment Services, which offers on-site interpreters or Video Remote Interpreting via Skype – nabs.org.au or 1800 246 945.

3.3 Respectful communication

Respectful communication is about providing a professional, safe and friendly environment for all patients. It requires a commitment from all staff to address personal bias or fears and to contribute to a safe environment for all patients.

Potential risk areas for patients can include:

- negative reactions from staff members when disclosing personal information, such as sexuality or gender identity
- staff members responding to stereotypes rather than the needs of the individual patient
- using terms that are disrespectful or that do not match how a person describes their own gender, body or relationships. For example, referring to a transgender woman as 'he'.

8 Foundation House, *Promoting the engagement of interpreters in Victorian health services* (2013) 64.

9 Annabelle Allimant and Beata Ostapiej-Piatkowski, *Supporting women from CALD backgrounds who are victims/survivors of sexual violence: challenges and opportunities for practitioners* (Australian Centre for the Study of Sexual Assault, 2011) 10.

Example of respectful communication

Saul uses a communication board to overcome the challenges he faces expressing himself through speech. When he visits his GP assisted by a support worker from his group home, the GP directs all questions to Saul directly. Before asking the support worker about the medication procedures in the group home, she first asks Saul's permission.

Your practice should:

- use inclusive language when referring to relationships on forms and in all interactions with patients. Avoid assuming that all patients are heterosexual. For example, use 'partner' instead of husband/wife/boyfriend/girlfriend, 'relationship status' rather than 'marital status' and 'parent' rather than mother/father
- ask and respect how intersex, transgender and gender diverse patients describe their gender, which name and pronoun they would like others to use and how they describe their body, their family roles and relationships[10]
- ensure that patients and staff know they can raise concerns about communication problems or about disrespectful treatment. If patients do raise concerns, have a process in place for responding promptly and confidentially.

4 Review staff knowledge and training

What are the strengths and weaknesses of your staff in terms of experience and knowledge of working with diverse groups? Is training conducted, for whom and when?

4.1 Staff skills and knowledge

All staff in general practice should have the skills to perform their role without discrimination and respond to the needs of a diverse community.

Your practice should:

- ensure staff are aware of their specific rights and responsibilities
- improve staff knowledge and performance through face-to-face training sessions held at least every two years with regular reminders between sessions, covering the key laws and expectations (as set out in Part A), mentoring, supervision or reflective practice
- keep yourself and your staff informed of best practice in service provision to diverse communities within their field of expertise
- ensure staff have access to additional, tailored and relevant training – for example, in cultural competency/cultural safety, communication skills, disability awareness or gay, lesbian, bisexual, transgender and intersex (GLBTI) awareness.

At minimum, all staff members at a general practice should have read this guideline about their responsibilities.

4.2 Recognise staff and patient diversity

Diversity in your staff can assist your general practice to offer quality services to the whole community. For example, bi-cultural staff may be able to support communication with patients with low English proficiency and play an important role in linking services and communities. Aboriginal and Torres Strait Islander staff may be able to bring their experiences to improve services for this community.

If your practice wishes to draw on these strengths, it is important to support these staff members. This may include documenting these additional duties in role statements, providing appropriate remuneration for additional skills and supporting staff through mentoring and effective supervision. You should:

- look for best practice guides for working with diverse patients
- consider how you can support staff members who are contributing their expertise to services for diverse communities
- support staff with disabilities and other diverse needs by approving flexible work arrangements, such as varying work hours[11]
- when recruiting, seek to attract a diverse pool of applicants, set aside myths and stereotypes, and select the person best suited to the job. For more information on recruitment, refer to the *Guideline for the recruitment industry and employers*
- build knowledge of diverse communities within your practice. This could be done by building links with specialist services, for example Aboriginal Community Controlled Health Organisations, refugee health centres, GLBTI health organisations and local cultural, social or disability support groups.

10 For more information about inclusive language, see National LGBTI Health Alliance, *Inclusive language: respecting intersex people, trans people and gender diverse people* (2013).

11 Download template policies from the Right Smart Employers Toolkits on the Commission's website at humanrightscommission.vic.gov.au/employerstoolkits.

5 Review premises and accessibility

Look at your building and equipment. Are your premises accessible to people with a range of disabilities? Do all staff understand how to use available equipment? Does your practice need additional training or equipment?

5.1 Access, equipment and infrastructure

General practices may need to make changes to support access for people with disabilities, patients with communication needs and patients who attend with their children. Issues to consider include:

- car parking and access to your building
- the position and height of service desks, signs and other information
- the width of doorways, corridors and turning areas
- whether there are well-lit and quiet areas for communication with patients with communication difficulties
- available equipment such as hoists, adjustable beds or speaker or dual handset telephones for working with interpreters.

Since May 2011, new building approvals or upgrades need to comply with the Commonwealth Disability Standards on Access to Premises. More information about the Standards can be obtained from the Australian Human Rights Commission or online at humanrights.gov.au/publications/access-premises.

6 Review your complaints and feedback procedures

Look at complaints systems if there are some in place. Have you received complaints? What is the nature of the complaints? How have they been responded to?

6.1 Establishing a complaints procedure

An effective complaints process helps you to deal with complaints of discrimination, sexual harassment and victimisation quickly, fairly, impartially and transparently.[12]

The Equal Opportunity Act does not prescribe what a complaints process should include. However, an internal complaints process can be strengthened by:

- including information about the complaints process in any equal opportunity policy
- dealing with complaints in a way that is fair, prompt, transparent and confidential
- listening to the complaint in an open and impartial way
- keeping complaints confidential
- communicating about the progress of complaints
- ensuring that the person, their relatives and carers are not victimised or treated badly because they made a complaint
- informing the complainant that they may be able to have their complaint dealt with externally by the Victorian Equal Opportunity and Human Rights Commission or by the Health Services Commissioner.

6.2 Responding to feedback

Patient feedback can be a valuable source of information to improve quality, respond to diverse needs and prevent discrimination.

If your organisation has a feedback policy, it should make clear that patients are free to give feedback about communication, accessibility and respectful treatment. You might consider actively seeking feedback at particular points, such as after working with an interpreter, a communication aide or equipment that is aimed at improving accessibility.

Your practice should:

- offer a variety of ways to provide feedback to your service, such as pictorial feedback sheets, smiley face feedback forms or questionnaires
- be aware that some patients may not feel comfortable providing feedback directly to you or your service. Encourage anonymous feedback channels and develop open communication with community agencies that may be supporting your patients
- beware that no staff member victimises a person because they provide feedback.

7 Watching trends

Use knowledge of staff information, patient feedback, formal complaints and consultation to identify equal opportunity issues that might warrant further action over time. It is suggested you consider this every six months, or sooner if a worrying trend emerges.

12 Download a checklist to help you create an effective complaints procedure from the Right Smart Employers Toolkits on the Commission's website at humanrightscommission.vic.gov.au/employerstoolkits.

8 Consult with affected groups and individuals

Who is accessing your service and who is not? Are there things you could do to improve your service for particular communities?

8.1 Be aware of your community

In order to minimise the risk of discrimination you should:

- look at the community you serve, and remember that its profile may change rapidly. Statistical information that can help you understand the age groups, disabilities and cultural, religious, gender and sexual diversity of your existing or potential patients is available by local government area through the Victorian Department of Health's Health Status Atlas and may also be available through your Medicare Local. This demographic data can help you to identify potential gaps in your knowledge and the capacity of your general practice
- consider your organisation from the perspective of diverse patients. To do this, think about developing relationships with organisations that specialise in Aboriginal and Torres Strait Islander, GLBTI, culturally and linguistically diverse, or disability health; consulting communities; looking for good practice guides for working with diverse patients; and seeking feedback from patients in order to identify new perspectives.

8.2 Understand communities at risk of discrimination in health

Among the patients that you serve, some groups are at particular risk of discrimination in health services. These include:

- Aboriginal and Torres Strait Islander patients
- patients from culturally and linguistically diverse backgrounds and/or with low English proficiency
- transgender patients
- intersex patients
- gay, lesbian and bisexual patients
- patients with disabilities
- older and younger patients.

There is diversity within groups, and some individuals may experience multiple forms of disadvantage or discrimination. This reinforces the need for general practices to be open and flexible, and to respond to the individual needs and circumstances of patients. Below is information about these communities and some of the common forms of discrimination or disadvantage that can be faced.

Aboriginal and Torres Strait Islander patients

All Commonwealth, state and territory governments have recognised the gap in health outcomes between Aboriginal and Torres Strait Islander people and the general community.

In response to a 2011 survey of Aboriginal Australians, 29 per cent of respondents indicated that they had experienced racism within health care settings in the past 12 months.[13]

Examples of discrimination include:

- discriminatory attitudes of staff expressed through stereotypes (such as assumptions that Aboriginal and Torres Strait Islander patients have abused alcohol or drugs) or racist comments
- preventing patients from attending with children and family members
- refusing longer appointments or home visits
- being turned away from a mainstream health service and told to attend an Aboriginal Health Service (despite this not being the patient's preference)
- withholding written or complex information on the assumption of low education or literacy.

The history of certain practices in health care settings and other interactions between government agencies and Aboriginal and Torres Strait Islander people may also result in some Aboriginal and Torres Strait Islander people not trusting health services and practitioners, which may contribute to poorer health outcomes and provides reason for you to take particular care.

See Part B, 3.1 on page 14 for advice on how to encourage Aboriginal and Torres Strait Islander patients to identify.

Patients from culturally and linguistically diverse backgrounds and/or limited English proficiency

Culturally and linguistically diverse (CALD) patients may have particular health or communication needs, and may have limited English proficiency. They may be vulnerable to discrimination associated with:

- failure to work with interpreters, resulting in miscommunication and poor quality service. See Part B, 3.2 on page 15 for more information on working with interpreters
- discriminatory attitudes or comments by staff – for example, expecting a patient to speak English because of the amount of time they have been in Australia

13 Angeline Ferdinand, Yin Paradies and Margaret Kelaher, *Mental Health Impacts of Racial Discrimination in Victorian Aboriginal Communities: The Localities Embracing and Accepting Diversity (LEAD) Experiences of Racism Survey* (The Lowitja Institute, 2012) 20.

- stereotypes and assumptions – for example, that women from a particular community are uneducated or that migrants seek drugs to send to family members overseas
- withholding information on the assumption that a person will not understand or will not be interested.

Some of these forms of discrimination may also be experienced by patients of a particular religion. For example, a GP may withhold information about birth control and termination of pregnancy from a woman of a particular faith because they assume she would not want that option, or believe that a man of one religion is more likely to be violent than another.

Transgender patients

Transgender patients may experience discrimination in health settings, such as:

- failure to respect the gender of the person (such as incorrect use of he/she or failure to use a person's correct name or title)
- assumption of gender based on someone's voice or appearance
- unwanted and irrelevant focus on a person's gender identity during health consultations
- being asked not to use the toilets or facilities that are appropriate to their affirmed gender
- being treated with contempt, laughed at or otherwise subjected to a hostile environment.

Some transgender patients will have inconsistent information appearing on their records due to barriers imposed by policies, practices and legislation. For example, under Victoria's *Births, Deaths and Marriages Registration Act 1996,* a transgender person is not able to change the sex on their birth certificate unless they have completed sex affirmation surgery. This means that some patients who have transitioned to affirm their gender but who have not completed sex affirmation surgery may have identity documents that do not reflect this change.[14]

Intersex patients

Intersex people are a distinct group from transgender people and may experience different forms of discrimination.[15] This might include:

- failure to fully disclose diagnosis details, or doing so in a disrespectful manner or ways that prejudge treatment paths
- failure to fully inform regarding treatment options, risks and outcomes, including options to delay or avoid interventions
- suggesting that they must identify as a specific gender, or must have genital surgery, hormone or other treatment
- irrelevant focus on the sex of the patient, including binary definitions of sex on intake and patient record forms (for example, tick-boxes that only offer two options, 'male' or 'female').

Gay, lesbian and bisexual patients

Gay, lesbian and bisexual patients may experience discrimination in health settings. For example:

- negative comments or reactions when a person discloses their sexuality
- judgemental attitudes about sexual behaviour (for example, implying that a person is at fault for health problems because of their sexuality)
- irrelevant questions about sexuality
- treatment based on assumptions that all people are straight/heterosexual.

Patients with disabilities

People with disabilities experience worse health than the general population – and many of these differences are connected to social factors rather than being associated with the person's disability. People with disabilities are also at risk of discrimination in health care,[16] such as:

- physical barriers to access such as inaccessible buildings, lack of hoists, height adjustable beds or tactile wayfinding
- being refused entry to health services with an assistance dog

14 Transitioning refers to the process where a transgender person commences living as a member of another sex. This is sometimes referred to as the person 'affirming' their gender because transitioning means they start living as what they identify as their true gender. This may occur through medical intervention, style of dressing, or anything else that indicates an intention to commence living permanently as a member of another sex. It may or may not include sex affirmation surgery.

15 Intersex refers to people who are born with physical, hormonal or genetic features that are (a) neither wholly female nor wholly male; or (b) a combination of female and male; or (c) neither female nor male.

16 Professor Anne Kavanagh, Lauren Krnjacki and Monica Kelly, *Disability and health inequalities in Australia: research summary* (VicHealth, 2012).

- lack of support for communication needs, such as failure to work with Auslan interpreters or augmentative or alternative communication methods, and failure to provide clear and concise health information in a range of formats
- not being spoken to directly, having health complaints disregarded or inappropriate assumptions about a person's ability to consent to treatment
- not being believed or trusted because of a mental illness
- being shouted at or spoken to in a condescending, childlike manner
- being accused of drug-seeking behaviour when they have a chronic illness.

Women with disabilities are at particular risk of discrimination and disadvantage in healthcare, especially in relation to routine screening and reproductive and sexual health.[17] This can be caused by the attitudes of health professionals (for example, beliefs that women with disabilities are not, or should not be, sexually active), lack of information in accessible formats and physical barriers to accessing health services.

Older and younger patients

Some patients may be more vulnerable to discrimination because of their age. This can apply to younger as well as older patients. It might include:

- failure to involve the patient directly, for example, by seeking information only from their support person
- failure to respect the patient's decisions about their care, for example, assuming that older patients or patients with disabilities cannot consent to treatment
- failure to respect the patient's privacy, for instance, by sharing health information with family members without the patient's consent
- young patients being refused or forced to have treatment because of perceptions about their capacity to consent.

17 Sylvia Petrony, Dr Philomena Horsley and Professor Anne Kavanagh, *Access to health services for women with disabilities* (Women with Disabilities Victoria, 2011).

Frequently asked questions: Issues in general practice

I am a practice manager. What do I need to do to comply with the *Equal Opportunity Act 2010*?

First, you should read this guideline, which will tell you how to take reasonable precautions to prevent discrimination. This will involve reviewing your policies, practices and documentation to ensure compliance with the Equal Opportunity Act. Next, you should instruct your staff to read this guideline and provide them with the training they need. You should also use a good complaints process, staff knowledge and your consultation with communities to meet your positive duty by eliminating the causes of discrimination.

I work in a general practice. What do I need to do to comply with the Equal Opportunity Act?

First, you should read this guideline, which describes many practical ways you can ensure you are complying with the Equal Opportunity Act. These include attending training, understanding best practice in requesting information, working with interpreters and adapting your communication style to meet the needs of patients. You should also attend training as directed, and raise any gaps in accessibility or practice knowledge with your practice manager.

What parts of the Equal Opportunity Act relate to providing health care?

The law applies to all areas of providing a service to patients. However, you need to be particularly aware of obligations to prevent sexual harassment, avoiding asking discriminatory questions, and meeting the positive duty.

Can I refuse to perform a procedure on a patient because they have Hepatitis C or HIV and I am concerned about my safety?

No. It is against the law to discriminate against a patient or potential patient because of a disability. The Equal Opportunity Act allows you to limit or refuse a service if it is reasonably necessary to protect the health or safety of any person. However, this would not justify refusing treatment to a patient who has disclosed that they have Hepatitis C or HIV. This is because general practices are expected to apply universal infection control procedures.

Can I refuse to see a patient because of aggressive or disruptive behaviour?

If the behaviour is a symptom or manifestation of a disability, then you have a responsibility not to discriminate against the person.

If the behaviour is disruptive or time consuming you still have a responsibility to make reasonable adjustments to accommodate that person's disability.

If the behaviour is causing a safety risk, the Equal Opportunity Act allows you to discriminate, if it is reasonably necessary to protect health, safety or property. The person should not be refused service if you can take other reasonable steps to protect staff and other patients.

Can I refuse to see a patient because I feel uncomfortable with their sexual history?

No. Discrimination because of sexual orientation or lawful sexual activity (including discrimination against sex workers) is against the law.

Can I ask a patient not to breastfeed in a waiting room?

No. Discrimination because of breastfeeding is against the law. A woman has the right to breastfeed in a public space. This means that you cannot require a woman to move to a different room to breastfeed, although some women may welcome the option of breastfeeding in a more private or comfortable place.

Can I ask a patient not to bring their assistance dog to their appointment?

No. It is against the law to discriminate against a person because they are accompanied by an assistance dog. An assistance dog is trained to perform tasks or functions that assist a person with disabilities to alleviate the effects of his or her disability. This includes guide, hearing and mobility dogs, as well as dogs that assist with other disabilities including seizures or mental illness.

My patient has asked for an interpreter, but I think that the consultation can be done without one. Do I still need to work with an interpreter?

Yes. Failure to work with an interpreter may amount to discrimination under the Act. In addition, failure to work with an Auslan interpreter when needed might constitute a failure to make reasonable adjustments for a patient with disabilities (see Part A, 1.6 on page 7). It can also lead to liability in other areas of the law, such as the duty of care towards patients.

See section Part B, 3.2 on page 15 for more information about working with interpreters.

Can a general practice refuse a service to an Aboriginal or Torres Strait Islander patient because there is an Aboriginal health service that they can access instead?

No. Not all Aboriginal or Torres Strait Islander patients will prefer to visit an Aboriginal Community Controlled Health Organisation and cannot be required to by their general practice.

Similarly, a general practice should not assume that a gay patient will prefer a service for gay people, or that women will go to a women's clinic.

When can I advertise for staff members with particular attributes?

Under the welfare services exception in the Equal Opportunity Act, you can advertise for staff with a particular personal attribute if:

- they are being employed to provide a special measure (see Part A, 1.7.1 on page 8)
- they will be providing a service, benefit or facility to meet the special needs of patients
- the services are most effectively provided by people with the same attribute.

You could also employ these staff members if the recruitment decision itself is a special measure or if VCAT has granted an exemption that covers the recruitment.

How can I avoid vicarious liability for the behaviour of my staff?

To avoid vicarious liability, you must be able to show you took reasonable precautions to prevent an employee or agent acting in a discriminatory way. These precautions include having comprehensive policies dealing with equal opportunity and anti-discrimination laws, including specific information about obligations to patients. It involves training staff on those policies, putting them into practice, and having effective systems in place to deal with patients' complaints or concerns.

The reception staff in my practice work for several practitioners in the premises. Am I still responsible for their behaviour?

Practitioners who rent or own rooms in a clinic need to be aware that they can be responsible for services provided in the common areas of the practice (including access to the clinic) as well as in the service they provide.

Practitioners may also be responsible for the actions of reception staff they share with other practitioners in the same premises. Whether a GP is responsible for the conduct of staff on shared premises will depend on whether the staff member was acting as an agent of the pratitioner or of the general practice.

Isn't the building owner responsible for making sure the premises is accessible?

It is the service provider, rather than the owner of the premises, who must make reasonable adjustments to ensure their service is accessible. A service provider, which may be an individual GP or a general practice that shares the leased premises, would be obliged under their lease to seek the property owner's permission before making changes to the premises. The property owner may have separate responsibilities to ensure their premises are accessible.

Appendix: Useful contacts

AIS Support Group Australia

aissgaustralia@gmail.com
vicnet.net.au/~aissg

National body providing peer support, education, information and advocacy services for people with AIS and other intersex variations.

Australian Health Practitioner Regulation Agency

1300 419 495
ahpra.gov.au

Develops registration standards, codes and guidelines for health practitioners.

Australian Association of Practice Managers (AAPM) Vic

1300 651 334
aapm.org.au

AAPM is a non-profit, national peak association recognised as the professional body dedicated to supporting effective Practice Management in the healthcare profession. Members can contact the AAPM for advice.

Australian Medical Association Victoria (AMA)

1800 810 451
amavic.com.au

The AMA is the peak organisation representing doctors and medical students in Australia. The AMA performs roles such as research, advocacy and education. The AMA aims to protect the wellbeing of medical practitioners and promote and advance ethical behaviour in the medical profession.

Bisexual Alliance Victoria

bi-alliance.org

Bisexual Alliance Victoria is dedicated to promoting the acceptance of bisexuals in GLBTI and mainstream society and providing a fun, safe space where bisexuals can meet, make friends and talk about their experiences.

Centre for Culture Ethnicity and Health

(03) 9418 9929
ceh.org.au

Training, resources and publications on providing quality services to culturally and linguistically diverse communities. Resources include tip sheets on embedding cultural competence within an organisation.

Centre for Developmental Disability Health Victoria

(03) 9902 4467
cddh.monash.org

Resources on working with people with intellectual disabilities in healthcare settings.

Council on the Ageing (COTA) Victoria

(03) 9654 4443
cotavic.org.au

Provides information on the rights, needs and issues of older people.

Foundation House

(03) 9388 0022
foundationhouse.org.au

Publications and resources to enhance the understanding of the needs of people from refugee backgrounds among health and other professionals.

Gay and Lesbian Health Victoria

(03) 9479 8700
glhv.org.au

Offers training and resources on GLBTI health including the GLBTI inclusive practice service accreditation (The Rainbow Tick).

Medicare Locals

medicarelocals.gov.au

Local organisations established by the Australian Government to coordinate and deliver health services, including after-hours GP services, mental health services and targeted and tailored services for those in need. Your Medicare Local works collaboratively with other services in the area to ensure appropriate care for the community, and can work with you to establish contacts or provide advice.

Multicultural Centre for Women's Health

(03) 9418 0999
mcwh.com.au

Provides training and resources to enhance the health and wellbeing of immigrant and refugee women, including a Multilingual Resources Online Catalogue, Multilingual Library and training for health professionals.

Office of the Health Services Commissioner

1300 582 113
health.vic.gov.au/hsc

Accepts and resolves complaints from consumers of health services about health services in Victoria. Also provides training nd resources of the Health Records Act 2001 and the Health Privacy Principles.

Office of the Public Advocate

1300 309 337 (24-hours)
publicadvocate.vic.gov.au

Provides information about medical consent, refusal of medical treatment, powers of attorney and guardianship.

Organisation Intersex International Australia

www.oii.org.au
info@oii.org.au

National body raising awareness, providing education and lobbying for human rights and bodily autonomy for intersex people.

Resourcing Health and Education in the Sex Industry (RhED)

1800 458 752
sexworker.org.au

RhED is the Victorian sex worker organisation and works with female, male and trans* sex workers across all areas of the sex industry – brothel, escort, private and street sex work. RhED can provide training to GPs about the sex industry and the *Sex Work Act 1994* (Vic).

Royal Australian College of General Practitioners (RACGP)

1800 331 626
racgp.org.au

RACGP researches, lobbies and advocates on behalf on issues that influence GPs and their practice teams.

Scope Disability Resource Centre

(03) 9843 3000
scopevic.org.au

Offers training, information and support for organisations that work with people who use augmented or alternative forms of communication.

Seniors Rights Victoria

1300 368 821
seniorsrights.org.au

Provides training and education to increase and improve understanding and prevention of elder abuse.

Transgender Victoria

(03) 9517 6613
transgendervictoria.com

An advocacy organisation that also provides education about working on trans issues in a range of professional settings.

VicDeaf

(03) 9473 1111
vicdeaf.com.au

Can offer training and resources about communicating with deaf and hearing impaired people.

Victorian Aboriginal Community Controlled Health Organisation

(03) 9411 9411
vaccho.org.au

Victoria's peak representative Aboriginal health body offering training and resources on cultural safety for health workers.

Vision Australia

1300 847 466
visionaustralia.org

Australia's leading national provider of blindness and low vision services in Australia.

Zoe Belle Gender Centre

(03) 8398 4134
gendercentre.com

Provides online resources aimed at improving the health and wellbeing of Victoria's sex and gender diverse population.

Victorian Equal Opportunity
& Human Rights Commission

Contact us

Enquiry Line	1300 292 153 or (03) 9032 3583
Fax	1300 891 858
Hearing impaired (TTY)	1300 289 621
Interpreters	1300 152 494
Email	information@veohrc.vic.gov.au
Website	humanrightscommission.vic.gov.au