



Factsheet for General Practices

> Complying with the Equal Opportunity Act 2010 when providing services

Discrimination is against the law

The Victorian *Equal Opportunity Act 2010* makes discrimination, sexual harassment and victimisation against the law in many areas of public life, including services provided by general practices. The Equal Opportunity Act 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. All general practices need to show they have taken reasonable precautions to prevent unlawful conduct to avoid liability.

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

The Victorian Equal Opportunity and Human Rights Commission (the Commission) has developed a *Guideline for General Practices: complying with the Equal Opportunity Act 2010* to inform general practice teams about their obligations.

This factsheet explains some of these obligations and is intended as a guide only. **At minimum, all staff working in general practices should read the full Guideline to ensure they are aware of their legal obligations.** For more information, please contact the Commission.

What is discrimination?

Direct discrimination is treating someone unfavourably because of an actual or assumed protected attribute (characteristic).

Example of direct discrimination

Samir is a new patient at a rural GP 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 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.

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.

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).

Under the Equal Opportunity Act, 17 personal attributes are protected:

- age
- breastfeeding
- carer or parental status (having someone who depends on you for care)
- employment activity
- gender identity (including identifying as transgender)
- industrial activity
- lawful sexual activity
- disability (covering a broad range of temporary and ongoing conditions, including physical disability, intellectual disability, mental illness¹ and HIV or Hepatitis C status and including behaviour that is a manifestation of the disability)
- marital status
- physical features
- political belief or activity
- pregnancy
- race (including colour, nationality, ethnicity and ethnic origin)
- religious belief or activity
- sex
- sexual orientation
- personal association with someone who has, or is assumed to have, any of these personal attributes.

What is 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 and 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.

Communities at risk of discrimination

Some patients are at more risk of discrimination in health services and may be vulnerable to discrimination in the form of negative comments, assumptions, stereotypes or attitudes that make a person feel less welcome at your practice. Some groups are also at risk of experiencing particular types of discrimination, such as:

- **Aboriginal and Torres Strait Islander patients:** being turned away from a mainstream health service and told to attend an Aboriginal Health Service (despite this not being the patient's preference) or staff withholding written or complex information on the assumption of low education or literacy.
- **Gay, lesbian and bisexual patients:** experiencing 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 or assumptions that all people are heterosexual.

Example: 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.

- **Patients with disabilities:** facing physical barriers to access, lack of support for communication needs, being refused entry with an assistance dog, not being spoken to directly, not being believed or trusted because of a mental illness, being shouted at or spoken to in a condescending, childlike manner.

¹ The term mental illness is used in this fact sheet. 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.

- **Transgender patients:** having staff fail to respect their affirmed gender (such as incorrect use of he/she or failure to use a person's correct name or title), unwanted and irrelevant focus on their gender identity, being asked not to use facilities, including toilets, that are appropriate to their affirmed gender.

Example: Dana is a transgender woman. While on holiday, she wakes up with a high temperature, sore throat and blocked nose. During a 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 been asking discriminatory questions, unless they can demonstrate that the information they requested was reasonably required for a clinical purpose.

- **Intersex² patients:** having staff suggest that they must identify as a specific gender, irrelevant focus on their sex or failing to fully inform them regarding treatment options, risks and outcomes.
- **Older and younger patients:** having staff fail to involve them directly or respect their privacy (for example, seeking information from their family without consent), or failing to respect their decisions, assuming that they cannot consent to treatment.
- **Patients from culturally and linguistically diverse backgrounds and/or with low English proficiency:** having staff fail to work with interpreters or withholding information on the assumption that a person will not understand or will not be interested.

Case study: '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.'³

Frequently asked questions

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

First, you should read the *Guideline for General Practices: complying with the Equal Opportunity Act 2010 when providing services*. This 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 staff to read the 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 the *Guideline for General Practices: complying with the Equal Opportunity Act 2010 when providing services*. This 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 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, use of interpreters and meeting the positive duty.

Can I refuse to perform a procedure on a patient because they have Hepatitis C or HIV?

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.

² 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.

³ 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.

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. In addition, failure to work with an Auslan interpreter when needed might constitute a failure to make reasonable adjustments for a patient with disabilities. It can also lead to liability in other areas of the law, such as the duty of care towards patients.

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, you 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 Equal Opportunity Act, you can advertise for staff with a particular personal attribute if:

- they are being employed to provide a special measure
- 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 practitioner 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 who 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.

Where can I get more advice or information?

The full *Guideline for General Practices: complying with the Equal Opportunity Act 2010 when providing services* is available at humanrightscommission.vic.gov.au/guidelines.

The 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.

Phone 1300 292 153 or (03) 9032 3583

Email enquiries@veohrc.vic.gov.au

Web humanrightscommission.vic.gov.au.

Other specialist organisations can help you with specific issues. Refer to the [Appendix](#) in the full guideline.



**Victorian Equal Opportunity
& Human Rights Commission**

Need more information?

Contact the Commission:

Enquiry Line 1300 292 153 or (03) 9032 3583

Fax 1300 891 858

TTY 1300 289 621

Email enquiries@veohrc.vic.gov.au

Website humanrightscommission.vic.gov.au

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We welcome your feedback!

Were these resources useful? Easy to use? Would you like to see something else included? Please email us at communications@veohrc.vic.gov.au.

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