



Victorian Equal Opportunity
& Human Rights Commission

Volunteering and the Equal Opportunity Act 2010

> Issues paper

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About the Commission

The Victorian Equal Opportunity and Human Rights Commission is an independent statutory body with responsibilities under three laws:

- *Equal Opportunity Act 1995*¹
- *Racial and Religious Tolerance Act 2001*
- *Charter of Human Rights and Responsibilities Act 2006*.

The Equal Opportunity Act makes it against the law to discriminate against people on the basis of a number of different personal characteristics. The Racial and Religious Tolerance Act makes it against the law to vilify people because of their race or religion.

Under the Equal Opportunity Act and the Racial and Religious Tolerance Act, the Commission helps people resolve complaints of discrimination, sexual harassment, victimisation, and racial or religious vilification through a free and impartial dispute resolution service, with the aim of reaching a mutual agreement.

The Charter of Human Rights and Responsibilities requires government departments and public bodies to act in ways which are compatible with human rights and properly consider relevant human rights when making decisions. The Commission's role is to educate people about the rights and responsibilities contained in the Charter and to report annually to the Victorian Government about the operation of the Charter. The Commission does not handle complaints related to the Charter.

Services provided by the Commission include:

- a free telephone Enquiry Line
- a free and impartial dispute resolution service
- information and education about equal opportunity, racial and religious vilification and the Charter of Human Rights and Responsibilities.

¹ From 1 August 2011 the *Equal Opportunity Act 1995* will be replaced by the *Equal Opportunity Act 2010*.

Introduction

Organisations working with volunteers must comply with State regulatory requirements covering a range of areas, including working with children, food handling, privacy and occupational health and safety.

Not all organisations are aware that they also have responsibilities under Victorian equal opportunity laws when providing opportunities for volunteers to participate in their organisation. Additionally, many volunteers do not know that they are covered by these laws.

The current *Equal Opportunity Act 1995* provides some protections from discrimination for volunteers. These will continue under the *Equal Opportunity Act 2010*. The new Act will also extend protection from sexual harassment to volunteers.

Equal Opportunity Act 2010

The *Equal Opportunity Act 2010* comes into effect on 1 August 2011, replacing the *Equal Opportunity Act 1995*. Until then the *Equal Opportunity Act 1995* continues to operate.

The objectives of the *Equal Opportunity Act 2010* are to encourage the identification and elimination of discrimination, sexual harassment and victimisation and their causes, and to promote and facilitate the progressive realisation of equality.

The *Equal Opportunity Act 2010* strengthens discrimination laws in Victoria by changing some key definitions, creating new responsibilities for the Victorian Equal Opportunity and Human Rights Commission and strengthening the Commission's role in helping government, business and the community to identify and eliminate discrimination.

The Commission is developing tools and resources to help organisations comply with their obligations under the *Equal Opportunity Act 2010* and to help volunteers understand their rights under the new Act. These resources will be made available during 2011 prior to the commencement of the *Equal Opportunity Act 2010*.

This paper aims to:

- raise awareness of volunteers' rights and organisations' obligations under the *Equal Opportunity Act 2010*
- explore difficulties faced by volunteers and organisations based on the areas covered by the new Act, and
- seek feedback on practical ways in which the Commission can help to prevent discrimination in these areas.

Feedback on this paper

Responses to the questions in this paper will help the Commission develop and target tools and resources on the *Equal Opportunity Act 2010* for volunteers and organisations. The Commission would appreciate responses to these questions and feedback on any other issues covered by this paper by **10 June 2011**.

How does the Equal Opportunity Act 2010 apply to volunteers and organisations?

Sexual harassment

Under the *Equal Opportunity Act 2010*, volunteers will have the same protection against sexual harassment as paid employees. This change will bring Victoria into line with most other Australian jurisdictions which provide for some protection for volunteers from sexual harassment.

Sexual harassment is unwelcome conduct of a sexual nature. It involves behaviour that could reasonably be expected to make a person feel offended, humiliated or intimidated. Sexual harassment can be physical, verbal or written.

Workplace policies will need to protect volunteers from sexual harassment in the same way they protect paid employees.

Extending sexual harassment protection to volunteer workers means that an employer or employee must not sexually harass a person seeking work as a volunteer or a person currently working as a volunteer. It also means that volunteer workers must not sexually harass another employee or volunteer, their employer or another person seeking to work with the employer.

Discrimination

Volunteers will also continue to be protected from discrimination under the *Equal Opportunity Act 2010* as they are under the *Equal Opportunity Act 1995*.

Discrimination can be direct or indirect. Direct discrimination is treating someone unfairly because of a personal characteristic protected by law and causing them to be disadvantaged as a result. Indirect discrimination occurs when treating everybody the same way disadvantages someone because of a personal characteristic protected by law.

It is also against the law to victimise someone for making a complaint of discrimination.

In Victoria it may be unlawful to discriminate against volunteers because of their actual or assumed:

- age
- disability
- employment activity
- gender identity, lawful sexual activity or sexual orientation
- industrial activity

- marital status
- parental or carer status
- physical features
- political belief or activity
- pregnancy or breastfeeding
- race (including colour, nationality, ethnicity and ethnic origin)
- religious belief or activity
- sex
- personal association with someone who has, or is assumed to have, one of these characteristics.

Volunteers who are members of the club or organisation with which they volunteer are protected from discrimination on these grounds.

It is unlawful to discriminate against a person applying for **membership of a club** or against club members in, for example, the terms of their membership or the membership benefits provided to them. Exceptions exist for clubs established to preserve minority cultures, clubs established for people of a particular age group and single sex clubs.

In certain circumstances, volunteers who are not members of the organisation with which they volunteer may also be protected under the *Equal Opportunity Act 2010* when applying for volunteer roles and while volunteering.

Organisations' responsibilities

The *Equal Opportunity Act 2010* introduces a positive duty to eliminate discrimination, sexual harassment and victimisation.

The **positive duty** requires organisations and employers covered by the law to take reasonable and proportionate measures to eliminate discrimination, sexual harassment and victimisation. The reasonable and proportionate measures needed to satisfy the positive duty will depend on the size and resources of the organisation.

For a small community organisation for example, complying with the positive duty might include having policies aimed at preventing discrimination and harassment and ensuring that all staff are aware of their obligations.

The *Equal Opportunity Act 2010* also states that an organisation or employer can be held vicariously liable for the actions of their employees and volunteers.

Vicarious liability means that an organisation may be held legally responsible if an employee or volunteer discriminates against, or sexually harasses, a client, their employer or another volunteer or employee. An exception arises if the organisation or employer can show that they have taken reasonable precautions to prevent sexual harassment from occurring.

The new Act clarifies that organisations which provide opportunities for volunteer participation may be required to make reasonable adjustments for a volunteer with a disability. such as providing written materials in an accessible format or making modifications to ensure a workplace is physically accessible.

Making **reasonable adjustments** involves balancing the need for the adjustment with the expense or effort involved in making the adjustment. To assess whether an adjustment is reasonable, the nature of the adjustment required and the financial impact of the adjustment on the organisation should be considered.

An organisation would not be required to make an adjustment that is not reasonable with regard to the volunteer's disability, or if the person could not participate as a volunteer even after the adjustment was made.

Lastly, organisations delivering services on behalf of the Victorian Government will also have obligations under the Charter of Human Rights and Responsibilities.

The **Charter** sets out the basic rights, freedoms and responsibilities of all Victorians. These include the right to freedom of speech, the right to take part in public life and the protection of families and children.

The Charter requires that government, public authorities and organisations delivering services on behalf of government consider human rights when they make laws, develop policies and provide services.

Questions

Does this information adequately clarify the rights of volunteers and obligations of organisations under the *Equal Opportunity Act 2010*?

Are there any areas that require further explanation?

Barriers to volunteering covered by the Equal Opportunity Act 2010

In researching this paper the Commission consulted with a range of stakeholders about barriers to volunteering based on the attributes covered by Victorian equal opportunity laws.

The Commission conducted face to face and phone consultations with agencies including the Department of Planning and Community Development, the Office of Senior Victorians, the Victorian Multicultural Commission, Volunteering Victoria, VicSport, Council on the Ageing and the Municipal Association of Victoria.

The Commission also conducted an online survey during March 2011 with questions directed to volunteers and organisations working with volunteers (see Appendix 1).

The Commission received over 500 responses to the survey. Of these, 58 per cent were from volunteers and 42 per cent from organisations. The survey findings are discussed below.

Volunteers

Close to half of the volunteers who responded to the survey were not aware that volunteers are covered by Victorian equal opportunity legislation.

The top five organisations in which respondents volunteered were:

- non-government organisations
- sporting clubs
- local government
- cultural groups
- Royal Society for the Prevention of Cruelty to Animals.

Nearly three quarters of the volunteers who responded to the survey did not indicate that they had experienced any difficulties in volunteering based on the attributes covered by Victorian equal opportunity law.

Respondents that did experience difficulties indicated that these most frequently related to their:

- age
- disability
- sex or gender identity.

Age

While some respondents reported difficulties in volunteering based on their youth, most who identified issues relating to their age were mature aged. Older volunteers who reported difficulties said that:

I am often dismissed as a volunteer because I am seen as too old and out of touch. Many of the activists in my area of interest are young.

(In) the community service organisation in which I volunteer, the attitude towards older (people) is presented in an environment of stigma and rejection ... such as being appreciated or listened to in a meeting context, or when it comes to ... service delivery, usually a younger and maybe more attractive face is chosen over that of someone more mature.

I am often treated as if I have had no life experience or education. Younger bureaucrats or managers tend to assume that because one is a 'senior', then one is unintelligent and needs to be instructed and treated as if one was a child.

Disability

A number of respondents with a disability indicated that attitudes of both service providers and service users presented barriers to their volunteering:

When I started volunteering I was in a wheelchair and was unable to use my right side. It caused an issue with the users of the (service) ... (They) were afraid and upset that I was a volunteer as they thought it was not safe.

I have rheumatoid arthritis and people have a very limited understanding of an illness that fluctuates. They don't understand that one day you are fine and the next you are not.

As a volunteer I was required to do training. My mental illness made it difficult to focus at times, meaning it took longer to complete the training than I had planned. While the organisation was supportive, some key people ... were less than supportive (and) made disparaging remarks about me within my hearing...

Other respondents reported feeling frustrated and excluded by organisations that did not provide them with the supports needed to perform their role. One respondent with a hearing impairment described difficulties in answering the phone due to a lack of appropriate technology, while another had to stop volunteering at two organisations because they were not supported to participate in meetings.

Some respondents with a disability, however, identified what they found valuable in a volunteer placement:

Previous places simply could not accept that I was capable of doing things, they could not get past the disability and mental illness and simply saw me as a 'thing' that needed to be pitied and babysat. I am now at a brilliant place that is able to focus on what I can do and ... see the whole me, accept that I may at times have issues but that does not mean there is not something valuable that I can offer.

Sex/gender identity

A number of survey respondents identifying barriers to volunteering on the basis of their sex or gender were women who reported being subjected to jokes or patronising attitudes or assigned menial tasks because of their gender:

Staff member making jokes and being generally rude about and towards middle-aged, overweight women.

They will not allow me to do any other tasks than what they feel a female should do. I can get drinks for them and sell raffle tickets. All other duties are for men only.

One respondent who identified as intersex reported being excluded from volunteering with an LGBTI (lesbian, gay, bisexual, transgender and intersex) organisation on the basis that the organisation only provides services for same-sex attracted people.

Other key barriers identified by volunteers

Some respondents identified difficulties in volunteering due to a conflict between their religion and the religious principles of the organisation with which they volunteered or, in one case, the religion of an opposing sporting team.

Others identified that a prior criminal record presented a significant barrier to their volunteering. Discrimination on the basis of criminal record is not unlawful under Victorian equal opportunity law.² However, the frustration expressed by respondents with a criminal history unable to secure a volunteer placement makes their responses worth noting:

All work(places) do police checks and once they see that they say no. Four thousand email rejections, what do I do? I have written to many people for help and could not get it.

I have no pension, my hubby supports me, it feels like I have no right to work.

Somehow, some way, I have accepted it. The sad thing is that I'm an excellent worker.

Knowledge of rights and avenues for redress

Just under a quarter of the respondents who identified difficulties in volunteering sought help from outside the organisation in which they volunteered to try and resolve their issues. The most popular sources of external assistance were:

- peak bodies
- state government body or website
- local government.

Nearly two thirds of volunteers who reported seeking assistance for a volunteering-related issue identified that they were unable to resolve it.

Organisations

Most organisations responding to the survey came from one of the following sectors:

- non-government organisations

² Complaints of discrimination in employment and occupation on the basis of criminal record may be investigated by the Australian Human Rights Commission under the Federal *Australian Human Rights Commission Act 1986*. See www.humanrights.gov.au/human_rights/criminalrecord/index.html (viewed 6 April 2011)

- local government
- sport
- health
- cultural organisations.

Of the organisations that reported difficulties in working with volunteers, the areas most frequently identified as problematic were:

- volunteer recruitment and retention
- training
- relationships with other staff or clients
- cost issues
- insurance.

Volunteer recruitment and retention

Recruiting and retaining volunteers presented difficulties for many organisations responding to the survey. The ageing profile of volunteers, the need to find the right skill set for the role, and mandatory police checks and working with children checks were identified as contributing to these difficulties:

Many of our volunteer groups have difficulty attracting new volunteers, particularly younger volunteers. In general our volunteer population is ageing.

I believe some people may find the background checks off-putting/onerous.

Skill set and attitude to people with a disability are often problematic.

Specific issues in regard to recruitment and retention of volunteers were also raised by agencies in consultation with the Commission. For example, VicSport identified that the time commitment by volunteers to run sporting clubs has increased, as have the compliance obligations on clubs. These obligations have further increased the commitment required of volunteers who must build their expertise to enable clubs to meet their regulatory obligations.³

Training

A number of organisations highlighted difficulties with the cost of providing training and encouraging volunteers to attend training around work and personal commitments. Organisations noted the complexity of training required for particular roles and the need for specific training for volunteers serving on boards and committees:

Taking on a role which requires understanding of incorporation, official positions, budgeting for money... negotiation, conciliation, mediation ... (This is) personal development when what the volunteer thought they were doing was much less in terms of commitment.

We focus on this as much as our funding will allow but legislation means we have to do more of it but (no) funds to deliver and/or access.

³ Consultation with VicSport, 21 December 2010

(For volunteers in committee roles, training is required for them) to develop leadership and social skills to promote the inclusion/participation of as much of the community as possible in community groups.

Relationships with other staff or clients

Some organisations identified difficulties relating to supervision of volunteers, the attitude of paid staff to volunteer workers, and the attitude of volunteers towards service users:

Management of volunteers in regard to their relationships with others can sometimes be more difficult than with paid staff. If someone is volunteering their time it is uncomfortable if their behaviour requires supervision.

Because we work with homelessness and people with mental health (issues) it can often be difficult getting the 'right' people who can take those marginalised people for who they are.

Managing volunteers who have volunteered for some time and they are no longer appropriate for the role i.e. depression, health issues.

'Managing out' of volunteers considered no longer suitable for a role requires caution by organisations to ensure that, when doing so, they do not discriminate on the basis of attributes covered by the *Equal Opportunity Act 2010* such as age, disability or impairment.

Cost issues

Organisations that identified cost issues noted the need to reduce out-of-pocket expenses borne by volunteers, particularly for petrol, and the increasing costs of compliance with regulation such as mandatory criminal record and working with children checks.

Specific cost issues experienced by volunteers were raised in consultations with the Commission, particularly transport costs for volunteers in rural and regional areas.⁴

Insurance

A number of organisations identified confusion in relation to the type of insurance required to cover volunteers and the cost of insurance. Several organisations noted that the 'capping' of insurance based on a volunteer's age excluded older people from volunteering, with respondents variously stating that they had been unable to obtain insurance coverage for volunteers over 70, 75 or 80 years of age.

Several organisations that did not identify problems with insurance noted that they were covered by a state or local government insurance policy or were auspiced by a larger organisation.

The issue of insurance, particularly for older volunteers, frequently arose in consultations by the Commission. The Office of Senior Victorians raised the inconsistency in insurance coverage for older volunteers and that the inability to obtain adequate insurance coverage causes particular difficulties for smaller organisations.⁵ The Municipal Association of

⁴ Consultation with Department of Planning and Community Development Barwon South-West and Grampians Region, 16 December 2010

Victoria identified that insurance for volunteer drivers, particularly older drivers, had arisen as an issue for local government.⁶

Knowledge of obligations and sources of assistance

Most organisations responding to the survey said they were aware that volunteers are covered by laws preventing discrimination and sexual harassment (96 per cent).

When asked where they would go for help or support in managing volunteers, the top three responses were:

- peak body
- state government body or website
- local government or website.

A number of other respondents identified volunteer resources centres, local networks, workshops and forums as good sources of support and information. One organisation indicated that if issues arise with a volunteer with a disability they would seek assistance from their disability reference group.

Question

Are there other key issues concerning volunteers' rights and organisations' compliance with the *Equal Opportunity Act 2010* that have not been covered here?

⁵ Consultation with the Office of Senior Victorians, Department of Planning and Community Development, 30 November 2010

⁶ Consultation with Municipal Association of Victoria, 4 January 2011

How can the Commission help volunteers and organisations?

The Commission can help volunteers and organisations working with volunteers to understand their rights and obligations under the *Equal Opportunity Act 2010* in three key ways:

- **Training**

The Commission can provide training to organisations on the *Equal Opportunity Act 2010* in general and on specific areas of the Act, such as reasonable adjustments or sexual harassment. Training could be provided:

- Onsite at the Commission
- Through a peak body or local network
- As standalone training or in conjunction with other training, i.e. on regulatory compliance or volunteer management
- As part of a train-the-trainer process to enable staff to train other staff and/or volunteers.

- **Provision of information**

The Commission can develop information about the *Equal Opportunity Act 2010* for volunteers and organisations. This information could be made available:

- As downloadable information sheets from the Commission's website
- Through the Office of Community Sector's information portal, other government websites and peak bodies' websites
- Via local networks and forums
- Through inclusion in existing volunteer training packages.

- **Compliance tools**

The Commission can develop tools for organisations to assist them in complying with their obligations under the *Equal Opportunity Act 2010*, such as:

- Checklists and self-audit tools
- Sample equal opportunity and sexual harassment policies
- Sample action plans.

Questions

Which of these resources and distribution methods will be most effective in communicating to volunteers about their rights and assisting organisations to comply with their obligations under the *Equal Opportunity Act 2010*?

Are there other resources and/or distribution methods that would be useful?

Conclusion and next steps

The Commission's research has shown that while most volunteers report positive volunteering experiences, a minority identify discriminatory treatment based on attributes covered by the Equal Opportunity Act 2010. The research also found that a significant number of volunteers are not aware that they are protected by Victorian equal opportunity law. This indicates a need for organisations that work with volunteers, peak bodies and government to ensure volunteers are aware of their rights and avenues for redress.

While the Commission's research found that most organisations were aware that volunteers are covered by the Equal Opportunity Act 2010, it revealed some risks faced by organisations in working with volunteers. These included the risk that volunteers may themselves discriminate against service users and that, in the process of managing or 'managing out' volunteers, organisations risk discriminating against them on the basis of attributes covered by the Act. The research also indicated that some areas of the law are unclear in relation to discriminatory treatment of volunteers, such as insurance provisions based on age.

The *Equal Opportunity Act 2010* creates some new obligations for organisations and clarifies existing obligations in relation to working with volunteers. Organisations working with volunteers are already bound to comply with a range of regulations and report difficulty in training volunteers as part of their current compliance obligations. Many are community organisations reliant on volunteers to provide core services that are additionally challenged by volunteer recruitment and long term retention.

The Commission's objective is to prevent discrimination in volunteering in ways which minimise the regulatory burden on organisations. Informed by responses to this paper, the Commission will be developing tools and resources to help organisations comply with their obligations under the *Equal Opportunity Act 2010* and to help volunteers understand their rights under the new Act. The Commission will consult with key stakeholders in the development of these resources. The resources will be made available during 2011.

For further information and to provide feedback on this paper before 10 June 2011 contact: Rivkah Nissim, Senior Advisor, Strategic Projects on (03) 9032 3405 or rivkah.nissim@veohrc.vic.gov.au

Appendix: Volunteer survey

Are you

- a volunteer
- an organisation that works with volunteers

Volunteers

What type of organisation do you volunteer with?

- Sporting club or group
- Cultural group
- Local council
- Community organisation
- Other - please describe

Have you experienced difficulties in your volunteer work because of your

- age
- sex/gender
- disability
- mental illness
- race
- religion
- criminal record
- no I haven't experienced any difficulties
- other – please describe

If yes, please briefly describe the difficulties caused by your...

Did you seek help or information from outside the organisation to resolve the issue?

- yes
- no

From whom did you seek help or information?

- state government (including websites)
- local government (including websites)
- peak body
- other – please describe

Were you able to resolve the issue?

- yes
- no

Did you know that volunteers are covered by legislation administered by the Victorian Equal Opportunity and Human Rights Commission, including the Equal Opportunity Act and the Racial and Religious Tolerance Act?

- yes
- no

Organisations

What type of organisation do you represent?

- Sporting club or group
- Cultural group
- Local council
- Community organisation
- Other - please describe

Please briefly describe your organisation's volunteer profile in terms of age, sex, cultural background etc

Have you experienced difficulties with volunteers because of:

- insurance (please describe)
- recruitment or retention (please describe)
- cost (please describe)
- training (please describe)
- relationships with other staff or clients (please describe)
- other – please describe
- no we have not experienced any difficulties

Where would you go for help or support in working with or managing volunteers?

- state government (including websites)
- local government (including websites)
- peak body
- other – please describe

Are you aware that volunteers are covered by laws that cover discrimination, victimisation, bullying and sexual harassment?

- yes
- No

Thank you for taking the time to complete this survey.