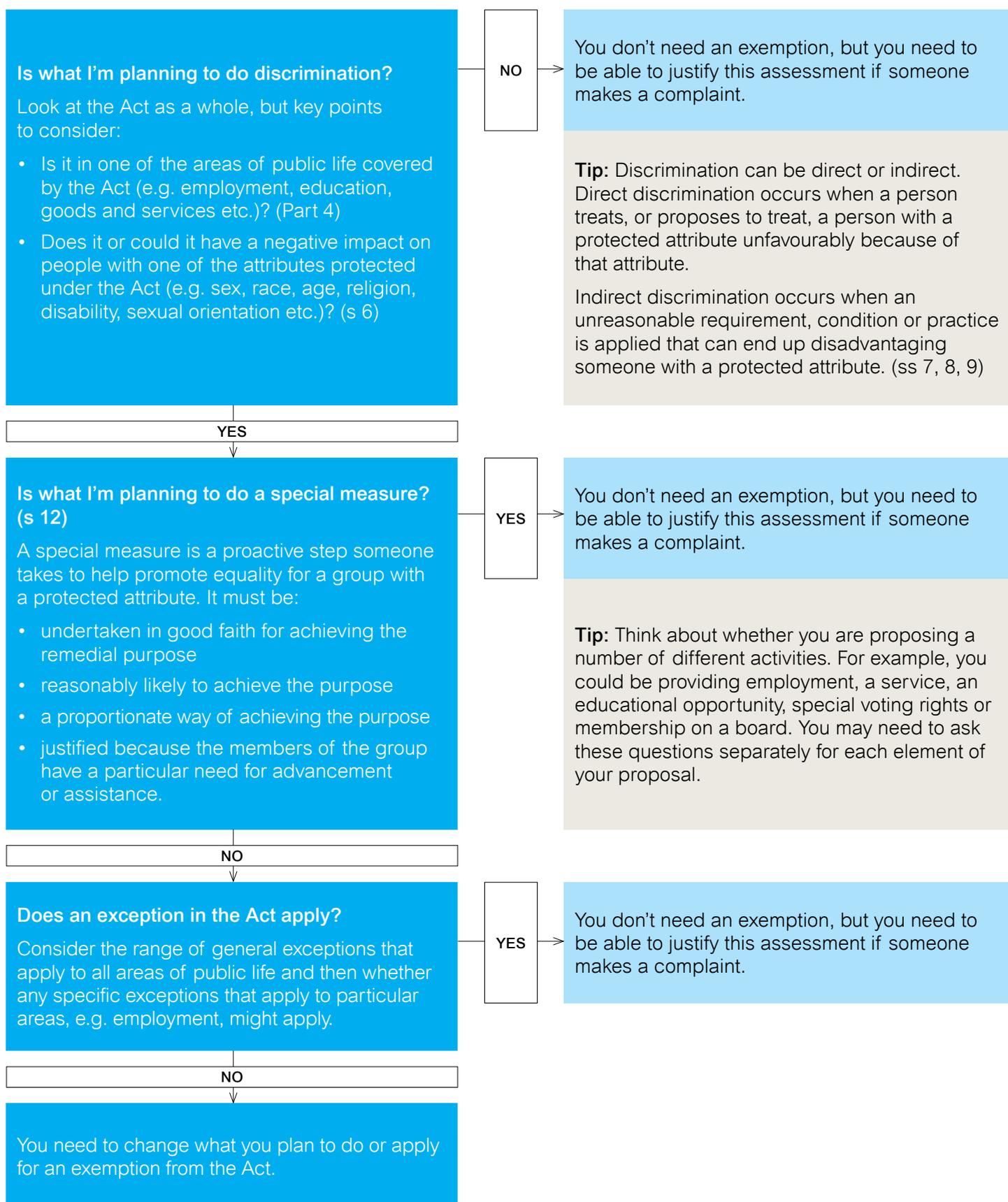


When do I need to apply for an exemption from the Equal Opportunity Act 2010?



What does VCAT look at when considering an exemption application?

Section 89 of the *Equal Opportunity Act 2010* gives the Victorian Civil and Administrative Tribunal (VCAT) power to grant an exemption from the Act. An exemption allows conduct that would otherwise be unlawful discrimination. VCAT must consider a number of issues when deciding whether to grant, renew or revoke an exemption. These are set out below.

1. Is the proposed exemption unnecessary because an exception or exemption already applies?

Tip: There are both exceptions and exemptions to discrimination under the Equal Opportunity Act.

Exceptions are ongoing and are listed in the Act. Some apply to specific areas, such as employment, others are general and apply across all areas.

Exemptions need to be applied for in particular circumstances. VCAT considers exemption applications and can grant them for up to five years.

2. Is the proposed exemption unnecessary because the conduct would not be prohibited discrimination, that is, it falls outside the Act or is a special measure?

Tip: You can contact VCAT for application forms and information about the process for making an exemption application. Call (03) 9628 9900 or visit vcat.vic.gov.au.

3. Is the proposed exemption a reasonable limitation on the right to equality set out in the Charter of Human Rights and Responsibilities (the Charter). This involves VCAT considering whether the proposed limitation on the right is:

- reasonable
- justified
- necessary, and
- proportionate. (s 7(2), the Charter)

Tip: When making an application, think about the supporting material VCAT will need from you to properly consider these issues. This might include things like relevant policies, position descriptions, organisational structure and statements setting out the reasons behind the action you propose to take. Remember that an exemption restricts other people's right to equality, so VCAT is making an important decision.

4. All the relevant circumstances of the case. This means VCAT can consider any other relevant factors.

Tip: An exemption under the *Equal Opportunity Act 2010* does not excuse you from obligations you may have under other laws.

Contact the Australian Human Rights Commission for information about federal anti-discrimination laws in the areas of race, sex, age and disability. Call 1300 369 711 or visit humanrights.gov.au.

If, having considered these factors, VCAT decides that an exemption is appropriate, it will make an order and publish the exemption in the *Government Gazette*.

Exemptions can be granted for up to five years and can include any conditions VCAT thinks fit.



Victorian Equal Opportunity
& Human Rights Commission