

Victorian *Equal Opportunity Act 1995*

What government schools need to know

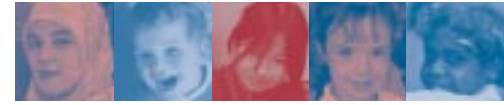


equal
opportunity
commission
victoria

An independent statutory body
accountable to the Victorian Parliament



Department of
Education & Training



Introduction

The Department of Education & Training ('the Department') will not tolerate unlawful discrimination or sexual harassment and is committed to providing safe workplaces and educational settings in accordance with its obligations under State and Federal anti-discrimination legislation. This brochure gives an overview of relevant provisions of the Victorian *Equal Opportunity Act 1995* and supporting information.

Equal Opportunity Commission Victoria

The Equal Opportunity Commission Victoria receives complaints lodged under the Victorian *Equal Opportunity Act 1995* and the *Racial and Religious Tolerance Act 2001*. The Human Rights and Equal Opportunity Commission receives complaints under Federal legislation, including the *Sex Discrimination Act 1984*, *Racial Discrimination Act 1975* and the *Disability Discrimination Act 1992*. These Acts aim to ensure equality of opportunity in an environment free from discrimination and sexual harassment.

Where is discrimination and sexual harassment prohibited?

The Victorian *Equal Opportunity Act 1995* ('the Act') makes it unlawful to discriminate or sexually harass in the following areas of public life: education, employment, provision and receipt of goods and services, sport, accommodation, clubs and club members, local government and disposal of land.

When is discrimination prohibited?

It is unlawful to **sexually harass** or to **discriminate** on the basis of the following protected attributes: age, impairment/disability, industrial activity, pregnancy, sex, religious belief or activity, lawful sexual activity, sexual orientation, gender identity, marital, parental or carer status, breastfeeding, physical features, political belief or activity, race and personal association with a person who is identified by reference to any of the above attributes.

What is discrimination?

Under the Act discrimination may be **direct** or **indirect**.

Direct discrimination means treating a person with a protected attribute less favourably than a person who does not have the protected attribute in the same or similar circumstances. Direct discrimination is set out in section 8 of the Act.

Indirect discrimination occurs when an unreasonable requirement, condition or practice, which may appear to be neutral, in fact has a disproportionately negative impact on people with a particular attribute. Indirect discrimination is set out in section 9 of the Act.

How are schools affected by the Act?

Schools are covered by the Act because they:

- educate children
- employ people (as teachers, cleaners, administrators, aides, etc.)
- provide goods and services (canteen, parent interviews, after school programs, etc.)
- organise sporting teams.

Discrimination in education

An educational authority must not discriminate against a person:

- in deciding who should be admitted as a student
- by refusing or failing to accept the person's application for admission as a student
- in the terms on which the authority admits the person as a student
- by denying or limiting access to any benefit
- by expelling the student
- by subjecting the student to any other detriment: see section 37.

There are a number of exceptions to discrimination in the area of education, for example:

- An educational authority that operates a school or program designed for a particular sex, race, religious belief, age group or students with a particular

impairment/disability may exclude students who are not a member of the particular group: see section 38.

- An educational authority may impose reasonable standards of dress, appearance and behaviour for students: see section 40.
- An educational authority may discriminate on the basis of disability/impairment if a student requires special services and facilities and it is not reasonable for those special services and facilities to be provided, or the student could not derive substantial benefit from the educational program even after the provision of special services or facilities: see section 39.

Discrimination in employment

Discrimination in the area of employment is prohibited under the Act. It is unlawful to discriminate against job applicants, employees and contract workers: see sections 13, 14 and 15.

There are a number of exceptions that may apply in the area of employment. For example:

- An employer may discriminate against job applicants and employees on the basis of disability/impairment if, for example, in order to do the job a particular service or facility is required and it is unreasonable in the circumstances to provide it: see section 22.
- An employer may discriminate against job applicants and employees on the basis of disability/impairment if, for example, the person could not adequately perform the job even after the provision of special services: see section 22.
- An employer may discriminate against an applicant or employee if the employment involves the care, instruction or supervision of children and a genuine belief exists, which is rational and can be proven, that the discrimination is necessary to protect the well-being of the children: see section 25.

There are also a number of general exceptions that may apply broadly (not only employment), including:

- A person may discriminate against another person on the grounds of impairment or physical features if the discrimination is necessary to protect the health or

safety or property or any person or of the public generally: see section 80.

- A person may discriminate if it is necessary to comply with, or is authorised by, a provision of an Act or enactment: see section 69.

The merit and equity policy of the Department must be reflected in all its employment practices. This will ensure:

- the workplace is free from practices which will discriminate unlawfully against staff or potential job seekers
- there is access to a fair and efficient grievance review process in relation to disciplinary, personnel and administrative actions.

Discrimination in the provision of goods and services

It is unlawful to discriminate in the provision of goods and services:

- by denying a person goods or services
- in the terms on which goods or services are provided
- by subjecting a person to any other detriment in connection with the provision of goods or services: see section 42.

Schools acting as providers of goods or services at fetes, excursions, canteens, textbook outlets or even at parent-teacher information sessions are guided in their relationships with their clients by their own codes of practice which apply to principals, school council members, staff and school community members and establish expected professional behaviours.

There are also exceptions to discrimination in the provision of goods and services. For example:

- A school may require, as a term for providing a service such as a school excursion, that a child be accompanied or supervised by an adult if there is a reasonable risk that, if unaccompanied, the child may cause a disruption or endanger himself/herself or any other person: see section 45.
- A person may refuse to provide a service, or set reasonable terms for the provision of a service, if the service would be required to be provided in a special

manner and it cannot be done in that manner or the person can only reasonably provide the service on more onerous terms: see section 46.

Discrimination in sport

In the area of sport, a person must not discriminate against another person:

- by failing to select the other person in a sporting team
- by excluding the other person from participating in a sporting activity.

Curriculum

School curriculum goals must not only address the delivery of programs and the level of student performance, but also the extent of participation by all students. Strategies that address the lack of participation by particular students will assist schools in addressing direct or indirect discrimination in the area of sport.

However, participation in a competitive sporting activity can be restricted to:

- people who can effectively compete
- people of a specified age or age group
- people with a general or particular disability
- people of one sex where the strength, stamina or physique of competitors is relevant and competitors are over 12 years of age: see section 66.

Sexual harassment

Under the Act it is against the law to sexually harass another person. The Act addresses sexual harassment in Part 5. Section 85 (1) provides: *'a person sexually harasses another person if he or she –*

- a) makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person; or*
- b) engages in any other unwelcome conduct of a sexual nature in relation to the other person –*

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.'

Section 85(2) provides: ‘ “conduct of a sexual nature” includes–

- a) subjecting a person to any act of physical intimacy;
- b) making, orally or in writing, any remark or statement with sexual connotations to a person or about a person in his or her presence;
- c) making any gesture, action or comment of a sexual nature in a person’s presence.’

A person sexually harasses another person if he or she makes an unwelcome sexual advance, request for sexual favours, or engages in any other unwelcome conduct of a sexual nature. Sexual harassment is behaviour that is uninvited, unreciprocated and unwelcome. It may include:

- comments about a person’s sex life or physical appearance
- comments of a sexual nature
- suggestive behaviours, such as leering and ogling
- unnecessary physical intimacy, such as brushing up against a person
- physical contact, such as touching or fondling
- ‘flashing’ or sexual gestures
- sexual propositions or repeated unwanted requests for dates
- making promises or threats in return for sexual favours
- sexual jokes, offensive telephone calls, displays of offensive photographs, reading matter or objects
- sending jokes or graphics of a sexual nature by email, internet or fax
- unwelcome questioning about a person’s private life
- offensive computer screen savers
- unwanted requests for sex
- stalking, indecent assault or rape (which are also criminal offences).

Sexual harassment can be physical, verbal or visual and may include statements or transmissions by telephone, fax, video conference, internet and email, and will vary in the degree and extent to which it causes affront and distress.

It is unlawful for a person to sexually harass another

person in a school environment. All relationships in a school environment are protected from sexual harassment, including student to student.

Who is responsible if discrimination or sexual harassment occurs?

- Teachers are liable for their actions.
- Students are liable for their actions.
- Employers are liable for the actions of their employees, unless they can show that they have taken reasonable precautions to prevent their employee from contravening the Act.
- Teachers, schools and students may be liable for the actions of students and other teachers if they authorise, encourage or assist discrimination or sexual harassment.

The Department’s *Sexual Harassment Policy and Procedures* sets out the roles and responsibilities of Department Education & Training (DE&T) employees. You can obtain a copy of the policy from your principal/manager or online (www.eduweb.vic.gov.au/hrweb/Docs/SexHarPolicy.doc).

To minimise the risk of discrimination and sexual harassment occurring and to help ensure that all reasonable precautions have been taken, the Department:

- has developed this brochure and the sexual harassment policy and published them to raise awareness at all levels of the Department
- encourages schools to develop and distribute their own anti-discrimination/anti-sexual harassment policies based on adoption of Departmental guidelines. For guidelines on addressing the responsibilities for students refer to:
 - *Guidelines for Developing the Student Code of Conduct*
 - *Framework for Student Support Services in Victorian Government Schools*
 - *Addressing Bullying Behaviour Resource Book*
www.sofweb.vic.edu.au/welfare/welfare.htm
- has developed a network of sexual harassment contact officers who provide information to our staff and individuals in relation to grievances
- provides professional development and online training,

Workplace Discrimination and Sexual Harassment, for all staff to complement the sexual harassment and anti-discrimination policy and procedures online (www.eduweb.vic.gov.au/hrweb/diversity/equal.htm#1).

In addition, to help schools comply with their obligations under the legislation, the Department's Conduct and Ethics Branch, equal opportunity investigations officer and the Equal Opportunity Commission offer advice, assistance and training.

Complaints procedures for discrimination

Student complaints are managed in accordance with each school's Code of Conduct for Students and the Department's Student Discipline Procedures.

The following handbooks set out the complaints process for employees:

- *Victorian Government Schools Principal Class Handbook*
- *Victorian Government Schools Teacher Class Handbook*
- *Victorian Government Schools School Services Officers Handbook*
- *Guidelines on Complaints, Unsatisfactory Performance and Serious Misconduct in the VPS.*

You can access these handbooks online (www.eduweb.vic.gov.au/hrweb/resources/handbks.htm).

The handbooks outline the appropriate complaints procedures. Information can also be gained from your sexual harassment contact officer or from the Department's *Sexual Harassment Policy and Procedures*.

It is incumbent on the principal or manager to act where unacceptable conduct is observed or brought to his/her attention. Managers and principals are required to manage the complaint and may contact the Conduct and Ethics Branch for advice and possible action.

Complainants are encouraged to use the above internal processes, but they also have a right to make a complaint to an external agency.

How do you lodge a complaint with an external body?

1. Merit Protection Boards complaints procedures

A DE&T employee may lodge a personal grievance with the Merit Protection Boards within 14 days of the incident of discrimination or sexual harassment. The Merit Protection Boards apply the definition of discrimination as specified in the Act. Alternatively, employees may lodge a complaint with the Equal Opportunity Commission.

2. Equal Opportunity Commission complaints procedures

A person may lodge a complaint with the Equal Opportunity Commission under the Act. The Commission provides a confidential and free complaints resolution service, which aims to resolve disputes by conciliation. If the Commission's conciliation process is unsuccessful, the matter may be referred, at the complainant's request, to the Victorian Civil and Administrative Tribunal for public hearing.

It is against the law for anyone to 'victimise' a person because they have raised, or intend to raise, a complaint under the Act.

Online Resources

DE&T Sexual Harassment Policy and Procedures
www.eduweb.vic.gov.au/hrweb/Docs/SexHarPolicy.doc

Equal Opportunity Act 1995 (Vic)

www.dms.dpc.vic.gov.au

Racial and Religious Tolerance Act 2001 (Vic)

www.dms.dpc.vic.gov.au

- *Victorian Government Schools Principal Class Handbook*
- *Victorian Government Schools Teacher Class Handbook*
- *Victorian Government Schools School Service Officers Handbook*

www.eduweb.vic.gov.au/hrweb/resources/handbks.htm

Victorian Public Sector Staffing Guidelines

www.eduweb.vic.gov.au/hrweb/workm/default.htm

Sexual Harassment and Workplace Discrimination Online Training

www.techniworks.com.au/detvic

Further information

EO Investigations Officer

Conduct and Ethics Branch

Department of Education & Training

www.eduweb.vic.gov.au/hrweb/workm/perform/comunt.htm

Ground Floor, 33 St Andrews Place,
East Melbourne, Vic. 3002

Telephone (03) 9637 2594

Fax (03) 9637 2430

Manager

Diversity and Equity Unit

Employee Relations Branch

Department of Education & Training

www.eduweb.vic.gov.au/hrweb/diversity

Ground Floor, 2 Treasury Place
East Melbourne, Vic. 3002

Telephone (03) 9637 2457

Fax (03) 9637 2340

The Registrar

Merit Protection Boards

www.mpb.vic.gov.au

Level 9, 35 Spring Street
Melbourne, Vic. 3000

Telephone (03) 9651 0290

Fax (03) 9651 0299

Equal Opportunity Commission

www.eoc.vic.gov.au

Level 3, 380 Lonsdale Street
Melbourne, Vic. 3000

Telephone (03) 9281 7111

Country Calls 1800 134 142

TTY (03) 9281 7110

Fax (03) 9281 7171

© State of Victoria, 2003



Department of
Education & Training