# What is discrimination?

This document was prepared by the Equality Law Program. We are a specialised team of lawyers at Victoria Legal Aid providing advice and representation to eligible people experiencing discrimination, sexual harassment and victimisation.

Discrimination means being treated badly or unfairly, or not as well as others, because of a personal characteristic like disability, sex, age, gender identity, race, sexual orientation, parental or carer status or marital status. These are called ‘personal’ or ‘protected’ attributes. It is against the law to discriminate against someone on these grounds in certain areas of ‘public life’.

Public life includes:

* at work, whether you are a job applicant, an employee, volunteer or a contractor
* at school, university or TAFE
* in accommodation (for example, staying at a hostel or renting a home)
* in activities you participate in, such as sports, clubs and community organisations
* in local government and
* when buying or selling goods or services.

Under anti-discrimination laws, there are two main types of unlawful discrimination: direct discrimination and indirect discrimination. Sexual harassment is also against the law. Anti-discrimination laws also provide that in some circumstances ‘reasonable adjustments’ should be made for people with a disability or with parental or caring responsibilities. This may mean changes to your workspace to allow for your disability, or changes to your work hours because of your parental duties.

### Direct discrimination

Under Victorian law, direct discrimination is when someone treats you unfavourably, or proposes to treat you unfavourably, because of your protected attribute.

For example, a person with schizophrenia is refused accommodation in a caravan park because the manager believes that a caravan park is not a suitable place for a person with a mental illness to live.

Under Commonwealth anti-discrimination laws, the test is different and requires you to compare yourself with someone else. You need to demonstrate that the person has treated you less favourably than they would treat someone in similar circumstances who does not have the same personal attribute that you have, such as your race, sex or disability. This means that you need to show that:

* the reason or one of the reasons that the person treated you badly is because of your personal attribute and
* they treat, or would treat, others without your personal attribute better.

### Indirect discrimination

Indirect discrimination is when a requirement, condition or practice (sometimes expressed as an expectation) which appears to treat everyone the same actually disadvantages people with certain protected attributes, and it is not reasonable in the circumstances.

With indirect discrimination, you need to be able to show that being treated the same as everyone else puts you at a disadvantage because of your personal attribute.

For example, Susan’s employer sends an email to all staff stating that everyone must be at work by 8.20am every morning. Susan has two children who she has to drop off at school at 8.45am each day. The employer’s requirement disadvantages Susan as an employee with parental responsibilities. This requirement would be unreasonable if it is not necessary to do the job.

## Victoria’s discrimination laws

In Victoria, the [Equal Opportunity Act 2010 (Vic)](https://www.legislation.vic.gov.au/in-force/acts/equal-opportunity-act-2010/) makes it unlawful to discriminate against someone because of certain personal attributes. These are:

* age
* breastfeeding
* gender identity
* disability (which also includes discrimination based on having an assistance aid supporting a person with disability – this includes equipment like a wheelchair or cane, an assistance dog or a person providing assistance or services to them.
* employment activity (this means asking your employer about your entitlements, or raising a concern that you’re not receiving your entitlements).
* industrial activity
* profession, trade or occupation
* lawful sexual activity
* marital status
* status as a parent or carer
* physical features
* pregnancy
* race
* sex
* sexual orientation
* sex characteristics (physical features relating to sex)
* political or religious beliefs or activities
* an expunged homosexual conviction (when a person has successfully applied to have their

historic homosexual conviction removed from the record)

* a spent conviction (some kinds of convictions may be ‘spent’, and not appear on a person’s criminal record, if they do not reoffend within a certain period)
* personal association with anyone who has any of these characteristics.

The [Victorian Equal Opportunity and Human Rights Commission](https://www.humanrights.vic.gov.au/) is responsible for administering Victoria's discrimination laws.

## Commonwealth discrimination laws

There are also Commonwealth laws that protect people’s rights in public life and when dealing with Commonwealth Government departments and agencies.

There are specific Acts that prohibit discrimination on the grounds of:

* age: the [Age Discrimination Act 2004 (Cth)](https://www.legislation.gov.au/Current/C2021C00275)
* sex, pregnancy, breastfeeding, marital or relationship status, family responsibilities, sexual orientation, gender identity, intersex status and relationship status: the [Sex Discrimination Act 1984 (Cth)](https://www.legislation.gov.au/Current/C2018C00499)
* race, colour, nationality, ethnicity, descent: the [Racial Discrimination Act 1975 (Cth)](https://www.legislation.gov.au/Current/C2016C00089)
* disability (which includes prohibiting discrimination based on requiring adjustments for a person’s carer, assistant, assistance animal or disability aid): the [Disability Discrimination Act 1992 (Cth)](https://www.legislation.gov.au/Current/C2018C00125)
* sexual preference, a criminal record, trade union activity, political opinion, religion or social origin (in employment only): the [Australian Human Rights Commission Act 1986 (Cth)](https://www.legislation.gov.au/Current/C2019C00030).

The [Australian Human Rights Commission](https://humanrights.gov.au/) is responsible for administering Commonwealth anti-discrimination and human rights laws.

## Discrimination at work

The [Fair Work Act 2009 (Cth)](https://www.legislation.gov.au/Current/C2021C00189) also aims to protect employees from discrimination at work. Under the Act, it is unlawful for an employer to take adverse action (for example, terminating someone’s employment) because of their:

* race or colour
* sex
* sexual preference
* age
* disability
* marital status
* family or carer’s responsibilities
* pregnancy
* religion
* political opinion
* national extraction or social origin
* because they engage in industrial activities.

The Fair Work Act deals with discrimination in a different way to anti-discrimination law.

You do not need to show that your employer has either directly or indirectly discriminated against you. Instead, you need to show that your employer has taken ‘adverse action’ because of your protected attribute. Adverse action includes terminating your employment, offering you fewer shifts or treating you unfavourably at work.

The [Fair Work Commission](https://www.fwc.gov.au/) is responsible for hearing claims that an employer has breached the Fair Work Act, including discrimination in the workplace. The [Fair Work Ombudsman](https://www.fairwork.gov.au/) is responsible for investigating breaches of the Fair Work Act.

### Victimisation

People are often concerned about making a complaint if they have a continuing relationship with the person responsible, such as an employer, because they think they will be victimised (treated badly) if they make a complaint.

However, victimisation is also unlawful under anti-discrimination laws.

Victimisation is when someone subjects, or threatens to subject, another person to some form of detriment or harm, because that person has:

* lodged a complaint of discrimination or sexual harassment
* provided information or documents regarding a complaint of discrimination or sexual harassment
* reasonably asserted their rights, or supported someone else’s rights, under anti-discrimination laws
* alleged that a person has acted unlawfully under anti-discrimination laws

or they believe that you may do one of these things.

### Discriminatory questions

Generally, it is unlawful to ask a person for information about their protected attribute if this information could be used in a discriminatory way.

For example, during an interview an employer asks a female job applicant whether she has parenting responsibilities 'that keep her busy'. The applicant tells the employer that she has two children in primary school. She does not get offered the permanent full-time position, despite being the best person for the role. Instead, she is only offered a part-time contract position for three months.

### Exceptions that apply to anti-discrimination laws

Exceptions in anti-discrimination laws are like ‘defences’. When an exception applies to certain conduct, this means that the conduct may not be unlawful even though it appears to be discriminatory. Some examples of exceptions are where:

* special services or benefits are only provided or supplied to people with protected characteristics, such as people with a disability
* other (Victorian or Commonwealth) laws authorise discrimination, such as not employing people as drivers if they are not old enough to hold a licence
* things that are done for the protection of health, safety and property.

## Where to get help

Contact our Legal Help telephone information service for free information about the law and how we can help you. It’s open Monday to Friday, 8.00 am to 6.00 pm. Call us on 1300 792 387.

If we can’t help you with your legal problem, we may be able to refer you to other organisations that can.

You can also contact the Victorian Equal Opportunity and Human Rights Commission, the Fair Work Ombudsman, or the Australian Human Rights Commission for more information.

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