

Guide to workplace behaviour

**Sexual harassment, discrimination,
bullying and victimisation – a guide for
community organisations**

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Part 1

Introduction

Introduction

This part of the guide:

- ▶ summarises what this guide covers
- ▶ lists the discrimination, sexual harassment, bullying and victimisation laws that apply in the workplace in Australia



This guide considers how discrimination, sexual harassment, bullying and victimisation laws apply in the workplace.



Disclaimer

This guide provides general information about the application of discrimination, sexual harassment, bullying and victimisation laws in Australia. This information is a guide only and is not legal advice. If you or your organisation has a specific legal issue, you should seek legal advice before deciding what to do.

Please refer to [the full disclaimer](#) that applies to this guide.

What this guide covers

The guide has five parts:

Part 1.	Introduction
Part 2.	Discrimination
Part 3.	Sexual harassment
Part 4.	Bullying
Part 5.	Victimisation

Discrimination, sexual harassment, bullying and victimisation laws

Discrimination, sexual harassment, bullying and victimisation laws exist at both the federal and state level.



Where the federal and a state or territory law relating to discrimination, sexual harassment, bullying or victimisation overlap, your organisation must comply with both.

The tables below set out Commonwealth, state and territory legislation relevant to discrimination, sexual harassment, bullying and victimisation. We consider these laws in more detail in the other parts of this guide.

Discrimination	
Commonwealth	• Racial Discrimination Act 1975 (Cth) • Disability Discrimination Act 1992 (Cth) • Age Discrimination Act 2004 (Cth) • Sex Discrimination Act 1984 (Cth)
Australian Capital Territory	• Discrimination Act 1991 (ACT)
New South Wales	• Anti-Discrimination Act 1977 (NSW)
Northern Territory	• Anti-Discrimination Act 1992 (NT)
Queensland	• Anti-Discrimination Act 1991 (QLD)
South Australia	• Equal Opportunity Act 1984 (SA)
Tasmania	• Anti-Discrimination Act 1998 (Tas)
Western Australia	• Equal Opportunity Act 1984 (WA)
Victoria	• Equal Opportunity Act 2010 (Vic)
Sexual harassment	
Commonwealth	• Sex Discrimination Act 1984 (Cth) • Fair Work Act 2009 (Cth)
Australian Capital Territory	• Discrimination Act 1991 (ACT)
New South Wales	• Anti-Discrimination Act 1977 (NSW)
Northern Territory	• Anti-Discrimination Act 1992 (NT)
Queensland	• Anti-Discrimination Act 1991 (QLD)
South Australia	• Equal Opportunity Act 1984 (SA)



Tasmania	• <i>Anti-Discrimination Act 1998 (Tas)</i>
Western Australia	• <i>Equal Opportunity Act 1984 (WA)</i>
Victoria	• <i>Equal Opportunity Act 2010 (Vic)</i>
Bullying	
Commonwealth	• <i>Fair Work Act 2009 (Cth)</i>
Australian Capital Territory	• <i>Work Health and Safety Act 2011 (ACT)</i>
New South Wales	• <i>Work Health and Safety Act 2011 (NSW)</i>
Northern Territory	• <i>Work Health and Safety (National Uniform Legislation) Act 2011 (NT)</i>
Queensland	• <i>Work Health and Safety Act 2011 (QLD)</i>
South Australia	• <i>Work Health and Safety Act 2012 (SA)</i>
Tasmania	• <i>Work Health and Safety Act 2012 (Tas)</i>
Western Australia	• <i>Work Health and Safety Act 2020 (WA)</i>
Victoria	• <i>Equal Opportunity Act 2010 (Vic)</i>
Victimisation	
Commonwealth	• <i>Racial Discrimination Act 1975 (Cth)</i> • <i>Disability Discrimination Act 1992 (Cth)</i> • <i>Age Discrimination Act 2004 (Cth)</i> • <i>Sex Discrimination Act 1984 (Cth)</i> • <i>Australian Human Rights Commission Act 1986 (Cth)</i>
Australian Capital Territory	• <i>Discrimination Act 1991 (ACT)</i>
New South Wales	• <i>Anti-Discrimination Act 1977 (NSW)</i>
Northern Territory	• <i>Anti-Discrimination Act 1992 (NT)</i>
Queensland	• <i>Anti-Discrimination Act 1991 (QLD)</i>
South Australia	• <i>Equal Opportunity Act 1984 (SA)</i>
Tasmania	• <i>Anti-Discrimination Act 1998 (Tas)</i>
Western Australia	• <i>Equal Opportunity Act 1984 (WA)</i>
Victoria	• <i>Equal Opportunity Act 2010 (Vic)</i>



Part 2

Discrimination

Discrimination



This part of the guide covers:

- ▶ what is discrimination?
- ▶ anti-discrimination laws and your organisation's obligations
- ▶ federal anti-discrimination laws
- ▶ state and territory anti-discrimination laws
- ▶ making a complaint about discrimination

This part of the guide considers how discrimination laws apply in the workplace.

Anti-discrimination laws exist at both the federal and state level.

At the federal level, anti-discrimination laws are found in legislation that set out protected attributes such as age, race, disability, sex and protected areas of public life. All the states and territories have their own legislation (usually called anti-discrimination or equal opportunity legislation).

We refer to all these laws collectively as **anti-discrimination laws**. These laws are explained further below.



Note – negligence and work health and safety laws

Along with duties that your organisation may owe under anti-discrimination laws, your organisation may have duties under work health and safety laws and under the law of negligence, which contains a duty to take reasonable care to avoid exposing your workers, including volunteers, to reasonably foreseeable risks of injury which could include harm caused by discrimination.

For more information about an organisation's responsibilities under negligence and work health and safety laws, see our webpages [Negligence, injuries, accidents and incidents](#) and [Work health and safety laws](#).



What is discrimination?

Under anti-discrimination laws, discrimination occurs when:

- a person is treated unfavourably because of a 'personal attribute' protected by law
- the treatment happens in an 'area of public life' protected by the law
- the treatment causes the person to be disadvantaged, and
- an exception does not apply

There are two types of discrimination:

- **direct discrimination** occurs where someone is treated less favourably because of a protected attribute they have or are assumed to have
- **indirect discrimination** occurs where a condition or requirement applies to everybody, but unfairly disadvantages people with a protected attribute (the condition or requirement must not be reasonable in the circumstances)

Discrimination involving workers can occur in the recruitment process, or in other situations including not being given opportunities that other workers are given. Further examples are below.



Note

While it is clear in the law that employees are protected from discrimination in the recruitment process, it is less clear whether these protections extend to the recruitment of volunteers. As such, and as a matter of best practice (and to protect your organisation from other risks such as reputational harm), your organisation should make sure it doesn't have discriminatory practices in the recruitment process for employees or volunteers.



Example – direct discrimination

Michael would like to volunteer at his local op shop and goes into the shop to apply for a role.

Mary, the manager, tells Michael that although he's qualified to carry out the role, because the rest of the volunteers and staff at the shop are women, she doesn't think he will fit in and so will not be offered a volunteer position. Mary has discriminated against Michael based on his gender.



Example – indirect discrimination

Sarah is a hairdresser and is transgender. She only recently started publicly identifying as female. Sarah has volunteered for many years with an organisation called Trims for Change, which gives free haircuts to homeless people.

Trims for Change has a policy that requires its volunteers to wear a uniform. The policy also provides that only one uniform per year will be provided to volunteers. The uniforms are gender specific – male volunteers wear a shirt and pants and female volunteers wear a dress. Sarah asked to be provided with the female uniform when she decided to publicly identify as female. Trims for Change refused, telling Sarah the policy only allowed one uniform per year for each volunteer.

The policy is likely to indirectly discriminate against Sarah and other transgender persons based on gender identity.



Example – reasonable indirect discrimination

Mandeep is Sikh and an avid cyclist. He wants to volunteer with an organisation that runs cycling programs for children to promote health and exercise. The organisation Mandeep applies to volunteer with has a policy that all volunteers must wear a helmet when cycling. Mandeep wears a turban as part of his religion.

The policy likely indirectly discriminates against people who wear religious headdresses based on religion, but the policy may also be reasonable because it is a reasonable safety requirement to require volunteers to wear helmets while cycling.

Protected personal attributes

The various anti-discrimination laws cover different personal attributes.

These laws may include some or all of the following: age, sex, race, skin colour, descent, national or ethnic origin, religious belief or activity (or lack of), disability, physical features, sexual orientation, sexual or gender identity, intersex status, marital or relationship status, carer and parental status, pregnancy or potential pregnancy, breastfeeding, family responsibilities, employment and industrial activity, political belief or activity, association with someone who has (or is assumed to have) one of these attributes, and irrelevant criminal record.

Protected areas of public life

The various anti-discrimination laws protect different ‘areas of public life’.

Many of these laws include as areas of public life – employment, education, accommodation, some clubs, goods and services and facilities. Some laws also include sport, local government, administration of government laws and programs or land.

As discussed below (in relation to the specific laws), these areas of public life may mean the federal laws might apply to your organisation in certain circumstances (when they might otherwise might not have done so – similarly, the New South Wales and Victorian laws).

Exceptions – when it is lawful to discriminate

Generally, discrimination will be lawful (ie. it is allowed) when the discrimination doesn’t contravene any relevant anti-discrimination legislation.

Discrimination is lawful (ie. allowed) if the discrimination is not based on a protected attribute, is excused or exempted by law, or takes place in an area of life not covered by the legislation.

Discriminatory conduct that is excused or exempted differs between the states and territories (see below for more information).

Anti-discrimination laws and your organisation’s obligations

Under anti-discrimination laws (where they apply):

- the discrimination of workers, while at work, is unlawful
- workers must not discriminate against others in the workplace (including other workers and clients or members of the public)
- your organisation could be liable (legally responsible) for any harm, injury or loss as a result of the actions of your workers (this ‘vicarious liability’ can generally be avoided if your organisation takes all reasonable steps to prevent sexual harassment), and
- your organisation may have a positive duty to take reasonable and proportionate measures to eliminate discrimination from the workplace (this means taking steps to prevent this behaviour and not waiting for a complaint before addressing inappropriate workplace behaviour)

Regardless of whether the not anti-discrimination laws apply to your organisation and its workers, it's best practice to comply with the laws (as much as reasonably practicable). Not only is it favourable to your workers (and other workers and clients or members of the public in contact with your organisation), but it will also help prevent any reputational or other damage to your organisation that may arise from a complaint of discrimination.



Tips – minimising discrimination in the workplace

- Prepare, and implement, an anti-discrimination policy with a section on discrimination in recruitment that covers your workers.
- When recruiting, prepare a position description that focuses on the skills required for the role rather than the personal attributes that may be desirable. Use the same language in the position description across advertisements and in the interview process.
- Nominate a person who your workers are to make complaints on discriminatory behaviour to and have a fair and transparent process for resolving complaints.
- Make all workers aware of relevant policies, and what to do if the process for making a complaint doesn't resolve the complaint.
- Conduct regular training for all workers in relation to the policy so they recognise discriminatory practices and the processes for addressing them.

As a matter of best practice, if not otherwise required by law, organisations should consider having an anti-discrimination policy and procedure in place. Not only will this help an organisation to meet its legal obligations, but it will also protect its workers from discriminatory behaviour and protect the reputation of the organisation if a complaint of discrimination is made.



For more information, see:

- the Australian Human Rights Commission's webpage '[A step-by-step guide to preventing discrimination in recruitment](#)', and
- [part 3 of our Volunteering guide 'the volunteer relationship'](#)

Federal anti-discrimination laws

At the federal level, discrimination laws are set out in the following legislation (and accompanying regulations):

- [Racial Discrimination Act 1975 \(Cth\)](#). This Act makes discrimination on the basis of a person's race, colour, descent, or national or ethnic origin unlawful where it occurs in specified areas of public life.
- [Disability Discrimination Act 1992 \(Cth\)](#). This Act prohibits discrimination against people with disabilities in specified areas of public life.
- [Age Discrimination Act 2004 \(Cth\)](#). This Act ensures people are not treated less favourably on the ground of age in specified areas of public life.
- [Sex Discrimination Act 1984 \(Cth\)](#). This Act prohibits discrimination on the basis of sex, gender identity, sexual orientation, intersex status, marital or relationship status, and pregnancy and family responsibilities in specified areas of public life.

These federal anti-discrimination laws make it unlawful to discriminate against a person in certain areas of public life, including in employment. These laws apply to all Australian employers and workers and mainly cover discrimination by employers against employees and contractors.

While most of these laws do not apply to volunteers, in specified areas of public life the federal anti-discrimination Laws may apply to volunteers.

The federal anti-discrimination laws specify that they apply in the context of the provision of facilities, goods or services. Some of them also cover clubs (in this context this means an association of at least thirty people that funds the provision of facilities for the club and sells or supplies alcohol) or sporting activities. Discrimination in these contexts prohibits organisations from discriminating against anyone, including volunteers.

There may also be some protection afforded to volunteers by the [*Australian Human Rights Commission Act 1986 \(Cth\)*](#), which incorporates international conventions and prohibits certain discriminatory behaviour.

Even if these federal anti-discrimination laws don't apply or only apply in limited circumstances (such as in specified areas of public life), your organisation may still owe duties under other laws to protect your volunteers from discrimination (for example, state and territory discrimination laws).

Table – protected personal attributes under federal anti-discrimination laws

Protected attribute	Racial Discrimination Act 1975 (Cth)	Disability Discrimination Act 1992 (Cth)	Age Discrimination Act 2004 (Cth)	Sex Discrimination Act 1984 (Cth)
Colour	✓			
Descent	✓			
National or ethnic origin	✓			
Race	✓			
Disability		✓		
Age			✓	
Breastfeeding				✓
Family responsibilities				✓
Sex				✓
Gender identity				✓
Intersex status				✓
Marital or relationship status				✓
Pregnancy or potential pregnancy				✓
Sexual orientation				✓



Case example – indirect discrimination based on gender identity

In *Tickle v Giggle for Girls Pty Ltd (No 2)* [2024] FCA 960, Ms Tickle, (whose sex was recognised as female on her Queensland birth certificate in 2020 after undergoing gender affirming surgery) downloaded a 'women-only' app called 'Giggle App' in February 2021. The app used artificial intelligence to determine if someone was 'male' by analysing an uploaded selfie. Ms Tickle did so, and she was granted access to the app.

However, in September 2021 she noticed her account had been restricted after CEO, Ms Grover, reviewed the photo and removed her access. Despite Ms Tickle contacting Ms Grover to resolve the issue, she did not regain access.

The Federal Court of Australia found both Giggle App and Ms Grover engaged in unlawful indirect discrimination by imposing a condition on Ms Tickle where she had to have the appearance of a cisgender woman to access Giggle App. The Court did not think the Giggle App or Ms Grover engaged in direct discrimination because they were not aware of Ms Tickle's gender identity.



Discrimination – protected areas of public life

Hai Van, who has multiple sclerosis and is in a wheelchair, is a client of an organisation that provides crisis accommodation. The organisation runs a kitchen that provides meals to which all clients are entitled. The kitchen is on the second floor of the building that the organisation occupies, and there is no way for Hai Van to get to the second floor in her wheelchair.

Under federal anti-discrimination laws, because the provision of goods and services is a protected area of public life, the organisation may be exposing itself to a complaint.

But, **what if Hai Van was a volunteer of the organisation rather than a client?**

Under federal anti-discrimination Laws, if she was a volunteer, Hai Van would not be protected from unlawful discrimination related to her work (because these laws don't apply to discrimination against volunteers in the workplace). However, federal anti-discrimination laws prohibit discrimination against a person based on a disability in relation to their access to premises, or parts of premises, (unless providing that access would cause the organisation an unjustifiable hardship, if, for example, it was too costly or impractical to install an elevator or stair lift). So, in this case, because access to premises is a protected area of public life under federal anti-discrimination laws, the organisation may still be exposing itself to a complaint.

State and territory anti-discrimination laws

Like the federal anti-discrimination laws, state and territory anti-discrimination laws make it unlawful to discriminate against a person in certain areas of public life, including in employment.

The state and territory anti-discrimination laws apply to all Australian employers and their workers but not always to volunteers.



Note – other laws to protect human rights

In each state and territory, people may be able to rely on other laws that protect them from discrimination. For example:

- In **Victoria** – the [Racial and Religious Tolerance Act 2001 \(Vic\)](#) prohibits vilification on the basis of race or religion (and has a broad application so is likely to apply to volunteers) and the [Charter of Human Rights and Responsibilities Act 2006 \(Vic\)](#) (volunteers for government local authorities and other public authorities may be able to rely on this law)
- In **Western Australia and Victoria** – the [Spent Convictions Act 1988 \(WA\)](#) and [Spent Convictions Act 2021 \(Vic\)](#) prohibit discrimination on the basis of having a spent conviction (this may be applicable to recruitment of volunteers)
- In **Queensland** – the [Human Rights Act 2019 \(QLD\)](#) states that every person as a right to equal and effective protection against discrimination (if your organisation provides services on behalf of the Queensland government, you may also need to comply with this Act when making decisions about volunteers – check your funding agreement and ask your contract manager)
- In the **Australian Capital Territory** - the [Human Rights Act 2004 \(ACT\)](#) sets out that every person has the right to equal and effective protection against discrimination on any ground (volunteers for public authorities may be able to rely on this law)

Table – protected personal attributes under state and territory anti-discrimination laws

Protected attribute	NSW	Vic	QLD	WA	SA	Tas	ACT	NT
Accommodation status							✓	
Age	✓	✓	✓	✓	✓	✓	✓	✓
Breastfeeding	✓	✓	✓	✓	✓	✓	✓	✓
Disability	✓	✓	✓	✓	✓	✓	✓	✓
Employment status		✓					✓	
Gender identity	✓	✓	✓		✓	✓	✓	
Gender history				✓			✓	
Genetic information							✓	
Immigration status							✓	
Industrial (trade union) activity		✓	✓			✓	✓	✓
Intersex status					✓	✓	✓	
Irrelevant criminal record						✓	✓	✓
Irrelevant medical record						✓		✓
Occupation							✓	



Protected attribute	NSW	Vic	QLD	WA	SA	Tas	ACT	NT
Nationality	✓	✓			✓			
Lawful sexual activity		✓	✓			✓		
Parental, family or carer responsibilities	✓	✓	✓	✓	✓	✓	✓	✓
Physical features		✓					✓	
Political views		✓	✓	✓		✓	✓	✓
Pregnancy	✓	✓	✓	✓	✓	✓	✓	✓
Race	✓	✓	✓	✓	✓	✓	✓	✓
Relationship status	✓	✓	✓	✓	✓	✓	✓	✓
Religion		✓	✓	✓		✓	✓	✓
Religious dress or appearance					✓			
Sex	✓	✓	✓	✓	✓	✓	✓	✓
Sexuality	✓	✓	✓	✓	✓	✓	✓	✓
Spent conviction	✓	✓		✓	✓		✓	✓
Association with a person who has, or is believed to have, any listed attribute	✓	✓	✓		✓	✓	✓	✓
Association with a person who has, or is believed to have, protected attributes of sexual orientation, race, age or impairment (disability)				✓				

Australian Capital Territory

The [Discrimination Act 1991 \(ACT\)](#) (**ACT Discrimination Act**) prohibits discrimination on the ground of:

- accommodation status
- age
- breastfeeding
- disability
- employment status
- gender identity
- genetic information
- immigration status
- industrial activity
- irrelevant criminal record
- parent, family, carer or kinship responsibilities
- physical features
- political or religious conviction

- pregnancy
- profession, trade, occupation or calling
- race
- record of a person's sex having been altered
- relationship status
- sex
- sex characteristics
- sexuality
- subjection to domestic or family violence
- association as a relative or otherwise with a person who has one of these protected attributes

Generally, areas where discrimination is prohibited include:

- employment
- access to premises
- the provision of goods, services or facilities, and
- the provision of accommodation

Unlawful discrimination

Under the ACT Discrimination Act, in the workplace, it is unlawful for an employer, based on one of the protected attributes:

- to discriminate against a person in deciding who should be offered employment, or in the terms or conditions on which employment is offered
- to discriminate against an employee:
 - in the terms or conditions of employment that the employer affords the employee
 - by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training or to any other benefit associated with employment
 - by dismissing the employee, or
 - by subjecting the employee to any other detriment

Further protections are provided for commission agents, contract workers and partners on similar terms.

Volunteers

Volunteers are covered under the employee protections because, under the ACT Discrimination Act, the term:

- 'employment' includes work as an unpaid worker
- 'unpaid worker' means a person who performs work for an employer for no remuneration
- 'employer' in relation to an unpaid worker, means the person the unpaid worker performs work for

Under the ACT Discrimination Act, an organisation can be held liable (responsible) for discrimination in the workplace by a 'representative'. A representative includes an employee (including volunteers) or agent. One way in which an organisation can defend itself against liability arising from the acts of its employees and agents is by proving that it took all reasonable steps to prevent them from engaging in the relevant misconduct.

Exceptions to unlawful discrimination

In certain circumstances, it may be lawful to discriminate on the ground of a protected attribute. For example, it may be lawful to discriminate if the discrimination is reasonable having regard to any relevant factors, or where legislation allows the discrimination.

Examples of exceptions under the ACT Discrimination Act include that it is not unlawful for a person (the first person) to discriminate against someone else in relation to a position as an employee or contract worker if:

- the duties of the position involve doing domestic duties on the premises where the first person lives, and the discrimination is reasonable, proportionate and justifiable in the circumstances, or
- the duties of the position involve the care of a child where the child lives

Exceptions may also apply:

- in the application of measures to achieve equality,
- to access to premises, the provision of accommodation, goods or services, or
- to clubs and voluntary bodies, religious bodies and workers, political workers, religious educational institutions

Furthermore, under the ACT Discrimination Act, it is not unlawful to discriminate against:

- a person in relation to a position as an employee, commission agent, contract worker or business partner (unless the discrimination is based on religious conviction) if it is a genuine occupational qualification of the position that the position be filled by a person having a particular protected attribute
- a prospective employee in relation to a position of employment if the prospective employee would be, unable to carry out the inherent requirements of the position because of the prospective employee's protected attribute and regardless of any reasonable adjustments able to be made by the employer,

and the discrimination is reasonable, proportionate and justifiable in the circumstances.



The ACT Discrimination Act sets out many other exceptions, so refer to the Act for provisions specific to each attribute protected under the Act.

Also see the [ACT Human Rights Commission's webpage 'Discrimination'](#) which summarises each protected attribute and the exceptions that apply to it.

Positive duty

The ACT Discrimination Act includes a positive duty (which applies to all organisations and businesses and any individual with organisational management responsibility for an organisation or business) which obliges them to take reasonable and proportionate steps to eliminate discrimination, sexual harassment and unlawful vilification.



For more information, see [ACT Human Rights Commission's webpage 'ACT Discrimination Act Positive Duty'](#).

Human Rights Act

If your organisation is a public authority, it may also need to comply with the [Human Rights Act 2004 \(ACT\)](#) (**Human Rights Act**) when making decisions about individuals.



For more information about when you may need to comply with the Human Rights Act, see the ACT Human Rights Commission webpage ['How are human rights protected in the ACT?'](#).

New South Wales

The [Anti-Discrimination Act 1977 \(NSW\)](#) (**NSW Anti-Discrimination Act**) prohibits discrimination on the ground of:

- race (includes colour, nationality, descent and ethnic, ethno-religious or national origin)
- sex (includes pregnancy and breastfeeding)
- transgender status
- marital or domestic status
- disability
- carer responsibilities
- homosexuality
- age

While religion and HIV/AIDs status are not listed as protected attributes, the NSW Anti-Discrimination Act provides that religious vilification and HIV/AIDS vilification is unlawful.

Generally, areas where discrimination is prohibited include:

- work
- the provision of goods and services
- accommodation
- registered clubs

Unlawful discrimination

Under the NSW Anti-Discrimination Act it is unlawful for an employer, based on one of the protected attributes:

- to discriminate against a person in determining who should be offered employment, or in the terms or conditions on which employment is offered
- to discriminate against an employee:
 - in the terms or conditions of employment that the employer affords the employee
 - by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training or to any other benefit associated with employment, or
 - by dismissing the employee or subjecting the employee to any other detriment

Further protections are provided for commission agents, contract workers and partners on similar terms.

Under the NSW Anti-Discrimination Act, organisations can be held liable (responsible) for discrimination in the workplace by its employees or agents. One way in which an organisation can defend itself against liability is by proving that it took reasonable steps to prevent the discrimination from occurring. This does not extend to acts done by volunteers, except in relation to acts of sexual harassment (see [part 3 of this guide](#)).

Volunteers

The definition of 'employment' under the NSW Anti-Discrimination Act doesn't include unpaid work, so volunteers are unlikely to be covered by most provisions of the NSW Anti-Discrimination Act, except in relation to acts of sexual harassment (see [part 3 of this guide](#)).

Exceptions to unlawful discrimination

In certain circumstances, it may be lawful to discriminate on the ground of a protected attribute. For example, it may be lawful to discriminate if the discrimination is reasonable having regard to any relevant factors, or where legislation allows the discrimination.

The NSW Anti-Discrimination Act sets out general exemptions to unlawful discrimination that apply to:

- acts done under statutory authority

- charities, voluntary bodies and religious bodies
- establishments providing housing accommodation for aged persons, and
- adoption services

The NSW Anti-Discrimination Act sets out many specific exceptions to unlawful discrimination.

For example, specific exceptions to unlawful discrimination on the ground of race include:

- meeting special needs, and
- promoting equal or improved access to facilities, services and opportunities



Refer to the NSW Anti-Discrimination Act for provisions specific to each attribute protected under the Act.

Also see the [Anti-Discrimination New South Wales webpage 'Discrimination'](#) which summarises each protected attribute and the exceptions that apply to it.

Northern Territory

The *Anti-Discrimination Act 1992 (NT)* (**NT Anti-Discrimination Act**) prohibits discrimination on the ground of:

- race
- language, including signed language
- sex
- gender identity
- sexual orientation
- sex characteristics
- age
- relationship status
- accommodation status
- employment status
- employment in sex work or engaging in sex work, including past employment in sex work or engagement in sex work
- pregnancy
- carer responsibilities
- breastfeeding
- disability
- HIV/hepatitis status
- subjected to domestic violence
- trade union or employer association activity
- religious belief or activity
- political opinion, affiliation or activity
- irrelevant medical or criminal record
- the person's details being published under section 66M of the *Fines and Penalties (Recovery) Act 2001*
- association with a person who has one of these attributes

Generally, areas where discrimination is prohibited include:



- education
- work
- accommodation
- the provision of goods, services or facilities
- clubs
- insurance and superannuation, and
- the administration of laws and government programs

Unlawful discrimination

Under the NT Anti-Discrimination Act, in the work area, it is unlawful for a person to discriminate based on one of the protected attributes:

- in deciding who should be offered work
- in the terms and conditions of work that is offered
- in failing or refusing to offer work
- by failing or refusing to grant a person seeking work access to a guidance program, vocational training program or other occupational training or retraining program
- in developing the scope or range of a guidance program, vocational training program or other occupational training or retraining program
- in any variation of the terms and conditions of work
- in failing or refusing to grant, or limiting, access to opportunities for promotion, transfer, training or other benefit to a worker
- in dismissing a worker, or
- by treating a worker less favourably in any way in connection with work

Further, in certain circumstances, it is unlawful to discriminate against a worker on the grounds of the worker's religious belief or activity by refusing the worker permission to carry out a religious activity during working hours being an activity.

Volunteers

Volunteers are covered under the work protections because the term 'work', under the NT Anti-Discrimination Act is defined to include work carried out in any capacity and at any place, including as:

- an employee
- a contractor or subcontractor
- an employee of a contractor or subcontractor
- an employee of a labour hire company
- an outworker
- an apprentice or trainee
- a student or other person gaining work experience, whether formal or informal
- a volunteer or on another unpaid basis
- a statutory appointee
- part of a vocational training program or other occupational training or retraining program, or
- a person of a prescribed class

Under the NT Anti-Discrimination Act, organisations can be held vicariously liable (responsible) for discrimination in the workplace by a worker (including volunteers) or agent. One way in which an organisation can defend itself against liability is by proving that it took all reasonable steps to prevent the discrimination from occurring.

Whether all reasonable steps have been taken under the NT Anti-Discrimination Act, requires consideration of the following:

- the provision of anti-discrimination training by the organisation
- the development and implementation of an equal employment opportunity management plan by the organisation
- the publication of an anti-discrimination policy by the organisation
- the financial circumstances of the organisation, and
- the number of workers and agents of the organisation

Exceptions to unlawful discrimination

In certain circumstances, it may be lawful to discriminate on the ground of a protected attribute. For example, it may be lawful to discriminate if the discrimination is reasonable having regard to any relevant factors, or where legislation allows the discrimination.

The NT Anti-Discrimination Act sets out general exemptions to unlawful discrimination that include exemptions that apply:

- when a person is subject to legal incapacity
- to certain activities of religious bodies, and
- to certain provisions in a will

The NT Anti-Discrimination Act also sets out specific exemptions to unlawful discrimination.

For example, a person may discriminate against another person in the area of work by fixing reasonable terms and conditions if that other person, because of age or disability, has a restricted capacity to do the work.



Refer to the NT Anti-Discrimination Act for more information on the general and specific provisions.

Also see the Northern Territory Anti-Discrimination Commission's webpages '[Discrimination](#)' and '[Where can discrimination occur?](#)' for more information.

Positive duty

The NT Anti-discrimination Act includes a positive duty (which applies to all organisations and businesses) which obliges them to take reasonable and proportionate measures to eliminate discrimination, sexual harassment or victimisation to the greatest extent possible.



See the Northern Territory Anti-Discrimination Commission's webpage '[Positive Duty Resources](#)' for more information.

Queensland

The *Anti-Discrimination Act 1991 (QLD)* (**QLD Anti-Discrimination Act**) prohibits discrimination on the ground of:

- sex
- relationship status
- pregnancy

- parental status
- breastfeeding
- age
- race
- impairment
- religious belief or religious activity
- political belief or activity
- trade union activity
- sex work activity
- gender identity
- sexuality
- sex characteristics
- family responsibilities
- association with a person who has one of these attributes

Generally, areas where discrimination is prohibited include:

- work and work-related areas
- education
- the provision of goods and services
- insurance and superannuation
- disposition of land
- accommodation
- clubs
- the administration of state laws and programs, and
- local government

Unlawful discrimination

Under the QLD Anti-Discrimination Act, in the work area, it is unlawful for a person to discriminate based on one of the protected attributes:

- in the arrangements made for deciding who should be offered work
- in deciding who should be offered work
- in the terms of work that is offered (including a term about when the work will end because of a person's age)
- in failing to offer work
- by denying a person seeking work access to a guidance program, an apprenticeship training program or other occupational training or retraining program
- in developing the scope or range of such a program
- in any variation of the terms of work
- in denying or limiting access to opportunities for promotion, transfer, training or other benefit to a worker
- in dismissing a worker
- by denying access to a guidance program, an apprenticeship training program or other occupational training or retraining program
- in developing the scope or range of such a program, or
- by treating a worker unfavourably in any way in connection with work

Volunteers

The QLD Anti-Discrimination Act's definition of 'work' includes:

- work in a relationship of employment (including full-time, part-time, casual, permanent and temporary employment)
- work under a contract for services
- work remunerated in whole or in part on a commission basis
- work under a statutory appointment
- work under a work experience arrangement within the meaning of the *Education (Work Experience) Act 1996*
- work under a vocational placement
- work on a voluntary or unpaid basis
- work by a person with an impairment in a sheltered workshop, whether on a paid basis (including a token remuneration or allowance) or an unpaid basis, and
- work under a guidance program, an apprenticeship training program or other occupational training or retraining program

So volunteers are covered under the QLD Anti-Discrimination Act.

Under the QLD Anti-Discrimination Act, organisations can be held vicariously liable (responsible) for discrimination in the workplace by its workers (including volunteers) or agents. One way in which an organisation can defend itself against liability is by proving that it took reasonable steps to prevent the discrimination from occurring.

Exceptions to unlawful discrimination

In certain circumstances, it may be lawful to discriminate on the ground of a protected attribute. For example, it may be lawful to discriminate if the discrimination is reasonable having regard to any relevant factors, or where legislation allows the discrimination.

The QLD Anti-Discrimination Act sets out general exemptions to unlawful discrimination that apply:

- when a person is subject to legal incapacity
- to certain activities of religious bodies, and
- to certain provisions in a will

The QLD Anti-Discrimination Act also sets out specific exemptions to unlawful discrimination.

For example, in the workplace, the QLD Anti-Discrimination Act sets out the circumstances when it will be lawful to discriminate:

- in relation to residential domestic services, residential childcare services, and single sex accommodation
- when the workers are a married couple, or
- by imposing genuine occupational requirements for a position



Refer to the QLD Anti-Discrimination Act for more information on the general and specific provisions.

Also see the [Queensland Human Rights Commission webpage 'Discrimination'](#) for more information.

Human Rights Act

If your organisation provides services on behalf of the Queensland government, you may also need to comply with the [Human Rights Act 2019 \(Qld\)](#) (**Human Rights Act**) when making decisions about individuals.



For more information about when you may need to comply with the Human Rights Act, see the [Queensland Human Rights Commission fact sheet](#).

South Australia

The [Equal Opportunity Act 1984 \(SA\)](#) (**SA Equal Opportunity Act**) prohibits discrimination on the ground of:

- sex
- sexual orientation
- gender identity
- race
- disability
- age
- marital or domestic partnership status
- identity of spouse or domestic partner
- pregnancy
- association with a child (includes breast and bottle feeding)
- caring responsibilities
- religious appearance or dress
- being, or having been, subjected to domestic abuse

Generally, areas where discrimination is prohibited include:

- work
- education
- land, goods, services and accommodation
- superannuation

Unlawful discrimination

Under the SA Equal Opportunity Act it is unlawful for an employer to discriminate on the basis of one of the protected attributes:

- in determining, or while determining, who should be offered employment
- in the terms or conditions on which employment is offered
- in the terms or conditions of employment
- by denying or limiting access to opportunities for promotion, transfer or training, or to other benefits connected with employment
- by dismissing an employee
- by segregating the employee from persons of other races (if discrimination is on the ground of race)
- by subjecting an employee to other detriment

Further protections are provided for commission agents, independent contractors, contract workers and partners on similar terms.

Volunteers

Volunteers are covered by the SA Equal Opportunity Act as:

- 'employee' includes an unpaid worker

- 'employer' (in relation to an unpaid worker) means an organisation for which the unpaid worker performs services
- 'employment' includes unpaid work
- 'unpaid worker' means a person who performs work for an employer for no remuneration

Under the SA Equal Opportunity Act, organisations can be held vicariously liable (responsible) for discrimination by an agent or employee (including a volunteer). One way in which an organisation can defend itself against liability is by proving that it took reasonable steps to prevent the discrimination from occurring.

Whether all reasonable steps have been taken under the SA Equal Opportunity Act, requires consideration of the following:

- did the organisation have in force an appropriate policy for the prevention of the relevant act?
- did the organisation take reasonable steps to implement and enforce the policy including, did the organisation:
 - take reasonable steps to make its employees and agents aware of the terms of the policy?
 - investigate promptly any alleged act and take appropriate action

Exceptions to unlawful discrimination

In certain circumstances, it may be lawful to discriminate on the ground of a protected attribute. For example, it may be lawful to discriminate if the discrimination is reasonable having regard to any relevant factors, or where legislation allows the discrimination.

The SA Equal Opportunity Act sets out exemptions to unlawful discrimination that apply:

- in the application of measures to achieve equality
- to unjustifiable hardship
- to remuneration, insurance, and sporting activities
- to testamentary dispositions or gifts, charities and religious bodies
- to projects for the benefit of people of a particular race, disability, or age group
- to the legal capacity of children,

depending on which protected attribute applies.



Refer to the SA Equal Opportunity Act for more information on the exceptions.

Also see [Equal Opportunity SA's webpage on discrimination](#) for more information.

Tasmania

The *Anti-Discrimination Act 1998 (Tas)* (**Tasmanian Anti-Discrimination Act**) prohibits discrimination on the ground of:

- race
- age
- sexual orientation
- lawful sexual activity
- gender
- gender identity
- sex characteristics
- marital status

- relationship status
- pregnancy
- breastfeeding
- parental status
- family responsibilities
- disability
- industrial activity
- political belief or affiliation
- political activity
- religious belief or affiliation
- religious activity
- irrelevant criminal record
- irrelevant medical record, and
- association with a person who as, or is believed to have, any of these attributes

Generally, areas where discrimination is prohibited include:

- employment
- education and training
- provision of facilities, goods and services
- accommodation
- membership and activities of clubs
- administration of any law of the State or any State program
- awards, enterprise agreements or industrial agreements

Unlawful discrimination

Under the Tasmanian Anti-Discrimination Act it is unlawful to discriminate based on one of the protected attributes in any of the areas where discrimination is prohibited.

Volunteers

The Tasmanian Anti-Discrimination Act's definition of 'employment' includes:

- employment or occupation in any capacity, with or without remuneration
- membership of partnerships
- registration or recognition by, or membership of, professional and trade organisations
- registration or recognition by qualifying bodies
- engagement of commission agents
- registration or placement by employment agencies
- engagement under a contract for services
- employment by any person, and
- registration or enrolment by vocational training bodies

So volunteers are covered under the Tasmanian Anti-Discrimination Act.

Under the Tasmanian Anti-Discrimination Act, organisations can be held vicariously liable (responsible) for discrimination by a member, officer, employee (including volunteers) or agent. One way in which an organisation can defend itself against liability is by proving that it took reasonable steps to prevent the discrimination from occurring.

Exceptions to unlawful discrimination

In certain circumstances, it may be lawful to discriminate on the ground of a protected attribute. For example, it may be lawful to discriminate if the discrimination is reasonable having regard to any relevant factors, or where legislation allows the discrimination.

The Tasmanian Anti-Discrimination Act sets out general exemptions to unlawful discrimination that apply to:

- charities
- actions required by law
- disadvantaged groups and special needs, and
- equal opportunities

The Tasmanian Anti-Discrimination Act also sets out specific exemptions to unlawful discrimination that relate to different attributes.

For example, a person may discriminate against another person on the ground of age in relation to employment if the discrimination is based:

- on a genuine occupational qualification or requirement in relation to a particular position, or
- on wage rates that are based on age



Refer to the Tasmanian Anti-Discrimination Act for more information on the general and specific provisions.

Also see the Tasmanian Office of the Anti-Discrimination Commissioner webpages '[discrimination](#)' and '[exceptions](#)' for more information.

Victoria

The *Equal Opportunity Act 2010 (Vic)*, (**Victorian Equal Opportunity Act**) prohibits discrimination on the ground of:

- age
- breastfeeding
- employment activity
- gender identity
- disability
- industrial activity
- lawful sexual activity
- marital status
- parental status or status of a carer
- physical features
- political belief or activity
- pregnancy
- profession, trade or occupation
- race
- religious belief or activity
- sex
- sex characteristics
- sexual orientation

- an expunged homosexual conviction
- a spent conviction
- personal association with someone who has, or is assumed to have, any of these attributes

Generally, areas where discrimination is prohibited include:

- employment
- education
- the provision of goods and services, disposal of land, accommodation
- clubs, sport
- local government

Unlawful discrimination

Under the Victorian Equal Opportunity Act it is unlawful for:

- an employer to discriminate against a person based on one of the protected attributes:
 - in determining who should be offered employment
 - in the terms on which employment is offered to the person
 - by refusing or deliberately omitting to offer employment to the person
 - by denying the person access to a guidance program, an apprenticeship training program or other occupational training or retraining program
- an employer to discriminate against an employee based on one of the protected attributes:
 - by denying or limiting access by the employee to opportunities for promotion, transfer or training or to any other benefits connected with the employment
 - by dismissing the employee or otherwise terminating their employment
 - by denying the employee access to a guidance program, an apprenticeship training program or other occupational training or retraining program
 - by subjecting the employee to any other detriment

Further protections are:

- afforded to protect discrimination for parents and carers and to ensure people with a disability are provided with reasonable adjustments
- provided for discrimination in 'employment-related areas' which includes partnerships, firms, certain 'qualifying bodies' and industrial organisations

Under the Victorian Equal Opportunity Act organisations can be held vicariously liable (responsible) for discrimination in the workplace by an employee or agent. One way in which an organisation can defend itself against liability is by proving that it took reasonable precautions to prevent the discrimination from occurring. This does not extend to acts done by volunteers, except in relation to acts of sexual harassment (see [part 3 of this guide](#)).

Volunteers

The term 'employee' includes:

- a person employed under a contract of service (whether or not under a federal agreement or award)
- a person employed under the *Public Administration Act 2004* or a statutory office
- a person engaged under a contract for services
- a person who is engaged to perform work that is remunerated in whole or part on commission, and
- (only for the purposes of Part 6 of the Act – prohibition of sexual harassment) an unpaid worker or volunteer

As this definition of 'employee' only includes unpaid workers and volunteers in relation to the prohibition of sexual harassment, the Victorian Equal Opportunity Act does not cover all volunteering situations.

The Victorian Equal Opportunity Act may protect volunteers from discrimination, but it depends on the specific circumstances and the nature of the volunteering role.



For more information, see the Victorian Equal Opportunity & Human Rights Commission webpage '[Volunteering](#)'.

Exceptions to unlawful discrimination

In certain circumstances, it may be lawful to discriminate on the ground of a protected attribute. For example, it may be lawful to discriminate if the discrimination is reasonable having regard to any relevant factors, or where legislation allows the discrimination.

The Victorian Equal Opportunity Act sets out general exemptions to unlawful discrimination that apply:

- when things are done with statutory authority or to comply with orders of courts and tribunals
- to pensions and superannuation
- to charities, religious bodies and religious educational institutions
- when a person is subject to legal incapacity or has not reached the age of majority
- to protect health, safety and property
- when age concessions, age benefits or special needs apply

The Victorian Equal Opportunity Act also sets out specific exemptions to unlawful discrimination.

For example, in employment, exceptions to unlawful discrimination may apply:

- when adjustments for a person or employee with a disability are not reasonable
- in the provision of domestic or personal services, the care of children, or welfare services
- when there are genuine occupational requirements
- if the employment is a political position, or
- when youth wages or early retirement schemes apply



Refer to the Victorian Equal Opportunity Act for more information on the general and specific provisions.

For more information, also see the Victorian Equal Opportunity & Human Rights Commission webpages '[Discrimination](#)' and '[Exceptions](#)'.

Positive duty

Under the Victorian Equal Opportunity Act, organisations have a positive duty to eliminate discrimination, sexual harassment and victimisation. This means that positive action should be taken by the organisation to always prevent these behaviours. This imposes an obligation on employers, providers of accommodation, education or goods and services, clubs and sporting organisations. The positive duty is aimed at protecting certain groups such as employees, students, customers, consumers and club members, from harm.



For more information, see the Victorian Equal Opportunity & Human Rights Commission webpage '[Positive duty](#)'.

Charter of Human Rights and Responsibilities

If your organisation is a public authority, it may also need to comply with the [*Charter of Human Rights and Responsibilities Act 2006 \(Vic\)*](#) (**Charter**). The Charter imposes legal obligations on public authorities, such as Victorian state and local government departments and agencies, and people delivering services on behalf of government, to act consistently with the human rights set out in the Charter.



For more information on how the Charter applies to community organisations, see [our fact sheet The Charter of Human Rights and Responsibilities in Victoria](#).

Also see Victorian Equal Opportunity & Human Rights Commission webpages '[Human rights](#)', '[For public sector](#)' and '[Volunteering](#)'.

Western Australia

The [*Equal Opportunity Act 1984 \(WA\)*](#) (**WA Equal Opportunity Act**) addresses discrimination on the ground of:

- sex
- marital status, pregnancy or breast feeding
- sexual orientation
- race
- religious or political conviction
- impairment
- age
- publication of relevant details on the Fines Enforcement Registrar's website

Generally, areas where discrimination is prohibited include:

- work
- education
- the provision of goods, facilities and services
- accommodation
- the activities of clubs

Unlawful discrimination

Under the WA Equal Opportunity Act it is unlawful for it is unlawful for an employer to discriminate against a person based on one of the protected attributes:

- in the arrangements made for the purpose of determining who should be offered employment
- in determining who should be offered employment, or
- in the terms or conditions on which employment is offered

Under the WA Equal Opportunity Act it is unlawful for it is unlawful for an employer to discriminate against an employee based on one of the protected attributes:

- in the terms or conditions of employment that the employer affords the employee
- by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment
- by dismissing the employee, or
- by subjecting the employee to any other detriment

It is also unlawful for an employer to discriminate a gender reassigned person on gender history grounds in these settings where the person is an applicant for employment or is an employee.

Further protections are provided for discrimination against commission agents, contract workers and in partnerships professional or trade organisations and 'qualifying bodies'.

Under the WA Equal Opportunity Act organisations can be held vicariously liable (responsible) for discrimination in the workplace by an employee or agent (which is unlikely to include volunteers – see below). One way in which an organisation can defend itself against liability is by proving that it took all reasonable steps to prevent the discrimination from occurring.

Volunteers

The term 'employment' includes:

- part-time and temporary employment
- work under a contract for services, and
- work as a State employee

As the definition of 'employment' doesn't include volunteers, unpaid workers or vocational placement by an educational or training authority, the WA Equal Opportunity Act does not cover all volunteering situations.

The WA Equal Opportunity Act may protect volunteers in others areas (like access to goods, services, and facilities) but it depends on the specific circumstances and the nature of the volunteering role.

Exceptions to unlawful discrimination

In certain circumstances, it may be lawful to discriminate on the ground of a protected attribute. For example, it may be lawful to discriminate if the discrimination is reasonable having regard to any relevant factors, or where legislation allows the discrimination.

The WA Equal Opportunity Act sets out general exemptions to unlawful discrimination that apply to:

- acts done under statutory authority
- charities
- voluntary bodies
- religious bodies and educational institutions established for religious purposes
- establishments providing housing accommodation for aged persons

The WA Equal Opportunity Act also sets out specific exemptions to unlawful discrimination that apply to some protected attributes, such as:

- genuine occupational qualifications
- measures intended to achieve equality



Refer to the WA Equal Opportunity Act for more information on the general and specific provisions.

For more information, also see the Government of Western Australia Department of Mines, Industry Regulation and Safety webpage '[Grounds of discrimination](#)'.

Making a complaint about discrimination

Where possible and appropriate, complaints about discrimination should be dealt with internally and in accordance with the organisation's complaint handling policy.

Where it is not possible or appropriate to resolve complaints internally, complaints may be made to the relevant state or federal body. There are different bodies in each state and at the federal level to which a complaint regarding discrimination may be made.

For information on how to make a complaint, and what a complaint should contain, contact the relevant body listed in the table below. Equally, if you have been notified that a complaint has been made against you or your organisation, you should also contact the body in the table below.

Fair Work Commission (FWC)	Under the <u>Fair Work Act 2009 (Cth)</u> an employee or independent contractor (which excludes volunteers) who claims they have been discriminated against in the workplace, may make an application to the Fair Work Commission arguing that they have suffered 'adverse action' because of a protected attribute, which includes their race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin. This can be done during employment or within 21-days following a person's dismissal. Adverse action taken by a person includes doing, threatening, or organising any of the following: • an employer dismissing an employee, injuring them in their employment, altering their position to their detriment, or discriminating between them and other employees • an employer refusing to employ a prospective employee or discriminating against them in the terms and conditions the employer offers • a principal terminating a contract with an independent contractor, injuring them or altering their position to their detriment, refusing to use their services or to supply goods and services to them, or discriminating against them in the terms and conditions the principal offers to engage them on • an employee or independent contractor taking industrial action against their employer or principal • an industrial association, or an officer or member of an industrial association, organising or taking industrial action against a person, or taking action that is detrimental to an employee or independent contractor • an industrial association imposing a penalty of any kind on a member The process that follows an application for adverse action can vary according to the type of application made and whether the person continues to be employed or has been dismissed. You should seek advice if an application is made against your organisation. However, the Fair Work Commission will always try and resolve an application by conciliation. If the application can't be resolved through conciliation, the complainant may choose to start proceedings in the Federal Court or Federal Circuit Court of Australia. See: • the Fair Work Commission webpage '<u>What is adverse action?</u>' and the Fair Work Ombudsman webpage '<u>Protections at work</u>' • the Fair Work Commission webpage '<u>Discrimination</u>' and the Fair Work Ombudsman webpage '<u>Workplace discrimination</u>'
Australian Human Rights Commission (AHRC)	The AHRC investigates and resolves complaints of discrimination, harassment or bullying based on, but not limited to sex, disability, race or age. To resolve complaints, the AHRC uses the method of conciliation, a free and informal process which can occur through a telephone conference, exchange of letters, or a face to face conference between the complainant and respondent. If the complaint can't be resolved through conciliation, the complainant may apply to have their complaint be heard in the Federal Court or Federal Circuit Court of Australia, but must do so within 60 days (of the end of conciliation) and in some instances, with permission from the Court. The <u>Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022</u> has amended the <u>Australian Human Rights Commission Act 1986</u> to

	extend the period for making complaints about age, disability and race discrimination to a date 24 months after the conduct occurred. See the Australian Human Rights Commission webpages 'Age discrimination', 'Disability rights', 'Race discrimination', 'Sex discrimination' and 'Complaints'.
Australian Capital Territory Human Rights Commission (ACT-HRC)	The ACT-HRC's role is to resolve complaints and promote rights. It may: • decide to take no further action on a complaint • attempt to resolve it through conciliation, or • decide that resolution by conciliation is unlikely to be successful If the ACT-HRC decides that conciliation should be attempted to resolve the complaint, this allows an opportunity for both parties to discuss and try to find a way to resolve the complaint. Outcomes from conciliation may include: a written or verbal apology, the introduction of policies and guidelines, financial compensation (agreed to by the other party) or gestures to show the respondent's good will towards the complainant. If the complaint is unable to be resolved through conciliation or the ACT-HRC decides that conciliation will be unlikely to resolve the complaint, the complaint may be referred to the ACT Civil and Administrative Tribunal. See the ACT Human Rights Commission webpage 'Complaints'.
Anti-Discrimination Board of New South Wales (ADB)	The ADB investigates complaints of discrimination that are covered in the Anti-Discrimination Act 1977 (NSW). The ADB doesn't have the power to make an order or award compensation, but actively seeks to resolve complaints through conciliation which is designed to be an informal and cost-effective method of resolving disputes. The ADB may also choose to refuse investigating a complaint if the incident occurred more than 12 months before the complaint was lodged. If a person or organisation wishes to lodge a complaint about events which happened more than 12 months ago, an explanation for the delay in lodging the complaint must be provided to the ADB. See the Anti-Discrimination Board of New South Wales webpage 'Complaints'.
Northern Territory Anti-Discrimination Commission (NTADC)	A complaint to the NTADC must be made within 12 months of the incident occurring. However, the NTADC may consider complaints over 12 months if there is good reason. Once the NTADC receives a complaint covered by the Anti-Discrimination Act 1992 (NT), the respondent is notified by the NTADC and the matter is set down for a compulsory conciliation. If the matter is not resolved, and the NTADC decides there is merit for a referral, the complainant may continue the evaluation process by referring the complaint to the Northern Territory Civil and Administrative Tribunal. See the Northern Territory Anti-Discrimination Commission webpage 'Complaints'.
Queensland Human Rights Commission (QHRC)	Complaints to the QHRC must be made in writing, and set out how the incident involved a breach of the Anti-Discrimination Act 1991 (QLD) and the Human Rights Act 2019 (QLD). Complaints to the QHRC must be made within a year of the incident. However, the QHRC may choose to accept a complaint about an incident which occurred over a year ago depending on the length of and reason for the delay.

	The QHRC uses conciliation to resolve complaints. This service is provided free of charge. If the complaint is unable to be resolved through conciliation, the complainant may approach the Queensland Industrial Relations Commission for work-related complaints or the Queensland Civil and Administrative Tribunal for other complaints. See the Queensland Human Rights Commission webpage 'Making a complaint'.
Equal Opportunity Commission of South Australia (EOCSA)	The EOCSA provides free and confidential services in resolving complaints using conciliation. A 12 month time limit is imposed and the EOCSA generally won't consider complaints about incidents over 12 months ago unless there is good reason and it would be fair for the complaint to be considered despite it being late. If the parties are unable to agree to resolve the complaint, the EOCSA may choose to refer the complaint to the South Australian Employment Tribunal (SAET). The SAET hears and determines matters regarding: • equal opportunity complaints • exemptions to the Equal Opportunity Act 1984 (SA), or • a review of refusal to extend time Equal opportunity complaints must be made in the first instance to the EOCSA before approaching the SAET. See the Equal Opportunity Commission of South Australia webpage 'Making a complaint'.
Equal Opportunity Tasmania (EOT)	A complaint must be within the scope of the Anti-Discrimination Act 1998 (Tas) and made within 12 months of the incident. If the EOT decides the complaint is to be handled, an investigation process will occur. At the end of the investigation, the EOT may decide to: • dismiss the complaint • resolve the complaint through conciliation, or • refer the complaint to the Anti-Discrimination Tribunal If the EOT chooses to dismiss the complaint, the EOT will inform the complainant and respondent of the decision and reasons for it. The complainant has the right to ask the Anti-Discrimination Tribunal for a review of the decision by the EOT. If conciliation occurs, but the complaint is unresolved, the EOT must send the complaint to the Anti-Discrimination Tribunal for inquiry. See the Office of the Anti-Discrimination Commissioner webpage 'Complaints'.
Victorian Equal Opportunity and Human Rights Commission (VEOHRC)	The VEOHRC seeks to resolve complaints through the process of conciliation, the aim of which is to reach an agreement between the complainant and the respondent. The VEOHRC is unable to make orders or award compensation but common outcomes of conciliation can include: • an apology • financial compensation (agreed to by the other party) • a job reinstatement, or an agreement to change or stop behaviour If the issue can't be resolved through conciliation, a complainant may apply to the Victorian Civil and Administrative Tribunal. The complainant can make this application regardless of whether a complaint has been made to the VEOHRC.



	See the Victorian Equal Opportunity and Human Rights Commission webpage ' Make a complaint '.
Equal Opportunity Commission of Western Australia (EOCWA)	Complaints to the EOCWA must be on a matter under the Equal Opportunity Act 1984 (WA) and the incident must have occurred within 12 months of the complaint being lodged. Generally, the EOCWA will refuse complaints about incidents over 12 months ago but may consider them if there is good reason for the delay. Common outcomes from conciliation can include: • an apology • staff training programs, or • compensation for a specific loss If the complaint is unable to be conciliated, the EOCWA may choose to dismiss the complaint or refer the matter to the State Administrative Tribunal for hearing and determination. See the Equal Opportunity Commission of Western Australia webpage 'Complaint Process'.



Part 3

Sexual harassment

Sexual harassment

This part of the guide covers:

- ▶ what is sexual harassment and harassment on the ground of sex?
- ▶ sexual harassment laws and your organisation's obligations
- ▶ federal sexual harassment laws
- ▶ state and territory sexual harassment laws
- ▶ making a complaint about sexual harassment



This part of the guide considers how sexual harassment laws apply in the workplace.

Sexual harassment laws exist at both the federal and state level. Where the federal and a state or territory law relating to sexual harassment overlap, your organisation must comply with both.



Note – negligence and work health and safety laws

Along with duties that your organisation may owe under sexual harassment laws, your organisation may have duties under work health and safety laws and under the law of negligence, which contains a duty to take reasonable care to avoid exposing your workers, including volunteers, to reasonably foreseeable risks of injury which could include harm caused by sexual harassment.

For more information about an organisation's responsibilities under negligence and work health and safety laws, see our webpages [Negligence, injuries, accidents and incidents](#) and [Work health and safety laws](#).



What is sexual harassment?

The definition of sexual harassment differs slightly between the federal laws and the laws in each state and territory.

Generally, sexual harassment occurs when the following two factors are met:

- a person makes unwelcome sexual advances, requests sexual favours, makes unsolicited acts of physical intimacy, or physical contact of a sexual nature or remarks with sexual connotations about another person, and
- the behaviour is intended, or could reasonably be expected, to offend, humiliate or intimidate the other person



Examples of conduct which is likely to constitute sexual harassment

- unwelcome physical touching
- staring or leering in a sexual manner
- suggestive comments or jokes
- unwanted requests to go out on dates
- requests for sexual favours
- emailing pornography or rude jokes
- sending sexually explicit emails, texts or posts on social networking sites
- intrusive questions about a person's private life or body
- displaying posters, magazines or screen savers of a sexual nature



Example – sexual harassment

Peter volunteers with an environmental organisation. He leads a team of up to 10 other volunteers and they conduct door knocking, phone call campaigns and street petitions.

Peter is very friendly with his team and tries to create a close team atmosphere. He uses words like 'babe' and 'doll' when talking to female members of the team. He also winks and makes other sexually suggestive facial expressions at members of the team – male and female. Some team members are uncomfortable with Peter's behaviour. One female team member has told Peter she really doesn't like the pet names he uses and that his other behaviour isn't appropriate. Peter laughed this off.

Peter's behaviour is likely to constitute sexual harassment. Peter's behaviour has sexual connotations and, particularly for the team member who expressed her discomfort, is unwelcome and could reasonably be expected to offend, humiliate or intimidate others.



What is harassment on the ground of sex?

'Sex' in this context is best defined as the gender identity, however expressed, of the person being discriminated against.

Harassment on the ground of sex takes place when a person engages in unwelcome conduct of a seriously demeaning nature, because of another person's sex or characteristic of their sex, in circumstances in which a reasonable person would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.



Examples of conduct – harassment on the ground of sex

Examples of conduct from the Workplace Gender Equality Agency (WGEA) which are likely to constitute sex-based harassment include:

- commenting offensively about a person because of their gender
- ignoring or isolating a person because of their gender
- making repeated sexual invitations to a person who has declined before
- making sexual gestures
- displaying sexist material in the workplace
- asking inappropriate sexual questions
- sexual touching, kissing or staring
- sexual assault

Sexual harassment laws and your organisation's obligations

Generally, under these laws (where they apply):

- sexual harassment of workers, while they are working, is unlawful
- workers must not sexually harass others in the workplace (including other workers, volunteers, clients, and members of the public)
- your organisation will not be liable (legally responsible) for any harm, injury or loss as a result of the actions of your workers if your organisation has taken all reasonable steps to prevent sexual harassment)
- volunteers in your organisation generally have the same legal rights and protections against sexual harassment as paid workers, and
- your organisation may have a positive duty to take reasonable and proportionate measures to eliminate sexual harassment from the workplace



Tip – best practice

Regardless whether the sexual harassment laws apply to your organisation and workers (or if they only apply in limited circumstances, or only to your employees), it's best practice, as much as reasonably practicable, to comply with the laws.

This will be favourable to your workers (and clients and members of the public in contact with your organisation), and will help prevent any reputational or other damage to your organisation that may arise from a complaint of sexual harassment.

Along with duties that your organisation may owe under harassment laws, your organisation may also have duties under:

- work health and safety laws to provide a both a workplace free from physical and psychological harm, and
- the law of negligence, which includes a duty to take reasonable care to avoid exposing your workers (including volunteers) to reasonably foreseeable risks of injury which could include harm caused by sexual harassment



For more information about an organisation's responsibilities under negligence and work health and safety laws, see our webpages [Negligence, injuries, accidents and incidents](#) and [Work health and safety laws](#).

Federal sexual harassment laws

At the federal level, under the [Sex Discrimination Act 1984 \(Cth\)](#) (**Sex Discrimination Act**) and the [Fair Work Act 2009 \(Cth\)](#) (**Fair Work Act**) it is unlawful for a worker or persons conducting a business or undertaking (PCBU), to harass another worker, or a person who is seeking to become a worker, in that business or undertaking, on the ground of sex.



Who is a 'worker'?

Under the Sex Discrimination Act (which uses the same definition of 'worker' as the [Work Health and Safety Act 2011 \(Cth\)](#)), a 'worker' is a person who carries out work in any capacity, and for a person conducting a business or undertaking.

Under this definition, a 'worker' includes:

- an employee
- a contractor or subcontractor
- an apprentice or trainee
- a student gaining work experience, and
- a volunteer

The Fair Work Act has the same meaning for 'worker' for the parts of the Act that:

- prohibit sexual harassment in connection with work, and
- provide for application to the Fair Work Commission a stop bullying order



Note – a person seeking to become a worker in a particular business or undertaking

Under the Fair Work Act:

- sexual harassment of a person seeking to become a worker in a particular business or undertaking, is unlawful, and
- workers must not sexually harass another person where the other person is seeking to become a worker in a particular business or undertaking



Note – exception for volunteer associations

Under the Work Health and Safety Act 2011 (Cth) (**Work Health and Safety Act**) a ‘volunteer association’:

- means a group of volunteers working together for one or more community purposes where none of the volunteers, whether alone or jointly with any other volunteers, employs any person to carry out work for the volunteer association, and
- does not conduct a business or undertaking

Volunteers undertaking work for a ‘volunteer association’ fall into this exemption and will generally **not** be protected under the Sex Discrimination Act or the Fair Work Act as ‘workers’.

However, be aware that a ‘volunteer association’ may still owe duties under other laws to protect volunteers from sexual harassment (for example, under state and territory discrimination laws, work health and safety laws or negligence law) or where their volunteering falls within **a specified area of public life** covered by the Sex Discrimination Act.

These areas of public life include:

- providing goods, services and facilities (see example, below), and
- carrying out a function under a federal law or for the purposes of a federal government program (see example, below) or by a member of a management committee of a club (in this context ‘club’ means an association of at least 30 people that funds the provision of facilities for the club and sells or supplies alcohol)



Example – government programs (sexual harassment)

Greg and Ananya volunteer with an organisation that receives funding from the federal government as part of a federal program to support elderly people and assist them to stay living in their homes.

Greg and Ananya go to clients’ homes and assist with everyday tasks, and sometimes provide respite care for clients’ carers. Greg is often flirtatious with female clients, frequently making comments about their physical appearance. He says he is paying them compliments and making them feel good about themselves. However, Ananya has observed that many clients feel uncomfortable when Greg behaves this way.

Greg’s behaviour is prohibited under the Sex Discrimination Act because his role is for the purpose of delivering a federal government program and his behaviour constitutes an unwelcome sexual advance.



Example – goods, services or facilities (sexual harassment)

Sexual Health Awareness is a charity that works to promote and increase sexual health knowledge and education for young people.

The charity volunteers visit sexual health clinics to hand out information pamphlets and condoms to patients who want them. Nathan, a regular volunteer for the charity, tries to make jokes to patients who pick up pamphlets or condoms, but his jokes are generally of a sexual nature. Patients frequently feel very uncomfortable by Nathan's jokes. Nathan's behaviour while providing these goods and services could be reasonably expected to offend, humiliate or intimidate others, and is very likely prohibited under sexual harassment laws.

The positive duty

Both the Sex Discrimination Act and the Fair Work Act impose a positive duty on employers to take reasonable and proportionate measures to eliminate, as far as possible, sexual harassment and certain discriminatory conduct.

This positive duty to take reasonable and proportionate measures to eliminate sexual harassment from the workplace means taking steps to prevent this behaviour and not waiting for a complaint before addressing inappropriate workplace behaviour.

Under the Fair Work Act:

- sexual harassment of persons seeking to become workers in a particular business or undertaking, is unlawful, and
- workers must not sexually harass another person where the other person is seeking to become a worker in a particular business or undertaking



Tips – taking positive steps to prevent sexual harassment in the workplace

- Develop and implement a policy on appropriate workplace behaviour, which makes it clear that sexual harassment is unacceptable and will not be tolerated. This policy should cover how the organisation will comply with laws about sexual harassment (where they apply).
- Make all workers (including volunteers) aware of:
 - the kind of behaviour that is unacceptable
 - the terms of the policy
 - what to do if they are subjected to harassment, and
 - what to do if the process for making a complaint does not resolve the matter
- Conduct training on appropriate workplace behaviour for incoming workers and refreshers for ongoing workers.
- Implement an appropriate screening process for workers (see [our webpage on background checks](#)).
- Nominate a person to review and evaluate your organisation's compliance with the positive duty.
- Nominate a person, with sufficient authority to act on behalf of the organisation, who people can make complaints on inappropriate behaviour to.
- Implement a fair and transparent process for resolving complaints.



The Australian Human Rights Commission has published [guidance materials, fact sheets and other resources](#) on the positive duty in the Sex Discrimination Act.

Also see the [Work Health and Safety \(Sexual and Gender-based Harassment\) Code of Practice 2025](#), which is intended to help employers and workers prevent and respond to sexual and gender-based harassment in workplaces.

This code should be read and applied alongside the [code of practice for Managing Psychosocial Hazards at Work](#) (because sexual and gender-based harassment often occurs with other psychosocial hazards, duty-holders must consider the interaction

Hostile work environments

The Sex Discrimination Act makes it unlawful for a person to subject another person to a workplace environment that is hostile on the ground of sex (in this context, 'sex' refers to the gender identity, however described, of the other person).

A workplace environment will be hostile if it is offensive, intimidating or humiliating to a person because of two or more matters that relate to their sex or a characteristic of their sex, regardless of whether the sex or characteristic is the dominant or substantial reason.

A person will subject another person to a workplace environment that is hostile on the ground of sex if, while at work, the first person engages in conduct that a reasonable person (having regard to all the circumstances) would have anticipated might result in the workplace environment being offensive, intimidating or humiliating.

This conduct may include:

- commenting offensively about a person because of their gender
- ignoring or isolating a person because of their gender
- making repeated sexual invitations to a person who has previously declined such invitations
- making sexual gestures
- displaying sexist material in the workplace
- asking inappropriate sexual questions
- sexual touching, kissing or staring, or
- sexual assault

State and territory sexual harassment laws

Sexual harassment at the state and territory level is covered by the following laws:

Sexual harassment	
Commonwealth	• Sex Discrimination Act 1984 (Cth) • Fair Work Act 2009 (Cth)
Australian Capital Territory	• Discrimination Act 1991 (ACT)
New South Wales	• Anti-Discrimination Act 1977 (NSW)
Northern Territory	• Anti-Discrimination Act 1992 (NT)
Queensland	• Anti-Discrimination Act 1991 (QLD)

South Australia	• <u>Equal Opportunity Act 1984 (SA)</u>
Tasmania	• <u>Anti-Discrimination Act 1998 (Tas)</u>
Victoria	• <u>Equal Opportunity Act 2010 (Vic)</u>
Western Australia	• <u>Equal Opportunity Act 1984 (WA)</u>

These Acts all cover sexual harassment within an employment relationship but with varying definitions of workplace participants.

Regarding volunteers:

- the Acts in the **Australian Capital Territory, New South Wales, Queensland, South Australia, Tasmania, Victoria** and the **Northern Territory** all explicitly apply to volunteers in respect of sexual harassment, and
- in **Western Australia**, it's unlikely the sexual harassment law applies to volunteers: however, your organisation may still owe duties under other laws to protect your volunteers from sexual harassment, for example, work health and safety laws or the common law

While the sexual harassment provisions in these laws are all slightly different, they generally provide (as outlined above) that sexual harassment is likely to occur in situations where:

- a person engages in unwelcome conduct of a sexual nature, and
- a reasonable person would have anticipated the possibility the other person would be offended, humiliated or intimidated by the behaviour

These laws are explained further below.

Australian Capital Territory

Under the [Discrimination Act 1991 \(ACT\)](#) (**ACT Discrimination Act**) it is unlawful for:

- an employer to subject an employee, or a person seeking employment, to sexual harassment
- an employee to subject a fellow employee, or a person seeking employment with the same employer, to sexual harassment, or
- a workplace participant to sexually harass another workplace participant at a place that is a workplace of both those persons

A person subjects someone else to sexual harassment if the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person or engages in other unwelcome conduct of a sexual nature in circumstances in which the other person reasonably feels offended, humiliated or intimidated.

The term 'conduct of a sexual nature' includes making a statement of a sexual nature to, or in the presence of, a person, whether the statement is made orally or in writing.

Volunteers

Volunteers are covered by the ACT Discrimination Act under the definition of employment, which includes an unpaid worker (a person who performs work for an employer for no remuneration).

In relation to sexual harassment, the ACT Discrimination Act provides that the term 'workplace participant' includes an employer or employee and a commission agent or contract worker.

Under the ACT Discrimination Act, an organisation can be held liable (responsible) for sexual harassment in the workplace by a 'representative'. A representative includes an employee (including volunteers) or agent. One way in which an organisation can defend itself against liability arising from the acts of its employees and agents is by proving that it took all reasonable steps to prevent them from engaging in the relevant misconduct.

Positive duty

The ACT Discrimination Act includes a positive duty (which applies to all organisations and businesses and any individual with organisational management responsibility for an organisation or business) which obliges them to take reasonable and proportionate steps to eliminate discrimination, sexual harassment and unlawful vilification.



For more information, see the ACT Human Rights Commission's webpages '[Sexual Harassment](#)' and '[ACT Discrimination Act Positive Duty](#)'.

New South Wales

Under the [Anti-Discrimination Act 1977 \(NSW\)](#) (**NSW Anti-Discrimination Act**) it is unlawful for:

- an employer to subject an employee, or a person seeking employment, to sexual harassment,
- an employee to sexually harass a fellow employee or a person who is seeking employment with the same employer, or
- a workplace participant to sexually harass another workplace participant at a place that is a workplace of both those persons

A person sexually harasses another person if:

- the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person, or
- the person engages in 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.

Volunteers

In relation to sexual harassment, the NSW Anti-Discrimination Act provides that the term 'workplace participant' includes an employer or employee, a commission agent or contract worker, and a volunteer or unpaid trainee. So the NSW Anti-Discrimination Act applies to volunteers in respect of sexual harassment.

Under the NSW Anti-Discrimination Act, organisations can be held liable (responsible) for sexual discrimination in the workplace by its employees or agents (including volunteers). One way in which an organisation can defend itself against liability is by proving that it took reasonable steps to prevent the discrimination from occurring.



For more information, see Anti-Discrimination New South Wales webpage '[Sexual Harassment](#)'.

Northern Territory

Under the [Anti-Discrimination Act 1992 \(NT\)](#) (**NT Anti-Discrimination Act**):

- a person must not sexually harass another person, and
- sexual harassment takes place if a person:
 - subjects another person to an unwelcome act of physical intimacy
 - makes an unwelcome demand or request (whether directly or by implication) for sexual favours from the other person
 - makes an unwelcome remark with sexual connotations, or

- engages in any other unwelcome conduct of a sexual nature, and:
- that person does so:
 - with the intention of offending, humiliating or intimidating the other person, or
 - in circumstances where a reasonable person would have anticipated the possibility that the other person would be offended, humiliated or intimidated by the conduct, or
- that other person is, or reasonably believes they are likely to be, subjected to some detriment if they object to the act, demand, request, remark or conduct

Volunteers

The prohibition of sexual harassment under the NT Anti-Discrimination Act applies to the workplace and all workplace participants, including employers, employees and volunteers.

Under the NT Anti-Discrimination Act, organisations can be held vicariously liable (responsible) for sexual harassment in the workplace by a worker (including volunteers) or agent. One way in which an organisation can defend itself against liability is by proving that it took all reasonable steps to prevent the discrimination from occurring.

Whether all reasonable steps have been taken under the NT Anti-Discrimination Act, requires consideration of the following:

- the provision of anti-discrimination training by the organisation
- the development and implementation of an equal employment opportunity management plan by the organisation
- the publication of an anti-discrimination policy by the organisation
- the financial circumstances of the organisation, and
- the number of workers and agents of the organisation

Positive duty

The NT Anti-discrimination Act includes a positive duty (which applies to all organisations and businesses) which obliges them to take reasonable and proportionate measures to eliminate discrimination, sexual harassment or victimisation to the greatest extent possible.



See the Northern Territory Anti-Discrimination Commission's webpages '[Harassment](#)' and '[Positive Duty Resources](#)' for more information.

Queensland

Under the *Anti-Discrimination Act 1991 (QLD)* (**QLD Anti-Discrimination Act**) sexual harassment occurs where a person:

- subjects another person to an unsolicited act of physical intimacy
- makes an unsolicited demand or request (whether directly or by implication) for sexual favours from the other person
- makes a remark with sexual connotations relating to the other person, or
- engages in any other unwelcome conduct of a sexual nature in relation to the other person,

with the intention of offending, humiliating or intimidating the other person or in circumstances where a reasonable person would have anticipated the possibility that the other person would be offended, humiliated or intimidated by the conduct.

Volunteers

The prohibition of sexual harassment under the QLD Anti-Discrimination Act applies to the workplace and all workplace participants, including employers, employees and volunteers.

Under the QLD Anti-Discrimination Act, organisations can be held vicariously liable (responsible) for sexual harassment in the workplace by its workers (including volunteers) or agents. One way in which an organisation can defend itself against liability is by proving that it took reasonable steps to prevent the sexual harassment from occurring.



Note – requirement for a sexual harassment prevention plan in Queensland

From 1 March 2025, under *Work Health and Safety Regulation 2011 (Qld)*, a person conducting a business or undertaking (PCBU) in Queensland must prepare and implement a prevention plan to manage identified risks to the health and safety of workers, or others, from sexual harassment and sex or gender-based harassment at work.

WorkSafe Qld has published some resources on this requirement, including [a guide and template plan](#).

Queensland is the first state to require a written prevention plan.



For more information, see Queensland Human Rights Commission webpage '[sexual harassment](#)', and [sample discrimination and sexual harassment policy](#).

South Australia

Under the *Equal Opportunity Act 1984 (SA)* (**SA Equal Opportunity Act**) it is unlawful for a person to sexually harass:

- a person they work with, or
- a person who is seeking to become a fellow worker,

in a place that is a workplace of both people or in circumstances where the person was, (or ought reasonably to have been) aware that the other person was a fellow worker or seeking to become a fellow worker.

A person sexually harasses another if:

- the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed, or
- engages in other unwelcome conduct of a sexual nature in relation to the person harassed,

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

Further, under the SA Equal Opportunity Act, if an employee informs their employer about specific instances of sexual harassment they experienced during their employment, caused by someone who is not a fellow worker, and it is reasonable to anticipate that the same person is likely to commit further sexual harassment, then the employer is legally required to reasonable steps to prevent the further sexual harassment.

Volunteers

The prohibition of sexual harassment under the SA Equal Opportunity Act applies to all workplace participants, including employers, employees and volunteers.

Under the SA Equal Opportunity Act, organisations can be held vicariously liable (responsible) for sexual harassment by an agent or employee (including a volunteer). One way in which an organisation can help defend itself against liability is by proving that it had taken reasonable steps to prevent the sexual harassment from occurring.

Whether all reasonable steps have been taken under the SA Equal Opportunity Act, requires consideration of the following:

- did the organisation have in force an appropriate policy for the prevention of the relevant act?
- did the organisation take reasonable steps to implement and enforce the policy including, did the organisation:
 - take reasonable steps to make its employees and agents aware of the terms of the policy?
 - investigate promptly any alleged act and take appropriate action?



For more information, see Equal Opportunity SA's webpage '[Workplace sexual harassment](#)'.

Tasmania

The *Anti-Discrimination Act 1998 (Tas)* (**Tasmanian Anti-Discrimination Act**) provides that:

- a person must not sexually harass another person, and
- sexual harassment takes place if a 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, intimidated, insulted or ridiculed:
 - subjects another person to an unsolicited act of physical contact of a sexual nature
 - makes an unwelcome sexual advance or an unwelcome request for sexual favours to another person
 - makes an unwelcome remark or statement with sexual connotations to another person or about another person in that person's presence
 - makes any unwelcome gesture, action or comment of a sexual nature, or
 - engages in conduct of a sexual nature in relation to another person that is offensive to that person

Volunteers

The prohibition of sexual harassment under the Tasmanian Anti-Discrimination Act applies to all workplace participants, including employers, employees and volunteers.

Under the Tasmanian Anti-Discrimination Act, organisations can be held vicariously liable (responsible) for sexual harassment by a member, officer, employee or agent. One way in which an organisation can defend itself against liability is by proving that it took reasonable steps to prevent the discrimination from occurring.



For more information, see the Office of the Anti-Discrimination Commissioner's webpage '[sexual harassment](#)'.

Victoria

Under the *Equal Opportunity Act 2010 (Vic)* (**Victorian Equal Opportunity Act**)

- an employer must not sexually harass:
 - a person seeking employment with that employer, or
 - an employee of that employer

- an employee must not sexually harass:
 - another person employed by their employer
 - their employer, or
 - a person seeking employment with their employer
- a person must not sexually harass another person at a place that is a workplace of both (for this purpose 'workplace' means any place a person attends for the purpose of carrying out any functions in relation to their employment, occupation, business, trade or profession and need not be a person's principal place of business or employment)

The term 'sexual harassment' means:

- making an unwelcome sexual advance, or an unwelcome request for sexual favours, to another person, or
- engaging in any other unwelcome conduct of a sexual nature in relation to another person,

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

The term 'conduct of a sexual nature' can include:

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

Volunteers

Under the Victorian Equal Opportunity Act, the term 'employee' includes an unpaid worker or volunteer **only** for the purposes of Part 6 of the Act – the prohibition of sexual harassment.

Under the Victorian Equal Opportunity Act organisations can be held vicariously liable (responsible) for sexual harassment in the workplace by an employee or agent (including a volunteer). One way in which an organisation can defend itself against liability is by proving that it took reasonable precautions to prevent the conduct from occurring.

Positive duty

Further, under the Victorian Equal Opportunity Act, organisations have a positive duty to eliminate discrimination, sexual harassment and victimisation. This means that positive action should be taken by the organisation to always prevent these behaviours. This imposes an obligation on employers, providers of accommodation, education or goods and services, clubs and sporting organisations. The positive duty is aimed at protecting certain groups such as employees, students, customers, consumers and club members, from harm.



For more information, see the Victorian Equal Opportunity & Human Rights Commission webpages '[Volunteering](#)', '[Sexual harassment](#)' and '[Positive duty](#)'.

Western Australia

Under the [Equal Opportunity Act 1984 \(WA\)](#) (**WA Equal Opportunity Act**) it is unlawful for a person to harass sexually:

- an employee (their employer or any other person), or
- a person who is seeking employment by them or any other person

The Act includes sexual harassment provisions in the workplace that apply to commission agents and contract worker.

A person sexually harasses another person if they make an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person, or engages in other unwelcome conduct of a sexual nature in relation to the other person, and:

- the other person has reasonable grounds for believing that a rejection of the advance, a refusal of the request or the taking of objection to the conduct would disadvantage the other person in any way in connection with their employment or work or possible employment or possible work, or
- because of the other person's rejection of the advance, refusal of the request or taking of objection to the conduct, the other person is disadvantaged in any way in connection with their employment or work or possible employment or possible work

Under the WA Equal Opportunity Act organisations can be held vicariously liable (responsible) for sexual harassment in the workplace by an employee or agent (which is unlikely to include volunteers – see below). One way in which an organisation can defend itself against liability is by proving that it took all reasonable steps to prevent the sexual harassment occurring.

Volunteers

The provisions in the WA Equal Opportunity Act that relate to sexual harassment in employment include people:

- performing part-time and temporary employment, and
- people working under a contract for services or as a State employee

Accordingly, volunteers are unlikely to be covered by the sexual harassment provisions of the WA Equal Opportunity Act.

The WA Equal Opportunity Act may protect volunteers in others areas (like access to goods, services, and facilities) but it depends on the specific circumstances and the nature of the volunteering role.



For more information, see the WA Equal Opportunity Commission webpage '[Sexual harassment](#)'.

Making a complaint about sexual harassment

Where possible and appropriate, complaints about sexual harassment should be dealt with internally and in accordance with the organisation's complaint handling policy.

Where it is not possible or appropriate to resolve complaints internally, complaints may be made to the relevant state or federal body. There are different bodies in each state and at the federal level to which a complaint regarding sexual harassment may be made.

For information on how to make a complaint, and what a complaint should contain, contact the relevant body listed in the table below. Equally, if you have been notified that a complaint has been made against you or your organisation, you should also contact the body in the table below.

Fair Work Commission (FWC)

Under the Fair Work Act, a worker (including volunteers) who claims they have been sexually harassed in the workplace, may apply to the Fair Work Commission for an order to stop the harassment.

If the person making an application to the Commission for a stop sexual harassment order remains engaged in the workplace, they may make an application up to 24 months after the relevant conduct is alleged to have taken place.

If the Commission is satisfied that:

- the aggrieved person has been sexually harassed, and
- there is a risk that they will continue to be harassed,

the Commission may make an order it considers appropriate to prevent further harassment.



	The purpose of an order is for the worker to be able to continue their work free from the harassment. The order may require monitoring of behaviour, compliance and review of existing policies, further support and anything else the Commission considers appropriate in the circumstances. The Commission may not make an order requiring payment of a monetary amount. Without issuing a stop harassment order, the Commission may deal with a dispute through mediation, conciliation, making a recommendation or expressing an opinion. If attempts to resolve the dispute are unsuccessful, the Commission may issue a certificate allowing (within 60 days of the certificate being issued): • the parties to agree to deal with the dispute by arbitration in the Commission, or • the aggrieved person to apply to have the dispute heard by the Federal Court or the Federal Circuit and Family Court of Australia Multiple aggrieved persons can make an application so the Commission can deal with the aggrieved persons jointly. This can be both practical and efficient in cases involving a common perpetrator. See the Fair Work Commission webpage 'Sexual harassment' and the Fair Work Ombudsman webpage 'Making a complaint about workplace sexual harassment'.
Australian Human Rights Commission (AHRC)	The AHRC investigates and resolves complaints of discrimination, harassment or bullying based on, but not limited to sex, disability, race or age. The complaint made must be with regards to unlawful discrimination. To resolve complaints, the AHRC use the method of conciliation, a free and informal process which can occur through a telephone conference, exchange of letters, or a face to face conference between the complainant and respondent. If the complaint can't be resolved through conciliation, the complainant may apply to have their complaint be heard in the Federal Court or Federal Circuit Court of Australia, but must do so within 60 days (of the end of conciliation) and in some instances, with permission from the Court. The <i>Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022</i> amended the <i>Australian Human Rights Commission Act 1986</i> to extend the period for making complaints about age, disability and race discrimination to a date 24 months after the conduct occurred. The President of the AHRC may terminate claims made beyond this timeframe. See the Australian Human Rights Commission webpages 'Sex discrimination', 'Complaints', 'Complaints under the Sex Discrimination Act' and the webpage with resources on sexual harassment for employers.
Australian Capital Territory Human Rights Commission (ACT-HRC)	The ACT-HRC's role is to resolve complaints and promote rights. It may: • decide to take no further action on a complaint • attempt to resolve it through conciliation, or • decide that resolution by conciliation is unlikely to be successful If the ACT-HRC decides that conciliation should be attempted to resolve the complaint, this allows an opportunity for both parties to discuss and try to find a way to resolve the complaint. Outcomes from conciliation may include: a written or verbal apology, the introduction of policies and guidelines, financial compensation (agreed to by the other party) or gestures to show the respondent's good will towards the complainant.

	If the complaint is unable to be resolved through conciliation or the ACT-HRC decides that conciliation will be unlikely to resolve the complaint, the complaint may be referred to the ACT Civil and Administrative Tribunal. See the ACT Human Rights Commission webpage 'Complaints'.
Anti-Discrimination Board of New South Wales (ADB)	The ADB investigates complaints of discrimination that are covered in the Anti-Discrimination Act 1977 (NSW). The ADB doesn't have the power to make an order or award compensation, but actively seeks to resolve complaints through conciliation which is designed to be an informal and cost-effective method of resolving disputes. The ADB may also choose to refuse investigating a complaint if the incident occurred more than 12 months before the complaint was lodged. If a person or organisation wishes to lodge a complaint about events which happened more than 12 months ago, an explanation for the delay in lodging the complaint must be provided to the ADB. See the Anti-Discrimination Board of New South Wales webpage 'Complaints'.
Northern Territory Anti-Discrimination Commission (NTADC)	A complaint to the NTADC must be made within 12 months of the incident occurring. However, the NTADC may consider complaints over 12 months if there is good reason. Once the NTADC receives a complaint covered by the Anti-Discrimination Act 1992 (NT), the respondent is notified by the NTADC and the matter is set down for a compulsory conciliation. If the matter is not resolved, and the NTADC decides there is merit for a referral, the complainant may continue the evaluation process by referring the complaint to the Northern Territory Civil and Administrative Tribunal. See the Northern Territory Anti-Discrimination Commission webpage 'Complaints'.
Queensland Human Rights Commission (QHCR)	Complaints to the QHRC must be made in writing, and set out how the incident involved a breach of the Anti-Discrimination Act 1991 (QLD) and the Human Rights Act 2019 (QLD). Complaints to the QHRC must be made within a year of the incident. However, the QHRC may choose to accept a complaint about an incident which occurred over a year ago depending on the length of and reason for the delay. The QHRC uses conciliation to resolve complaints. This service is provided free of charge. If the complaint is unable to be resolved through conciliation, the complainant may approach the Queensland Industrial Relations Commission for work-related complaints or the Queensland Civil and Administrative Tribunal for other complaints. See the Queensland Human Rights Commission webpage 'Making a complaint'.
Equal Opportunity Commission of South Australia (EOCSA)	The EOCSA provides free and confidential services in resolving complaints using conciliation. A 12 month time limit is imposed and the EOCSA generally won't consider complaints about incidents over 12 months ago unless there is good reason and it would be fair for the complaint to be considered despite it being late. If the parties are unable to agree to resolve the complaint, the EOCSA may choose to refer the complaint to the South Australian Employment Tribunal (SAET). The SAET hears and determines matters regarding: • equal opportunity complaints • exemptions to the Equal Opportunity Act 1984 (SA), or



	• a review of refusal to extend time Equal opportunity complaints must be made in the first instance to the EOCSA before approaching the SAET. See the Equal Opportunity Commission of South Australia webpage 'Making a complaint'.
Equal Opportunity Tasmania (EOT)	A complaint must be within the scope of the Anti-Discrimination Act 1998 (Tas) and made within 12 months of the incident. If the EOT decides the complaint is to be handled, an investigation process will occur. At the end of the investigation, the EOT may decide to: • dismiss the complaint • resolve the complaint through conciliation, or • refer the complaint to the Anti-Discrimination Tribunal If the EOT chooses to dismiss the complaint, the EOT will inform the complainant and respondent of the decision and reasons for it. The complainant has the right to ask the Anti-Discrimination Tribunal for a review of the decision by the EOT. If conciliation occurs, but the complaint is unresolved, the EOT must send the complaint to the Anti-Discrimination Tribunal for inquiry. See the Office of the Anti-Discrimination Commissioner webpage 'Complaints'.
Victorian Equal Opportunity and Human Rights Commission (VEOHRC)	The VEOHRC seeks to resolve complaints through the process of conciliation, the aim of which is to reach an agreement between the complainant and the respondent. The VEOHRC is unable to make orders or award compensation but common outcomes of conciliation can include: • an apology • financial compensation (agreed to by the other party) • a job reinstatement, or an agreement to change or stop behaviour If the issue can't be resolved through conciliation, a complainant may apply to the Victorian Civil and Administrative Tribunal. The complainant can make this application regardless of whether a complaint has been made to VEOHRC. See the Victorian Equal Opportunity and Human Rights Commission webpage 'Make a complaint'.
Equal Opportunity Commission Western Australia (EOCWA)	Complaints to the EOCWA must be on a matter under the Equal Opportunity Act 1984 (WA) and the incident must have occurred within 12 months of the complaint being lodged. Generally, the EOCWA will refuse complaints about incidents over 12 months ago but may consider them if there is good reason for the delay. Common outcomes from conciliation can include: • an apology • staff training programs, or • compensation for a specific loss If the complaint is unable to be conciliated, the EOCWA may choose to dismiss the complaint or refer the matter to the State Administrative Tribunal for hearing and determination. See the Equal Opportunity Commission of Western Australia webpage 'Complaint Process'.



Part 4

Bullying

Bullying



This part of the guide covers:

- ▶ what is bullying?
- ▶ bullying and your organisation's obligations
- ▶ making a complaint about bullying

This part of the guide considers how bullying laws apply in the workplace.

Bullying laws exist at a federal level.

The *Fair Work Act 2009 (Cth)* (**Fair Work Act**) has provisions that relate to bullying behaviour in the workplace.



Note – negligence and work health and safety laws

Separately to these provisions, workplace bullying can also breach state and territory work health and safety (**WHS Laws**). Organisations covered by these laws owe various duties to their workers including providing and maintaining a working environment that is safe and without risks to health. Bullying in the workplace is a risk to 'psychological health.'

There is also a duty under negligence law to take reasonable care to avoid exposing your workers, including volunteers who might be exposed to reasonably foreseeable risks of injury, which could include harm caused by bullying.

For more information about an organisation's responsibilities under negligence and work health and safety laws, see our webpages [Negligence, injuries, accidents and incidents](#) and [Work health and safety laws](#).



What is bullying?

Under the Fair Work Act, workplace bullying occurs when:

- a person, or a group of people, repeatedly behaves unreasonably towards a worker or a group of workers at work, and
- the behaviour creates a risk to health and safety

As outlined above (under [Federal sexual harassment laws](#) in [part 3 of this guide](#)), a 'worker' is defined broadly and includes:

- an employee
- a contractor or subcontractor
- an apprentice or trainee
- a student gaining work experience, and
- a volunteer (except those that volunteer in a completely volunteer-based organisation with no employees, ie. 'volunteer associations')

Being at 'work' is not limited to the confines of a physical workplace. It can occur offsite, at work related functions and through social media channels.

The bullying provisions under the Fair Work Act apply to behaviour in your organisation if your organisation:

- 'conducts a business or undertaking' (the business or undertaking does not need to be for profit) within the meaning of work health and safety legislation (see the table at the start of this part of this guide summarising what bullying laws apply in all the states and territories and part 4 of this guide), and
- is a 'constitutional corporation' (see the note below) or is incorporated in the Australian Capital Territory or the Northern Territory,

The bullying provisions of the Fair Work Act don't apply to unincorporated associations.



Note – constitutional corporation

A **constitutional corporation** is a body which is incorporated under a federal or state Act (for example, a company limited by guarantee or incorporated association), and which conducts trading or financial activities. The key question for most not-for-profits will usually be whether they are 'trading'.

'Trading' in this context means the provision of good or services for payment as well as the provision of services carried on for the purpose of earning revenue. This may only be a small part of the organisation's activities and it doesn't matter that the income from trading activities is used for charitable purposes.

Activities classified by the courts as 'trading' activities include:

- providing services in return for a fee or charge
- selling goods from a shop or stall
- international student fees
- patient charges
- fundraising activities
- charging car parking fees
- ticket sales and charging admission to events or services
- advertising and broadcasting, and
- sale of publications

The receipt of government grants and subsidies to not-for-profit organisations are generally not regarded by the courts as trading.

The bullying provisions of the Fair Work Act will apply to many incorporated not-for-profit volunteer involving organisations, unless they don't have any employees or pay anyone to carry out work on behalf of the organisation.

Unreasonable behaviour that creates a risk to health and safety

Unreasonable behaviour includes, but is not limited to, behaviour that is humiliating, victimising, intimidating or threatening. The question is whether an objective, reasonable person in the circumstances would think that the behaviour is reasonable or not.

The bullying behaviour must also create a risk to health and safety. Often, bullying behaviour will create a risk of mental or psychological harm, for both the person being bullied and other workers who may witness the bullying behaviour. Bullying can make a person feel sad, isolated, and can lead to a mental health condition such as anxiety and depression.



Note – psychological health and safety

As a result of changes to the model WHS Laws in 2022, the primary duty of PCBUs to ensure, as far as is reasonably practicable, the health and safety of workers now includes psychological health and safety. The duty is no longer limited to physical health and safety.

A PCBU must eliminate psychosocial risks in the workplace, or if that is not reasonably practicable, minimise these risks so far as is reasonably practicable.

Victoria (the only state or territory that is not part of the Harmonised WHS scheme) is developing regulations and a code to address the management of psychosocial risks.

See our webpage [Work health and safety laws](#) for more information on the primary duty of care and psychological health and safety.

The bullying behaviour may also create a risk of physical harm, such as where the bully behaves in physically intimidating or violent ways, where workers are pressured not to conduct their work in a safe way, or where workers engage in activities like ‘hazing’ or initiation ceremonies.



Example – bullying

Background

Hiruni has been a volunteer board member of a charity that works with culturally and linguistically diverse youth to help them succeed academically for several years. Recently, the board has elected a new Chair, Megan.

Since Megan was elected Chair, the ‘culture’ of the board has changed. Hiruni has witnessed Megan talking down to board members, particularly Matthew, who is also a volunteer. Whenever Matthew speaks in board meetings Megan rolls her eyes and sometimes interrupts him in an abrasive manner. Hiruni checks in with Matthew about Megan’s behaviour. He says that it upsets him and he is intimidated by Megan. He made a complaint to the Secretary of the Board, Angela, and nothing ever came of it. Matthew says he thinks Megan started to dislike him after he raised a couple of safety concerns with her.

Hiruni speaks to Angela and asks her about the complaint Matthew made against Megan. Angela says that she went to Megan and tried to discuss it with her but Megan accused Angela of trying to sabotage the organisation by supporting Matthew’s ‘unreasonable expectations’.

Is this bullying?

Megan’s behaviour likely constitutes bullying under the Fair Work Act because it’s unreasonable and has occurred repeatedly, including:

- treating Matthew dismissively, and speaking over him rudely in board meetings, which makes him upset and intimidated
- Megan’s creation of a ‘culture of silence’; workers feel that they can’t raise concerns, and
- Megan’s behaviour has created a risk to health and safety because: workers are at risk of mental harm, particularly Matthew, because he feels upset and intimidated in the workplace



Case example – bullying and liability under common law of negligence

A small not-for-profit bookshop had one employee. It then employed another (Swan). The evidence showed that over a period, the first employee bullied Swan including regularly belittling her in front of customers, being constantly hyper critical of her work, even throwing books at her.

Swan complained to the board (as she had no-one else to complain to). The board promised to do something about it, discussed it at a board meeting but didn't take action to resolve the situation. The bullying continued and Swan again complained to the board who again promised to do something but they didn't. In the end Swan made an application to the Court alleging the negligence of her employer caused her injury (psychiatric) by exposing her to an unsafe workplace – she was subject to bullying conduct – and sought damages for pain and suffering and pecuniary loss.

The Court was highly critical of the employer's response to Swan's complaints. It found the employer was negligent because it didn't investigate the complaint, assess the risk to Swan, monitor the behaviour of its employees, have workplace behaviour policies setting out expectations on appropriate behaviour, have training on appropriate behaviour including on how to make complaints or a procedures on responding to complaints.

When determining that the organisation was liable, the judge found that the board's lack of action was 'explained but not excused' by the voluntary nature of the board members' work. The organisation was ordered to pay almost \$600,000 in damages.

Swan v Monash Law Book Co-operative [2013] VSC 326

When will behaviour not be bullying?

Behaviour will not be bullying when it's reasonable management action that is done in a reasonable way. Management action may include things like performance reviews, conducting a workplace investigation, or modifying a worker's duties because of a medical condition.

A spontaneous conversation or comment is unlikely to constitute management action.

Reasonable management action

The management action must be reasonable in the circumstances. Consider the following example.



Example – reasonable management action

Background

Glenda volunteers in the canteen of a not-for-profit community school. Glenda knows that other volunteers complain about her behind her back because she is a bit slower in completing her duties in the canteen. Glenda rolled her ankle recently and she has been medically advised to keep weight off it for at least two weeks. One of the volunteers reports to the facilities manager that Glenda is limping and seems to be in pain. The facilities manager tells Glenda that she has to go home and won't be able to come back to the canteen until she can provide a doctor's certificate that says she is fit to return to work. Glenda feels that this is unfair.

Is this bullying?

The facilities manager choosing to send Glenda home is 'management action'. The school has a duty to make sure all its workers, including volunteers, are conducting their work safely. Glenda is obviously injured, so it's reasonable in the circumstances to take management action to ensure her and other workers' safety.



Management action taken in a reasonable way

Management action must also be taken in a reasonable way. To ensure the manner of management action is reasonable, it may be necessary to consider the worker's particular circumstances. Review Glenda's situation in the above example and the following further information.



Example – management action taken in a reasonable manner

When told that Glenda was injured, the facilities manager considered how best to approach the situation, being mindful that Glenda has some difficulty with the other volunteers. The facilities manager consulted the school's work health and safety policy for guidance on the appropriate course of action, and made sure that when she told Glenda she would need to go home it was done in a discreet way to avoid making Glenda feel uncomfortable by attracting attention to the situation.

This is reasonable management action taken in a reasonable manner.



Example – management action taken in an unreasonable manner

After consulting the school's work health and safety policy, the facilities manager spots Terri-Anne, another canteen volunteer, walking past. The facilities manager calls out to Terri-Anne and tells her that Glenda's injury is 'a real health and safety issue' and that they must get her out of there before she does some damage to herself or someone else.

The facilities manager tells Terri-Anne that she's busy and so asks Terri-Anne to tell Glenda to go home till she's better. Terri-Anne promptly returns to the canteen and announces to Glenda in front of the other volunteers and children that the facilities manager told her to tell her to go home as she's a health and safety risk.

Glenda felt embarrassed and humiliated by receiving this message from Terri-Anne and in such an abrupt and public manner. Although the decision to send Glenda home was reasonable management action, it was taken in an unreasonable manner.



Case example – Mr Stancu

Stancu was engaged as a volunteer with Australian Volunteers International (AVI).

Stancu alleged that his AVI country manager, Ms Faktaufon ‘bullied him’ during his volunteer role as sanitation engineer at The Ministry of Public Works and Utilities in Kiribati (the Central Pacific). Stancu was there as part of the Australian Volunteers for International Development Program.

Stancu made an application for a stop bullying order against Faktaufon in the Fair Work Commission. Stancu argued that the way Faktaufon had counselled and warned Stancu about his behaviour was unreasonable, and that the behaviour created a risk to his health and safety. AVI argued that (among other things) Faktaufon’s actions constituted reasonable management action.

Faktaufon met with Stancu, provided written correspondence and issued a warning in relation to complaints about inappropriate behaviour at a state dinner function, excessive drinking, being inappropriately dressed in public (wearing no shirt, and wearing only swimwear in the streets), behaving inappropriately in the office, hitting a pedestrian with his car and using abusive and racist language toward the pedestrian.

The Commission found that these warnings did not present a health or safety risk to Stancu, and that they constituted reasonable management action carried out in a reasonable manner. The complaints raised had come from many different sources and in most cases it was reasonable that Faktaufon should act on them. Faktaufon also gave Stancu an opportunity to respond to the complaints.

The Commission also found that Stancu was not working as a volunteer for a constitutional corporation within the Commonwealth. Even though Stancu was engaged through the Australian Volunteers for International Development programme, which was being managed by AVI, his work was being done for the Ministry, which was not a constitutionally covered business and was operating outside the Commonwealth.

Stancu [2015] FWC 1999 (26 March 2015)

Bullying and your organisation’s obligations

Your organisation is likely to owe duties to protect its workers from being bullied and prevent them from bullying others in connection with their work (under the federal law, state and territory work health and safety legislation, or negligence law).

As we have stated for all other workplace behaviours, regardless of whether the bullying laws apply to your organisation (or only your employees and not volunteers) it’s best practice to comply with the law (as much as is reasonably practicable). Not only is it favourable to your workers (and other workers and clients or members of the public in contact with your organisation), but it will also help prevent any reputational or other damage to your organisation that may arise from a complaint of bullying.



Tips – eliminating bullying behaviour

- Have a policy on appropriate workplace behaviour. This policy should cover how your organisation will comply with laws about bullying (where they apply).
- Nominate a person who your workers are to make complaints on inappropriate behaviour to and have a fair and transparent process for resolving complaints.
- Make all workers aware of the kind of behaviour that is unacceptable, the policy, and what to do if the process for making a complaint does not resolve the complaint.
- Conduct ongoing training in relation to appropriate workplace behaviour.

Legal consequences under the Fair Work Act

The Fair Work Act allows a worker (including a volunteer) who has been bullied at work to apply to the Fair Work Commission for an order to stop bullying. If the worker is no longer performing any work for the organisation they can't apply to the Commission.

If the Commission is satisfied the worker has been bullied at work by a person or a group of people and there is a risk that the worker will continue to be bullied at work by the person or group, the Commission may make any order it considers appropriate.

It can make orders affecting the organisation generally or particular people within the organisation. The purpose of an order is for the worker to be able to continue their work without being bullied. The orders may require monitoring of behaviour, compliance and review of existing policies, further support and anything else the Commission considers appropriate except an order for payment of money.

Your organisation must comply with an order – if it doesn't, the person who has been bullied can then apply for an order for a financial penalty against your organisation.



Case example – Mr Bibawi

Stepping Stone is a community organisation that provides services to people with mental illness. They provide a clubhouse for clients. The clubhouse provides access to voluntary educational, social, recreational and work activities, and provides mental health services. One of the programs offered by Stepping Stone was called 'Work-ordered day'. Under this program clients could volunteer to give administrative support to the clubhouse. Participation in this program was intended to improve the health and wellbeing of participants, and assist them to return to employment. The clubhouse would not be able to run without the assistance of these volunteers.

Bibawi was a client of Stepping Stone and he participated in the 'Work-ordered day' program. His duties included data entry, writing parts of a newsletter, reaching out to clients and other general administrative tasks. By participating in this program, Bibawi qualified for the Centrelink Mobility Allowance.

While taking part in the program Bibawi experienced bullying and applied to the Fair Work Commission for a Stop-Bullying Order against Stepping Stone. To be eligible to apply for a Stop-Bullying Order, the applicant needs to be a 'worker' under the Fair Work Act.

At first the Commission said that Bibawi wasn't a worker, and so was not eligible to apply for a Stop-Bullying Order. Bibawi appealed this decision, arguing that he carried out work for Stepping Stone. The Full Bench of the Commission agreed with Bibawi, and found that he was a worker. They said that it was clear that Bibawi carried out work that was of benefit to the running of the clubhouse. They also said that it didn't matter that Bibawi was a client of Stepping Stone, that he received Centrelink benefits, or that he carried out the work to improve his well-being.

The Full Bench noted that 'there may be a wide range of motivations and objectives attaching to the performance of such work' and that the only consideration for the Commission should be that work was performed, and not the reasons behind it.

Bibawi v Stepping Stone Clubhouse Inc t/a Stepping Stone & Others [2019] FWCFB 1314



Note – actions of volunteer

Your organisation is also in many cases responsible for the actions or omissions of its workers (including volunteers). If your worker is acting in a way that may be classified as 'bullying' in the workplace, make sure you take proactive steps to prevent and respond to the behaviour.



For more information, see:

- Fair Work Commission; [Anti-Bullying Guide](#), [Anti-Bullying Benchbook](#)
- Safe Work Australia; [Guide for preventing and responding to workplace bullying](#)
- Australian Human Rights Commission; [What is bullying](#), [Workplace bullying](#)

Also refer to the relevant Work Safe body in your state or territory – these bodies have published information on workplace bullying.

Making a complaint about bullying

Where possible and appropriate, complaints about bullying should be dealt with internally and in accordance with the organisation's complaint handling policy.

Where it is not possible or appropriate to resolve complaints internally, complaints may be made to the relevant state or federal body. There are different bodies in each state and at the federal level to which a complaint regarding sexual harassment may be made.

For information on how to make a complaint, and what a complaint should contain, contact the relevant body listed in the table below. Equally, if you have been notified that a complaint has been made against you or your organisation, you should also contact the body in the table below.

Fair Work Commission (FWC)	The role of the FWC is to prevent bullying from occurring in the future. The FWC becomes involved when a person makes an application to the Commission for an order to stop bullying. The FWC can't order that financial penalties be imposed, or make orders for compensation. If a person is eligible to make a stop bullying application (they are a 'worker' and they are in a constitutionally covered business), they must make an application using Form F72 – Application for an order to stop workplace bullying, accompanied by the appropriate fee. Importantly, this application must be made while the worker is still involved with the organisation. Actions that the Commission might consider could include: • requiring the individual or group of individuals to stop the specified behaviour • regular monitoring of behaviours by an employer or principal • compliance with an employer or principal's bullying policy • the provision of information and additional support and training to workers • review of the employer's or principal's bullying policy See the Fair Work Commission webpages 'Bullying' and 'Apply to stop bullying at work (Form F72)'
Australian Human Rights Commission (AHRC)	As mentioned above, a person may also be able to make a complaint to the AHRC for bullying in the workplace, where the bullying is linked to, or based on, a protected characteristic, such as the person's age, sex, race or disability or if it based on person's criminal record, trade union activity, political opinion, religion or social origin. See the Australian Human Rights Commission webpage 'What is bullying?'
Access Canberra	Access Canberra's role is to monitor and enforce compliance with the Work Health and Safety Act 2011 (ACT). One of Access Canberra's roles in relation to bullying at work is to ensure that an employer is meeting their obligation to provide a work environment that is safe and



	that risks to health (including risks to psychological health) are prevented or managed. In the case of bullying, this can include dealing effectively with issues that do arise despite attempts at prevention. If an application is made to Access Canberra, an Access Canberra inspector might: • issue an improvement notice requiring specific actions to be taken by the employer where there is a breach of the <i>Work Health and Safety Act 2011</i> (this action may include directions to develop and implement policies and procedures, directions to train staff in relation to acceptable workplace behaviours or directions to train supervisors in relation to their role in dealing with bullying at work) • provide advice to the employer about how to comply with health and safety laws • decide that the workplace has taken reasonable steps to prevent bullying at work • decide that the employer has taken reasonable steps to respond to and manage allegations of bullying at work, and • recommend that the employer engage the services of a suitably qualified person to assist with managing health and safety issues See WorkSafe ACT's webpage 'Work-related bullying'.
SafeWork New South Wales	SafeWork NSW's role is to ensure that organisations subject to the <i>Work Health and Safety Act 2011</i> (NSW) provide and maintain a work environment that is without risks to health and safety. SafeWork NSW can investigate workplace bullying. If you are a worker you can notify SafeWork NSW by filling in the 'Workplace bullying form'. If a SafeWork inspector visits the workplace, they may: • provide information and advice on the requirements of WHS or workers compensation law • explain the range of SafeWork products and services available to your business • provide practical advice on how to eliminate or reduce the risk of injury and illness • investigate or verify compliance with legislative obligations • issue notices or other instructions to secure compliance with legislation See SafeWork NSW's webpage 'Workplace bullying'.
Northern Territory WorkSafe	The role of NT WorkSafe is to assess whether the workplace concerned, has appropriate systems in place to manage the risk of exposure to workplace bullying. NT WorkSafe responds to workplace bullying complaints only in certain situations that fall within the scope of the <i>Work Health and Safety (National Uniform Legislation) Act</i> (NT): • the complaint must (on the face of it) fall within the definition of workplace harassment • the complaint must be in writing. The complainant will be given or sent an information package which must be completed • the complaint should have been raised at the workplace and an attempt made to resolve the complaint internally See WorkSafe NT's webpage 'Bullying and harassment'.
Workplace Health and	WHSQ can only respond to complaints in certain situations that fall within the scope of the <i>Work Health and Safety Act 2011</i> (QLD), such as:



Safety Queensland (WHSQ)	- the complaint must (on face value) fall within the definition of workplace bullying - the complaint must be in writing unless there are exceptional circumstances - the complainant must contact the Work Health and Safety Infoline on 1300 362 128 for an information package, which includes the address to send the complaint and a checklist which must be completed, signed and attached to the written complaint - attempts should be made to resolve the situation in the workplace before contacting WHSQ If all the above has been satisfied, a WHSQ inspector will contact the workplace, advise them of the complaint and may request evidence from the workplace that the risk of injury or illness from workplace bullying is being effectively managed. When people at the workplace fail to meet their duties under the <i>Work Health and Safety Act 2011</i>, inspectors may use a range of compliance and enforcement options including, but not limited to, advice, verbal directions, improvement and infringement notices. See the Queensland Government webpage 'Workplace bullying' and WorkSafe Queensland webpage 'Bullying'.
SafeWork SA	SafeWork SA's role is to ensure that PCBUs and workers meet their obligations under work health and safety laws, including, psychological health risks from bullying. Workers can contact SafeWork SA to make a complaint on 1300 365 255. If a complaint is made to SafeWork SA, they will: - confirm if the complaint has merit under the legal definitions - determine if the PCBU has taken appropriate measures or actions - make sure the hazards are suitably controlled - issue statutory notices for breaches of work health and safety laws, if required See SafeWork SA's webpage 'Bullying and inappropriate behaviours'.
WorkSafe Tasmania	WorkSafe Tasmania can investigate if it receives a complaint of bullying in the workplace. A worker can make a complaint using the online form to lodge a complaint or phone the Helpline on 1300 366 322. WorkSafe Tasmania will only investigate when: - the bullying is still occurring, and - the victim has exhausted all options in their workplace to stop the bullying It is the role of a WorkSafe Tasmania inspector to investigate and determine if those involved have met their obligations under the <i>Work Health and Safety Act 2012 (Tas)</i> for example, if the organisation has a policy and procedure in place for preventing and responding to bullying. See WorkSafe Tasmania's webpage 'Bullying'.
WorkSafe Victoria	WorkSafe's Advisory Service can provide information on bullying and how to prevent it, advice on how to raise the issue of bullying in your workplace or refer the matter to an inspector (where appropriate). See WorkSafe Victoria's webpage 'Workplace bullying'.

**WorkSafe
Western
Australia**

A person (after taking preliminary steps) can make a complaint about bullying through an [Occupational Safety and Health \(OSH\) enquiry](#) with WorkSafe. Action taken by WorkSafe is targeted at preventing and managing bullying in the workplace. Depending on the outcome of the investigation and the circumstances the Inspector can take one or more of the following actions:

- no action
- provide information
- issue improvement notice

See WorkSafe Western Australia's webpages '[Complaints about bullying, sexual harassment or assault](#)' and '[Bullying](#)'.



Part 5

Victimisation

Victimisation



This part of the guide covers:

- ▶ what is victimisation?
- ▶ victimisation and your organisation's obligations
- ▶ federal victimisation laws
- ▶ state and territory victimisation laws
- ▶ making a complaint about victimisation

This part of the guide considers how victimisation laws apply in the workplace.

Discrimination, sexual harassment and bullying are distinct but often interconnected forms of harmful conduct that can lead to victimisation. The laws relating to discrimination, sexual harassment and bullying also prevent victimisation of a person who has made a complaint about such behaviour or exercised other rights under the relevant laws.



Note – negligence and work health and safety laws

Along with duties that your organisation may owe under victimisation laws, your organisation may have duties under work health and safety laws and under the law of negligence, which contains a duty to take reasonable care to avoid exposing your workers, including volunteers, to reasonably foreseeable risks of injury which could include harm caused by victimisation.

For more information about an organisation's responsibilities under negligence and work health and safety laws, see our webpages [Negligence, injuries, accidents and incidents](#) and [Work health and safety laws](#).



What is victimisation?

The definition of victimisation varies slightly from each territory and state and federally, generally, victimisation occurs when a person is subjected to, or threatened with, some form of detriment (a loss, damage, or injury to the person making the complaint) because:

- they, or someone associated with them makes or proposes to make a complaint under discrimination law (discrimination, harassment or victimisation)
- they asserted rights, or another person's rights, under discrimination law
- they assisted with an investigation of a complaint of a matter covered by discrimination law, or
- they refused to do something because it would be discrimination, sexual harassment or victimisation

The types of detriment that might result in victimisation in the workplace can include:

- bullying and intimidation by other workers
- being moved to another position with lower responsibility
- not being given any meaningful work, or
- ending a volunteer relationship

Outside the workplace, detriment can include:

- retribution of some sort such as making a complaint in retaliation
- breaching privacy by publishing information about a person without their consent, or
- withdrawing a service from a person

In situations where a volunteer is not protected as a worker or employee, ending a volunteer relationship will still be a detriment.



Example – victimisation

Chris is a volunteer at a not-for-profit animal shelter. While volunteering, Chris observed his colleague Anushka being subjected to comments of a sexual nature by their supervisor, Trudi. Chris saw that Anushka was upset by the comments and encouraged her to make a complaint about Trudi's conduct. However, Anushka was reluctant to do so because she feared that Trudi may retaliate against her. Despite this, Chris reported the incident to Trudi's supervisor. Trudi and her supervisor were friends and, following Chris's complaint, both he and Anushka were told that their services as volunteers were no longer required.

Both Chris and Anushka have been victimised.

Victimisation and your organisation's obligations

Under the same laws that prohibit discrimination, harassment and bullying (where they apply) your organisation should be aware that:

- victimisation of anyone who have engaged in a protected activity under these laws is unlawful
- workers (which can include volunteers) must not victimise others in the workplace (including other employees, volunteers, clients, and members of the public)
- your organisation could be liable (legally responsible) for any harm, injury or loss as a result of the actions of your workers (which can include volunteers) (this 'vicarious liability' can generally be avoided if your organisation takes all reasonable steps to prevent victimisation), and
- your organisation may have a positive duty to take reasonable and proportionate measures to eliminate victimisation from the workplace. This means taking steps to prevent this behaviour and not waiting for a complaint before addressing inappropriate workplace behaviour

The laws dealing with victimisation are complex when it comes to volunteers, so you may need to seek legal advice to determine how they may apply. However, victimisation laws under the relevant Acts discussed below (except for the Fair Work Act as discussed) apply to all those who engage in those activities protected under each law's particular victimisation provisions, regardless of whether they are employees, volunteers, clients, or members of the public. As such, any organisation covered by an Act must be aware of its obligations to prevent victimisation and that the prohibitions protect all people who engage in these protected activities.

Positive duty to eliminate acts of victimisation

The *Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022* imposes a positive duty on employers Australia-wide to 'take reasonable and proportionate measures to eliminate' victimisation as far as possible.

In practice, this means that employer organisations are obligated to take proactive steps to prevent acts of victimisation which relate to complaints, proceedings, assertions or allegations about discrimination, sexual harassment and hostile workplace environments. This duty is ongoing and requires employers to continually review their practices to ensure they are taking steps to prevent victimisation.



Tip – victimisation and ending the working relationship

Before you end the working relationship with a worker, always make sure there are no outstanding complaints made by the worker, to avoid victimisation at this point. If there are outstanding complaints, resolve these appropriately before proceeding with ending the working relationship.

Your organisation should also make sure its policy on appropriate workplace behaviour (as outlined above in relation to sexual harassment and discrimination) makes it clear that victimisation is unacceptable and will not be tolerated. This policy should cover how the organisation will comply with laws about victimisation (where they apply). The policy should also set out the process for resolving complaints and what to do if the process for making a complaint does not resolve the complaint. All workers should be trained on these policies and procedures and the policy must be implemented.

Volunteers

The Fair Work Act does not contain express provisions aimed at preventing victimisation, but it has a similar scheme (discussed below) referred to as the 'general protections' which are similar and don't apply to volunteers.

In the other federal anti-discrimination laws, as well as that of the states and territories, the same laws that prohibit discrimination and harassment (as discussed earlier in this guide) also prohibit victimisation (to varying degrees).



Victimisation – goods and services

Hai Van has multiple sclerosis and is in a wheelchair. She is a client of an organisation that provides crisis accommodation. The organisation runs a kitchen that provides meals to which all clients are entitled. The kitchen is on the second floor of the building that the organisation occupies, and there is no way for Hai Van to get to the second floor in her wheelchair, even though it would not cause the organisation an unjustifiable hardship to install a stair lift.

Under State Discrimination Laws, the organisation has breached the relevant legislation. Hai Van discusses this with the organisation and alleges that she intends to bring a claim against the organisation. In response, the organisation informs Hai Van that she is barred from utilising the organisation's crisis accommodation.

In this case, the organisation has victimised Hai Van and is exposed to a claim.



Victimisation – access to premises

Consider the above example if Hai Van was a volunteer of the organisation rather than a client and, instead of being barred from accessing the organisation's services, she is told that her services as a volunteer are no longer required.

Under ACT, QLD, Tas, SA and NT Discrimination Laws, Hai Van is protected from discrimination in relation to her work as a volunteer. She informs the organisation that she has been discriminated against and has a right to make a claim. By informing Hai Van that it is terminating the volunteering relationship, the organisation has, in addition to unlawfully discriminating against Hai Van, victimised her and is exposed to a claim.

Under Vic, NSW and WA Discrimination Laws, Hai Van is not protected from unlawful discrimination in the area of her work and so she is not protected by the laws against victimisation. However, Discrimination Laws in these jurisdictions do prohibit discrimination against a person on the basis of a disability in relation to their access to premises, or parts of premises (unless, for example, providing access would cause an unjustifiable hardship on the organisation). So she may still be able to make a victimisation claim against the organisation on that basis (that she was discriminated against in relation to the provision of access to premises).

Regardless of whether a volunteer is protected from discrimination or sexual harassment while providing volunteer services, as indicated in the example below, volunteers may nevertheless expose organisations to victimisation claims as a result of the volunteer's actions.



Example – victimisation by a volunteer

A community house runs educational courses. A volunteer tutor fails a student because she didn't complete her attendance requirement. The student complains that she is being discriminated against due to her race. The community house tells the student that this is a ridiculous complaint and that any application to re-enrol next year will not be accepted. While the student's discrimination complaint appears weak, she may be able to bring a claim for victimisation based on the actions of the community house after receiving the complaint. In this instance the community house may be liable for the unlawful (victimisation) action of its volunteer.

The laws dealing with victimisation are complex. These laws are explained further below.

Federal victimisation laws

At the federal level, victimisation provisions are found the following Acts:

- *Racial Discrimination Act 1975 (Cth)*. This Act prohibits victimisation against individuals who make complaints or take action under this Act regarding discrimination on the basis of a person's race, colour, descent, or national or ethnic origin (where this occurs in the political, economic, social, cultural or any other field of public life).
- *Disability Discrimination Act 1992 (Cth)*. This Act contains provisions against victimisation for those asserting their rights in relation to disability discrimination in specified areas of public life.
- *Age Discrimination Act 2004 (Cth)*. This Act makes it unlawful to victimise someone who takes action or makes a complaint under this Act for age discrimination in specified areas of public life.
- *Sex Discrimination Act 1984 (Cth)*. This Act makes it unlawful to victimise someone who takes action or makes a complaint under this Act for discrimination on the basis of sex, gender identity, sexual orientation, intersex status, marital or relationship status, and pregnancy and family responsibilities in specified areas of public life.

- The *Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022* imposes a positive duty on employers Australia-wide to 'take reasonable and proportionate measures to eliminate' victimisation as far as possible.

However, the *Fair work Act 2009 (Cth)* operates differently to the above. While this Act is not exclusively an anti-discrimination law, it does make it unlawful for a person to engage in 'adverse action' because:

- an employee has exercised or proposes to exercise a 'workplace right' (such as the right to make a bullying or discrimination complaint), or
- of a protected attribute of the employee

Further, this Act contains provisions making it unlawful to coerce an employee into exercising (or not exercising) a 'workplace right'. While the above concepts of adverse action and coercion are similar to victimisation, they do not operate with the same broad application and are limited to employees only.

State and territory victimisation laws

Like the federal anti-discrimination laws, state and territory anti-discrimination laws make it unlawful to victimise a person where they engage in activities protected by each Act.

Victimisation at the state and territory level is covered by the following laws:

Victimisation	
Australian Capital Territory	• <i>Discrimination Act 1991 (ACT)</i>
New South Wales	• <i>Anti-Discrimination Act 1977 (NSW)</i>
Northern Territory	• <i>Anti-Discrimination Act 1992 (NT)</i>
Queensland	• <i>Anti-Discrimination Act 1991 (QLD)</i>
South Australia	• <i>Equal Opportunity Act 1984 (SA)</i>
Tasmania	• <i>Anti-Discrimination Act 1998 (Tas)</i>
Victoria	• <i>Equal Opportunity Act 2010 (Vic)</i>
Western Australia	• <i>Equal Opportunity Act 1984 (WA)</i>

Australian Capital Territory

The *Discrimination Act 1991 (ACT)* (**ACT Discrimination Act**) makes it unlawful for a person to subject, or threaten to subject, another person to any detriment because:

- the other person, or someone associated with the other person, has taken (or proposes to take) discrimination action, or
- the first person believes the other person, or someone associated with the other person has taken (or proposes to take) discrimination action

The term 'discrimination action' includes actions such as making a discrimination complaint, reasonably asserting a right, giving evidence in court or giving evidence as part of an investigation.

This protects people from being victimised for taking discrimination action, including making a complaint or providing information.

Volunteers

Under the ACT Discrimination Act, an organisation can be held liable (responsible) for victimisation in the workplace by a 'representative'. A representative includes an employee (including volunteers) or agent.

One way in which an organisation can defend itself against liability arising from the acts of its employees and agents is by proving that it took all reasonable steps to prevent them from engaging in the relevant misconduct.

A volunteer will be protected from victimisation under the ACT Discrimination Act where they engage in one of the above protected activities.



For more information, see the [ACT Human Rights Commission's webpage 'Victimisation'](#).

New South Wales

The *Anti-Discrimination Act 1977 (NSW)* (**NSW Anti-Discrimination Act**) makes it unlawful for a person to subject another person to any detriment in any circumstances on the grounds that the victimised person has (or intends to):

- brought proceedings against the discriminator or any other person under the NSW Anti-Discrimination Act
- given evidence or information in connection with proceedings brought under the NSW Anti-Discrimination Act
- alleged that the discriminator has committed an act which would amount to a contravention of the NSW Anti-Discrimination Act, or
- otherwise done anything under or by reference to the NSW Discrimination Act in relation to the discriminator or any other person

This makes it unlawful to subject a person to any detriment because they have made a complaint or taken action under the Act. These provisions do not apply to false allegations not made in good faith.

Under the NSW Anti-Discrimination Act, organisations can be held liable (responsible) for victimisation in the workplace by its employees (not including volunteers) or agents. One way in which an organisation can defend itself against liability is by proving that it took reasonable steps to prevent the victimisation from occurring.

Volunteers

A volunteer will be protected from victimisation under the NSW Anti-Discrimination Act where they engage in one of the above protected activities.



For more information, see the [Anti-Discrimination New South Wales webpage 'Victimisation'](#).

Northern Territory

The *Anti-Discrimination Act 1992 (NT)* (**NT Anti-Discrimination Act**) makes it unlawful for a person to subject another person (or associate of the person) to victimisation because the person has (or intends to):

- make a complaint under the NT Anti-Discrimination Act
- given evidence or information in connection with proceedings brought under the NT Anti-Discrimination Act
- alleged that a person has committed an act which would amount to a contravention of the NT Anti-Discrimination Act, or
- done anything in relation to a person under or by reference to the NT Anti-Discrimination Act

The above does not apply to false allegations not made in good faith.

Volunteers

Under the NT Anti-Discrimination Act, organisations can be held vicariously liable (responsible) for victimisation in the workplace by a worker (including volunteers) or agent. One way in which an organisation can defend itself against liability is by proving that it took all reasonable steps to prevent the victimisation from occurring.

A volunteer will be protected from victimisation under the NT Anti-Discrimination Act where they engage in one of the above protected activities.

Positive duty

The NT Anti-discrimination Act includes a positive duty (which applies to all organisations and businesses) which obliges them to take reasonable and proportionate measures to eliminate discrimination, sexual harassment or victimisation to the greatest extent possible.



For more information, see the Northern Territory Anti-Discrimination Commission's webpage '[Victimisation](#)'.

Queensland

Under the *Anti-Discrimination Act 1991 (QLD)* (**QLD Anti-Discrimination Act**) victimisation occurs where a person does an act, or threatens to do an act, to the detriment of another person:

- because the second person (or a person associated with that person):
 - refused to do an act that would amount to a contravention of the QLD Anti-Discrimination Act
 - in good faith, alleged, or intends to allege that a person committed a contravention of the QLD Anti-Discrimination Act, or
 - is, has been, or intends to be, involved in a proceeding under the QLD Anti-Discrimination Act against any person, or
- because the first person believes that the second person (or a person associated with that person) is doing, has done, or intends to do one of the things mentioned above.

The term 'involvement in a proceeding' includes making a complaint under the QLD Anti-Discrimination Act, being involved in a prosecution for an offence under the QLD Anti-Discrimination Act, and supplying information, producing documents or appearing as a witness as part of the prosecution process.

Volunteers

Under the QLD Anti-Discrimination Act, organisations can be held vicariously liable (responsible) for victimisation in the workplace (including for the acts of their volunteers). One way in which an organisation can defend itself against liability is by proving that it took reasonable steps to prevent the victimisation from occurring.

A volunteer will be protected from victimisation under the QLD Anti-Discrimination Act where they engage in one of the above protected activities.



For more information, see the [Queensland Human Rights Commission webpage 'Victimisation'](#) for more information.

South Australia

The [Equal Opportunity Act 1984 \(SA\)](#) (**SA Equal Opportunity Act**) prohibits acts of victimisation, including treating the victim unfavourably on the ground that the victim has (or intends to, or is suspected of having):

- brought proceedings under the SA Equal Opportunity Act
- given evidence or information in proceedings under the SA Equal Opportunity Act
- made allegations that the victim or some other person has been the subject of an act that contravenes the SA Equal Opportunity Act
- reasonably asserted the victim's right, or the right of some other person, to lodge a complaint or take other proceedings under the SA Equal Opportunity Act, or
- otherwise done anything under or by reference to the SA Equal Opportunity Act

The above does not apply to false allegations not made in good faith.

Volunteers

Under the SA Equal Opportunity Act, organisations can be held vicariously liable (responsible) for victimisation by a worker (including a volunteer). One way in which an organisation can defend itself against liability is by proving that it took reasonable steps to prevent the victimisation from occurring.

A volunteer will be protected from victimisation under the SA Equal Opportunity Act where they engage in one of the above protected activities.



For more information, see:

- [Equal Opportunity SA's webpage on victimisation](#), and
- The South Australian Civil and Administrative Tribunal's fact sheet '[Referral of an equal opportunity complaint](#)' which covers victimisation.

Tasmania

The [Anti-Discrimination Act 1998 \(Tas\)](#) (**Tasmanian Anti-Discrimination Act**) prohibits a person from subjecting, or threatening to subject another person (or an associate of that person) to any detriment because they:

- have made, or intend to make, a complaint under the Tasmanian Anti-Discrimination Act
- gave, or intend to give, evidence or information in connection with any proceedings under the Tasmanian Anti-Discrimination Act
- allege, or intend to allege, that any person has committed an act which would amount to a contravention of Tasmanian Anti-Discrimination Act
- refused, or intend to refuse, to do anything that would amount to a contravention of the Tasmanian Anti-Discrimination Act, or

have otherwise done anything under or by reference to the Tas Anti-Discrimination Act.

Volunteers

Under the Tasmanian Anti-Discrimination Act, organisations can be held vicariously liable (responsible) for acts of victimisation by a member, officer, employee (including volunteers) or agent. One way in which an organisation can defend itself against liability is by proving that it took reasonable steps to prevent the victimisation from occurring.

A volunteer will be protected from victimisation under the Tasmanian Anti-Discrimination Act where they engage in one of the above protected activities.



For more information, see the Tasmanian Office of the Anti-Discrimination Commissioner webpage '[victimisation](#)'.

Victoria

The *Equal Opportunity Act 2010 (Vic)* (**Victorian Equal Opportunity Act**) prohibits victimisation, which occurs where a person subjects, or threatens to subject, another person to any detriment because that other person (or a person associated with that person) has:

- brought a dispute to the Victorian Equal Opportunity and Human Rights Commission
- made a complaint under the Victorian Equal Opportunity Act
- brought any proceeding or dispute under the Victorian Equal Opportunity Act against any person
- given evidence or information, or produced a document, in connection with a proceeding or investigation conducted under the Victorian Equal Opportunity Act
- attended a compulsory conference or mediation in any proceedings under the Victorian Equal Opportunity Act
- alleged that a person that has done an act or has refused to do anything that is unlawful under certain provisions of the Victorian Equal Opportunity Act (or believes that they would do so), or
- has otherwise done anything in accordance with the Victorian Equal Opportunity Act in relation to any person

The above does not apply to false allegations not made in good faith.

Volunteers

Under the Victorian Equal Opportunity Act organisations can be held vicariously liable (responsible) for victimisation in the workplace by an employee or agent. One way in which an organisation can defend itself against liability is by proving that it took reasonable precautions to prevent victimisation from occurring. This does not extend to acts of victimisation done by volunteers.

A volunteer will be protected from victimisation under the Victorian Equal Opportunity Act where they engage in one of the above protected activities.

Positive duty

Under the Victorian Equal Opportunity Act, organisations have a positive duty to eliminate discrimination, sexual harassment and victimisation. This means that positive action should be taken by the organisation to always prevent these behaviours. This imposes an obligation on employers, providers of accommodation, education or goods and services, clubs and sporting organisations. The positive duty is aimed at protecting certain groups such as employees, students, customers, consumers and club members, from harm.



For more information, see the Victorian Equal Opportunity & Human Rights Commission webpages '[Victimisation](#)' and '[Positive duty](#)'.

Western Australia

The *Equal Opportunity Act 1984 (WA)*, (**WA Equal Opportunity Act**) provides that it is unlawful for a person (victimiser) to subject or threaten to subject another person (the person victimised) to any detriment because the person victimised has (or intends):

- made, or proposes to make a complaint under the WA Equal Opportunity Act
- brought, or proposes to bring proceedings against the victimiser or any other person under the WA Equal Opportunity Act

- given information, or a document, to a person performing any function under the WA Equal Opportunity Act
- appeared as a witness before the Tribunal in a proceeding under the WA Equal Opportunity Act
- has asserted any rights of the person victimised or rights of any other person under the WA Equal Opportunity Act, or
- has made an allegation that a person that has done an act that is unlawful under certain provisions of the WA Equal Opportunity Act

The above does not apply to false allegations not made in good faith.

Volunteers

Under the WA Equal Opportunity Act organisations can be held vicariously liable (responsible) for victimisation in the workplace by an employee or agent (which is unlikely to include volunteers). One way in which an organisation can defend itself against liability is by proving that it took all reasonable steps to prevent victimisation from occurring.

A volunteer will be protected from victimisation under the WA Equal Opportunity Act where they engage in one of the above protected activities.



For more information, see the [Equal Opportunity Commission Fact Sheet - Unlawful Discrimination](#), which considers victimisation.

Making a complaint about victimisation

Where possible and appropriate, complaints about victimisation should be dealt with internally and in accordance with the organisation's complaint handling policy.

Where it is not possible or appropriate to resolve complaints internally, complaints may be made to the relevant state or federal body. There are different bodies in each state and at the federal level to which a complaint regarding sexual harassment may be made.

For information on how to make a complaint, and what a complaint should contain, contact the relevant body listed in the table below. Equally, if you have been notified that a complaint has been made against you or your organisation, you should also contact the body in the table below.

Fair Work Commission (FWC)

Under the Fair Work Act an employee or independent contractor (which excludes volunteers) who claims they have been victimised in the workplace, may make an application to the Fair Work Commission arguing that they have suffered 'adverse action' because that person:

- has a workplace right
- has or has not used a workplace right
- proposes to, or proposes not to, use a workplace right
- does or does not belong to a trade union
- engages or does not engage in industrial activity (as set out previously).

This can be done during employment or within 21-days following a person's dismissal.

Adverse action taken by a person includes doing, threatening, or organising any of the following:

- an employer dismissing an employee, injuring them in their employment, altering their position to their detriment, or discriminating between them and other employees



- an employer refusing to employ a prospective employee or discriminating against them in the terms and conditions the employer offers
- a principal terminating a contract with an independent contractor, injuring them or altering their position to their detriment, refusing to use their services or to supply goods and services to them, or discriminating against them in the terms and conditions the principal offers to engage them on
- an employee or independent contractor taking industrial action against their employer or principal
- an industrial association, or an officer or member of an industrial association, organising or taking industrial action against a person, or taking action that is detrimental to an employee or independent contractor
- an industrial association imposing a penalty of any kind on a member

The process that follows an application for adverse action can vary according to the type of application made and whether the person continues to be employed or has been dismissed and advice should be sought if an application is made against your organisation. However, the Fair Work Commission will always try and resolve an application by conciliation. If the application can't be resolved through conciliation, the complainant may choose to commence proceedings in the Federal Court or Federal Circuit Court of Australia.

See the Fair Work Commission webpage '[What is adverse action?](#)' and the Fair Work Ombudsman webpage '[Protections at work](#)'.

Australian Human Rights Commission (AHRC)

The AHRC investigates and resolves complaints of victimisation.

To resolve complaints, the AHRC uses conciliation, a free and informal process which can occur through a telephone conference, exchange of letters, or a face to face conference between the complainant and respondent.

If the complaint can't be resolved through conciliation, the complainant may apply to have their complaint be heard in the Federal Court or Federal Circuit Court of Australia, but must do so within 60 days (of the end of conciliation) and in some instances, with permission from the Court.

The *Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022* has amended the *Australian Human Rights Commission Act 1986* to extend the period for making complaints about age, disability and race discrimination to a date 24 months after the conduct occurred. The President of the AHRC may terminate claims made beyond this timeframe.

See the Australian Human Rights Commission webpage '[Complaints](#)'.

ACT Human Rights Commission (ACT-HRC)

The ACT-HRC's role is to resolve complaints and promote rights.

It may:

- decide to take no further action on a complaint
- attempt to resolve it through conciliation, or
- decide that resolution by conciliation is unlikely to be successful

If the ACT-HRC decides that conciliation should be attempted to resolve the complaint, this allows an opportunity for both parties to discuss and try to find a way to resolve the complaint.

Outcomes from conciliation may include: a written or verbal apology, the introduction of policies and guidelines, financial compensation (agreed to by the other party) or gestures to show the respondent's good will towards the complainant.

	If the complaint is unable to be resolved through conciliation or the ACT-HRC decides that conciliation will be unlikely to resolve the complaint, the complaint may be referred to the ACT Civil and Administrative Tribunal. See the ACT Human Rights Commission webpage 'Complaints'.
Anti-Discrimination Board of New South Wales (ADB)	The ADB investigates complaints of victimisation that are covered in the Anti-Discrimination Act 1977 (NSW). It doesn't have the power to make an order or award compensation, but actively seeks to resolve complaints through conciliation which is designed to be an informal and cost-effective method of resolving disputes. The ADB may also choose to refuse investigating a complaint if the incident occurred more than 12 months before the complaint was lodged. If a person or organisation wishes to lodge a complaint about events which happened more than 12 months ago, an explanation for the delay in lodging the complaint will need to be provided to the ADB. In some cases, a victimisation complaint can be upheld even though the original complaint of discrimination was not. See the Anti-Discrimination Board of New South Wales webpage 'Complaints'.
Northern Territory Anti-Discrimination Commission (NTADC)	A complaint to the NTADC must be made within 12 months of the incident occurring. However, the NTADC may consider complaints over 12 months if there is good reason. Once the NTADC receives a complaint covered by the Anti-Discrimination Act 1992 (NT) the respondent is notified by the NTADC and the matter is set down for a compulsory conciliation. If the matter is not resolved the complainant may decide to continue the evaluation process which involves the complaint being referred to the Northern Territory Civil and Administrative Tribunal if the NTADC decides there is merit for the referral. See the Northern Territory Anti-Discrimination Commission webpage 'Complaints'.
Queensland Human Rights Commission (QHRC)	The QHRC uses conciliation in resolving complaints that may arise and QHRC provide this service free of charge. Complaints to the QHRC must be made in writing, and set out how the incident involved a breach of the Anti-Discrimination Act 1991 (QLD) and the Human Rights Act 2019 (QLD). Complaints to the QHRC must be made within a year of the incident. However, the QHRC may choose to accept a complaint about an incident which occurred over a year ago depending on the length of and reason for the delay. If the complaint is unable to be resolved through conciliation, the complainant may approach the Queensland Industrial Relations Commission for work-related complaints or the Queensland Civil and Administrative Tribunal for all other complaints. See the Queensland Human Rights Commission webpage 'Making a complaint'.
Equal Opportunity Commission South Australia (EOCSA)	EOCSA provide free and confidential services in resolving complaints through the use of conciliation. A 12 month time limit is imposed and the EOCSA generally won't consider complaints about incidents over 12 months ago unless there is good reason, and it would be fair for the complaint to be taken up despite being late. If the parties are unable to agree to resolve the complaint, the EOCSA may choose to refer the complaint to the South Australian Employment Tribunal (SAET). The SAET hears and determines matters regarding: • equal opportunity complaints



	• exemptions to the <u>Equal Opportunity Act 1984 (SA)</u>, or • a review of refusal to extend time Equal opportunity complaints must be made in the first instance to the EOCSA before approaching the SAET. See the Equal Opportunity Commission of South Australia webpage '<u>Making a complaint</u>'.
Equal Opportunity Tasmania (EOT)	A complaint must be within the scope of the <u>Anti-Discrimination Act 1998 (Tas)</u> and made within 12 months of the incident. If the EOT decides the complaint is to be handled, an investigation process will occur. At the end of the investigation, the EOT may decide to: • dismiss the complaint • resolve the complaint through conciliation, or • refer the complaint to the Anti-Discrimination Tribunal If the EOT chooses to dismiss the complaint, the EOT will inform the complainant and respondent of the decision and reasons for it. The complainant has the right to ask the Anti-Discrimination Tribunal for a review of the decision by the EOT. If conciliation occurs, but the complaint is unresolved, the EOT must send the complaint to the Anti-Discrimination Tribunal for inquiry. See the Office of the Anti-Discrimination Commissioner webpage '<u>Complaints</u>'.
Victorian Equal Opportunity and Human Rights Commission (VEOHRC)	VEOHRC seeks to resolve complaints through the process of conciliation, the aim of which is to reach an agreement between the complainant and the respondent. VEOHRC is unable to make orders or award compensation but common outcomes of conciliation can include: • an apology • financial compensation (agreed to by the other party) • a job reinstatement, or an agreement to change or stop behaviour If the issue can't be resolved through conciliation, a complainant may apply to the Victorian Civil and Administrative Tribunal. The complainant can make this application regardless of whether a complaint has been made to VEOHRC. See the Victorian Equal Opportunity and Human Rights Commission webpage '<u>Make a complaint</u>'.
Equal Opportunity Commission (EOCWA)	Complaints to the EOCWA must be on a matter under the <u>Equal Opportunity Act 1984 (WA)</u> and the incident must have occurred within 12 months of the complaint being lodged. Generally, the EOCWA will refuse complaints about incidents over 12 months ago but may consider them if there is good reason or good cause for the delay. Common outcomes from conciliation can include: • an apology • staff training programs, or • compensation for a specific loss If the complaint is unable to be conciliated, the EOCWA may choose to dismiss the complaint or refer the matter to the State Administrative Tribunal for hearing and determination. See the Equal Opportunity Commission of Western Australia webpage '<u>Complaint Process</u>'.

