



Discrimination and the law

> A guide for owners corporations

Owners corporations have legal obligations under the *Equal Opportunity Act 2010*. This information sheet provides tips to help them to meet these obligations by preventing discrimination when providing services and accommodation.

It is important that owners corporations are aware of their duty to address complaints of discrimination, sexual harassment or victimisation, and to take action to prevent them from occurring in the first place.

This includes when granting access to premises, facilitating quiet enjoyment of accommodation, providing day-to-day maintenance, common services and employing staff.

What is discrimination?

Discrimination is treating someone unfavourably, or proposing to, because of a personal attribute protected by the Equal Opportunity Act.

Discrimination can also happen if an unreasonable policy or practice is applied that may disadvantage someone because of a personal attribute. This covers a proposed policy or practice.

There are 17 personal attributes, which include disability, sex, age, race and sexual orientation.

The Equal Opportunity Act protects people from discrimination and sexual harassment in a variety of areas of life. For example, goods and services, employment or accommodation.

It is against the law to authorise and assist discrimination or sexual harassment, or to victimise someone for making a complaint about discrimination or sexual harassment.

Sexual harassment

Sexual harassment is unwelcome sexual behaviour, which could be expected to make a person feel offended, humiliated or intimidated.

Sexual harassment can be physical, verbal or written. It can include:

- comments about a person's private life or the way they look
- sexually suggestive behaviour, such as leering or staring
- brushing up against someone, touching, fondling or hugging
- sexually suggestive comments or jokes
- displaying offensive screen savers, photos, calendars or objects
- repeated requests to go out
- requests for sex
- sexually explicit emails, text messages or posts on social networking sites.

About the Commission

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

- *Equal Opportunity Act 2010*
- *Charter of Human Rights and Responsibilities Act 2006*
- *Racial and Religious Tolerance Act 2001*.

The Commission helps people resolve complaints of discrimination, sexual harassment, victimisation, and racial or religious vilification. It does this through a free, fair and timely dispute resolution service that gives parties the opportunity to decide the terms upon which they resolve a complaint.

In addition, the Commission provides education, training and consultancy services, and also educates the community about equal opportunity and human rights.

Owners corporations' obligations under the Equal Opportunity Act

Below is a summary of key obligations under the Act as they relate to owners corporations. Other areas of the Act may be relevant to people in owners corporations. More information is available from the Commission.

- When employing someone an owners corporation must not discriminate based on one of the characteristics protected under the Act (when advertising a role, the selection and recruitment processes, or while an employee is working for them).
- An owners corporation providing a service must not discriminate based on one of the characteristics protected under the Act.
- An owners corporation must make 'reasonable adjustments' for people with disabilities. For example, when maintaining a common area an owners corporation must make reasonable adjustments to allow people with disabilities to access and use the area.
- An owners corporation must not discriminate against someone because of their disability in relation to any premises that the public or a section of the public can access. People with a disability have a right to access places maintained by owners corporations that are available to the public.
- An owners corporation must allow a person with disabilities to make reasonable alterations to common property to meet their special needs if the person pays for it, and if the alterations do not require changes to lots occupied by other people or have an impact on the interests of other owners or occupiers. Action required by the person to restore the property to the condition it was in before alterations is reasonably practicable if it is likely they will do so.
- An owners corporation must not authorise and assist discrimination, such as requiring a committee or manager to impose discriminatory conditions on meetings that do not accommodate a person's disability. This means, for example, that an owners corporation should not schedule meetings to be held in a location that cannot be accessed easily by a person with a disability (for instance by people using wheelchairs), or in a manner that is inaccessible to people with other disabilities, such as people with hearing disability.
- An owners corporation has a duty to take reasonable measures to prevent discrimination from happening. This is called the positive duty. This duty means that owners corporations must, in a proactive way, give positive consideration to how their actions may affect people with a disability, older people, carers and parents (who may experience difficulties with access).

It is important that owners corporations know about the positive duty because complying with it will help stop discrimination before it happens and will

take us closer to creating equal opportunity for everyone in Victoria.

There are many opportunities for owners corporations to be forward thinking about addressing the needs of people with disabilities, older people and parents and carers. For example, when renovations are due or a modification to common property is proposed, by considering designs that best promote accessibility for people with disabilities.

Owners corporations must consider whether there are any potential problems for people in accessing their premises, and think about how to address these. Things for owners corporations to consider when looking at measures to take include:

- how poor accessibility might affect people with different types of disability (for instance, people with vision impairment or people using wheelchairs or walking frames)
- what changes are required to accommodate a person's disability, age, parental or carer status
- the owners corporation's own financial circumstances
- the effect of making a change, that is, who would be disadvantaged but also who else may benefit. For example, the installation of ramps assists older people and people with prams as well as those with disability.

It may not be possible to prevent discrimination in some circumstances when the adjustments required are not reasonable. An owners corporation, however, must demonstrate that it has considered how it can best promote access to and participation in its services.

Exceptions to unlawful discrimination

Not all discrimination will be against the law. Discrimination is only against the law when it happens based on a protected characteristic, provided no exemption or exception applies.

Exceptions are set out in the Equal Opportunity Act and allow people to discriminate in limited circumstances. These are discussed below, in the context of explanations about how the Act applies to owners corporations.

Complaints

It is important for owners corporations to be aware that people can make complaints about discrimination, sexual harassment and victimisation to the Commission.

The Commission offers a free and impartial dispute resolution service to help people resolve their complaints. This can be beneficial to both parties to help resolve issues and keep it out of court.

People can also make an application to the Victorian Civil and Administrative Tribunal alleging discrimination, sexual harassment or victimisation.

You can contact the Commission on 1300 292 153 for more information.

FAQs: Could discrimination breach the Equal Opportunity Act?

The following section provides examples of common discrimination issues that can arise for owners corporations.

Examples are used from Victoria and other Australian jurisdictions with similar anti-discrimination laws to help show what these obligations mean in practice.

Owners corporation unwilling to allow alterations for owner/occupier with disabilities

An owners corporation is unwilling to allow alterations to a common hallway next to an apartment owned by a person who uses a wheelchair. It also objects to the cost and difficulty in changing access to a swimming pool area suggested by the owner. Can the owners corporation refuse to consider changes?

No. The request needs to be considered. An owners corporation needs to be mindful of its duty not to discriminate in the terms on which it provides services or accommodation when maintaining access to common areas and facilities.

An owners corporation must allow an owner/occupier of a lot it manages to make reasonable alterations to common property to meet their special needs if:

- the person can pay for it
- alterations do not badly affect the interests of other occupiers or their use of common property
- the action required to restore property to the condition it was in before the alterations would be reasonable
- the owner/occupier agrees to restore the property to its previous condition and it is reasonably likely they will do so.

Changes need to comply with building regulations. An owners corporation therefore must consider alterations designed to enhance access.

Auslan interpreters at owners corporation meetings

An owners corporation has several members with hearing impairments. They require Auslan interpreters to understand the content of spoken communication. Although the members are keen to participate in meetings, especially ones involving voting on rules about management of common areas, the committee is unwilling to provide Auslan interpreters. Do they have to provide interpreters?

Meetings can be a service provided by an owners corporation. As a service provider, the owners corporation is required to make reasonable adjustments to enable members with disabilities to participate.

An owners corporation needs to consider the types of adjustments that can be made within the limits of their financial resources. As a general principle, if an owners corporation can reasonably afford to provide the adjustment, it should.

It is important for the owners corporation to communicate with its members, so the members can suggest the sorts of adjustments needed to ensure they can participate fully.

An owners corporation must not authorise and assist discrimination, for example, by requiring a committee to impose conditions of meetings that make it difficult for everyone to participate on an equal basis.

Case study: reasonable adjustments within a premises

Queensland tribunal orders body corporate to pay \$25,000 for refusing to modify locks

A body corporate was unwilling to install electronic devices to enable a resident with severe physical disabilities to access common areas blocked by security gates.

Due to this, the resident experienced great difficulty moving around the complex without assistance.

A tribunal found that:

- legislation required the body corporate to control, manage and administer its common property and renew any fixtures including gates and doors
- access to common property amounted to “access to a service”. The body corporate of the unit complex was responsible for providing this.

The tribunal ordered payment of \$25,000 compensation.¹

Note: An owners corporation is known as a body corporate in other states.

Owners corporation unwilling to permit an assistance dog on the premises

John, an owner of a unit, has severe physical disabilities. John has an assistance dog, which is highly trained to perform tasks to alleviate difficulties associated with his disabilities. The owners corporation has said that pets are not permitted on the premises. Can they ban his dog?

An owners corporation must not refuse to provide accommodation to a person with an assistance dog, require the dog to be kept elsewhere or make a person pay extra for the dog. An assistance dog is trained to perform tasks or functions to assist a person to alleviate the effects of the disability. Banning an assistance dog may amount to disability discrimination.

Banning an assistance dog may also breach the *Owners Corporation Act 2006*. Owners corporations can make their own rules, but a rule will be unenforceable if it unfairly discriminates. Model rules will apply. The *Owners Corporation Regulations 2007* also state that an owner or occupier must only remove an animal in cases where an owners corporation has resolved that the animal is a danger or is causing a nuisance. John can contact the Commission to make a complaint.

Case study: reasonable adjustments required to improve access to premises

NSW tribunal finds owners corporation needed to make reasonable adjustments

S was an occupier who accessed a swimming pool in a large residential development. He had polio and could only walk very short distances, so he regularly parked his car directly outside the pool, until the owners corporation barred access.

The only other car park was further away and S could not use it because of his disability. The owners corporation refused to look into doing anything to address his needs.

A tribunal found that the owners corporation had indirectly discriminated against S. If he wanted to access the pool, he needed to either use a wheelchair or be assisted by another person, which he normally did not medically need to do. Adopting measures to allow him to park close to the pool would not impose an unjustifiable burden.²

People with disabilities have a right to access places used by the public

An owners corporation manages a common entrance and foyer area of a large commercial building, which was built in the 1970s and not designed for good accessibility. The entrance has features making the main route through the space unsafe for people with vision or mobility disabilities. The owners corporation is now commencing extensive renovations, however, these appear to be doing nothing to address significant access issues.

Kate runs a shop on the ground level of the building and is concerned, as a number of clients who enter the building have vision impairments and disabilities affecting mobility. She has raised these issues with the owners corporation but it has ignored her. Isn't the owners corporation supposed to make the place accessible?

Yes. People with a disability have a right to have access to places used by the public.

The Equal Opportunity Act makes it against the law to discriminate based on disability in the conditions on which a person is allowed to access or use premises. An owners corporation has a positive duty to prevent discrimination.

An owners corporation has to make reasonable adjustments only. It will not be unlawful discrimination if the adjustments needed to make it accessible are unreasonable.

Also note that, since 2011, any new building open to the public, or existing buildings undergoing significant renovation, have been required to comply with the Commonwealth Disability (Access to Premises – Buildings) Standards 2010, (Premises Standards) under federal law.

The Premises Standards aim to ensure that buildings do not impose unreasonable barriers and have dignified access for people with disabilities.

The Premises Standards apply to those responsible for design or construction of a building and interior.

Affected places include office blocks, education facilities, retail outlets, entertainment venues, buildings used for commercial activities and common areas of apartment blocks with apartments available for short-term rent.

Strict conditions placed on young people in accommodation

An owners corporation proposes to set some strict rules barring teenagers from accessing common facilities (for example, the pool and gym) during the evening when others are welcome, and preventing children from playing in the common garden area. Can owners corporations restrict the movement of teenagers and children?

Owners corporations wishing to promote quiet enjoyment of premises can impose reasonable conditions addressing noise. They must not, however, adopt standards unlawfully discriminating based on factors such as age. The NSW Administrative Decisions Tribunal found that a caravan park discriminated against young people by enforcing a rule preventing teenagers from moving around the caravan park after 9pm.³

An owners corporation cannot enforce unreasonable rules that unfairly discriminate against young people or families owning or occupying lots.

In a situation where it is reasonably likely that an unsupervised child may endanger themselves or cause a disruption, for example, within a swimming pool area, an owners corporation may require the child to be supervised by an adult.

Discrimination in employment

A committee of an owners corporation responds to complaints from residents about the upkeep of common areas. It places an advertisement in the local paper for a job as a cleaner, requiring an applicant to speak and read English fluently. Can the committee impose these requirements?

This may amount to indirect race discrimination. Owners corporations have a duty not to discriminate in the area of employment, based on the characteristics protected under the Act. The advertisement may disadvantage a person on the basis of their race. The requirement may be unreasonable if speaking and reading English fluently is not necessary to perform the job.

A person who thinks that they may have been disadvantaged by such an advertisement can contact the Commission to make a complaint. Such an advertisement can amount to an offence of discriminatory advertising.

Conciliated outcomes at the Australian Human Rights Commission

Assistance dog banned from a retirement village – complaint settled for \$10,000

The complainant's mother has a hearing and vision disability. A retirement village did not permit her mother to have her hearing dog on the premises. Her mother had no option but to move.

The retirement village stated that its policy does not permit pets but allows hearing dogs. It did not know that the dog was an assistance animal trained to alleviate the effects of disability and to meet high standards of hygiene and behaviour.

The complaint was resolved with an agreement that the retirement village pay \$10,000 compensation for moving costs, hurt and distress and an undertaking to continue to provide anti-discrimination training to staff.⁴

Negotiated settlement allowing assistance dog to remain on premises

A complainant alleged that an owners corporation did not allow him to keep his assistance animal in his apartment. The issue was resolved when the owners corporation advised that it had changed its rules to permit approval of an assistance animal on receipt of evidence that the animal was a trained assistance animal rather than simply a pet or companion animal.⁵

Negotiated settlements to make owners corporation meetings accessible

A man who has a physical disability complained that he was unable to participate in meetings of an owners corporation of his apartment block as they were held at a venue he could not enter. The complaint was resolved with an agreement to hold meetings in accessible venues in future.

A woman with a vision disability complained that documents for owners corporation meetings were provided only in print. The complaint was resolved when the owners corporation agreed to provide all materials on disc in accessible formats.⁶

Endnotes

¹ C v A [2005] QADT 14, paras 29, 30, 48, 64 <<http://www.austlii.edu.au/au/cases/qld/QADT/2005/14.html>>.

² Sutherland v Tallong Park Association [2006] NSWADT 163, paras 48, 52, 53, 93 <<http://www.austlii.edu.au/au/cases/nsw/NSWADT/2006/163.html>>.

³ Johnson v Free Spirit Management Pty Ltd (No 2) [2011] NSWADT 29 <<http://www.austlii.edu.au/au/cases/nsw/NSWADT/2011/29.html>>.

⁴ See <<http://www.humanrights.gov.au/complaints/conciliation-register/disability-discrimination-act-1992-complaints-conciliated-and#goods>>.

⁵ DDA accommodation conciliated settlements <<http://www.humanrights.gov.au/dda-accommodation-conciliated-settlements>>.

⁶ Ibid.



Victorian Equal Opportunity
& Human Rights Commission

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humanrightscommission.vic.gov.au/training

Need more information?

Talk to someone at the Commission:

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Disclaimer: This information is provided as a guide only and has been prepared to support owners corporations in meeting their obligations under the *Equal Opportunity Act 2010*. It is not a substitute for legal advice. There may be other laws that also apply to you. We recommend that you seek further advice.