



**Victorian Equal Opportunity  
& Human Rights Commission**

**GUIDELINE**

# **Transgender people at work**

**A QUICK GUIDE FOR EMPLOYERS**



**TRANS  
GENDER  
VICTORIA**



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## Guideline: Transgender people at work – complying with the Equal Opportunity Act 2010 in employment

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# About the guideline

This guideline, developed by the Victorian Equal Opportunity and Human Rights Commission, outlines obligations under the *Equal Opportunity Act 2010* regarding discrimination against transgender people in employment. It provides practical guidance for employers on how to be proactive in preventing discrimination against transgender employees.

Under section 148 of the Equal Opportunity Act, the Commission may issue practice guidelines on any matter relating to the Act.

In addition to outlining legal obligations for employers, this guideline offers practical information about gender identity issues more broadly and provides support about how to approach issues that people may not be familiar with.

While this guideline may be used in a formal capacity by a court or tribunal, the Commission has sought to simplify the language of the law to make it as easy as possible for you to put into practice.

This guideline does not cover every possible situation and circumstance you may encounter. If you have a matter you need to clarify, consider seeking legal advice.

As required under the Act, the Commission consulted widely to make sure this guideline is relevant and useful. Job services peak bodies, employer peak bodies, recruitment agencies, government agencies and community organisations assisted the Commission by highlighting the issues and challenges in meeting legal obligations when it comes to discrimination against transgender people.

## Who is this guideline for?

This guideline is for all employers operating in Victoria, regardless of the size of their organisation. The duties of an employer extend to all full-time, part-time and casual workers, agents and contractors, trainees and apprentices, and job applicants.

The guideline also provides information on legal obligations to prevent discrimination against transgender people in recruitment. This applies to organisations and individuals involved in all aspects of recruitment including:

- human resource professionals
- recruitment consultants
- employment services agencies
- anyone with responsibility for interviewing or recruiting new employees.

## Who is this guideline about?

This guideline is about transgender people who are protected from discrimination based on their gender identity under the Equal Opportunity Act. It also provides some information on protections for people who are intersex. However, intersex people are a distinct group from transgender people. Therefore, this guideline does not consider the specific experiences of intersex people.<sup>1</sup>

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<sup>1</sup> Under the Equal Opportunity Act, people of indeterminate sex who identify as a particular gender are protected from discrimination based on their gender identity. People may also be protected from discrimination because they are physically intersex, on the basis of the 'sex' protected attribute.

## Why do I need to follow this guideline?

There are a number of important reasons for using this guideline:

- as an employer, you have legal responsibilities under Victoria's anti-discrimination law – the Equal Opportunity Act. That means you are acting unlawfully if you treat employees or job applicants unfavourably because they are transgender
- by ensuring discrimination against transgender employees does not occur, you can retain valuable workers, enhance workplace morale and be recognised as an employer of choice
- while this guideline is not legally binding, a court or tribunal may consider whether a person has complied with it when hearing a complaint of discrimination or any other unlawful conduct under the Equal Opportunity Act.

## Terminology

The Commission acknowledges the complexities of language and identity in this area and that the terms we use are not applicable to everyone. We know that the term 'transgender' encompasses a broad range of people whose gender is different from the sex assigned to them at birth and that some people may not identify with this term. We acknowledge and respect an individual's right to identify and describe their gender identity as they choose. For further discussion of terminology, see pages 5 and 6.

## What does this guideline contain?

This guideline is in six parts:

- *Part 1: Transgender people and gender identity – understanding the issues* outlines the issue of discrimination against transgender people and key definitions.
- *Part 2: Discrimination against transgender people in employment* – includes frequently asked questions regarding discrimination against transgender people in employment and guidance on preventing discrimination.
- *Part 3: Understanding the law – the Equal Opportunity Act 2010* identifies key components of the law that relate to gender identity discrimination including who is liable for discrimination, sexual harassment and victimisation, the positive duty and exceptions and exemptions.
- *Part 4: Eliminating discrimination against transgender employees – your 'positive duty' and addressing vicarious liability* outlines your organisation's obligation to prevent discrimination and sexual harassment from occurring in your workplace.
- *Part 5: Preventing and responding to discrimination against transgender employees – checklist* provides a checklist which summarises the advice given in this guideline.
- *Part 6: Where else can I go for help?* Provides a directory of other organisations that may be able to assist you.

# Part 1: Transgender people and gender identity – understanding the issues

## 1.1 Background

Transgender people experience significant levels of discrimination, not just in employment but in all areas of life. This can include discrimination in the provision of goods and services, accommodation and sport and may include harassment, abuse or even physical violence.<sup>2</sup> In employment, discrimination can include not being recognised as their preferred gender, being forced to disclose private information and missing out on employment opportunities.<sup>3</sup>

Discrimination against transgender people can sometimes be a result of ignorance or a lack of understanding. In addition to outlining legal obligations, this guideline seeks to build a broader understanding among employers about this issue so they can prevent discrimination from occurring and create a safe and supportive work environment for transgender employees.

## 1.2 Valuing diversity

Discrimination is not only harmful to the health and wellbeing of employees; it also has negative consequences for employers. These can include increased employee turnover, poor morale and loss of reputation.

Valuing diversity and ensuring discrimination does not occur in your workplace has a number of benefits – not just for those who may be vulnerable to discrimination – but for all employees. By recognising all of the ways in which your employees differ, including differences in gender identity, you can create an environment where all employees feel safe, respected and valued.

If you are inclusive of people from a range of backgrounds and circumstances, including transgender people, you can become an employer of choice and be rewarded with staff that are loyal, motivated and less likely to leave. Not only does this boost your organisation's reputation for fairness, it can also increase your organisation's productivity and competitiveness.

## 1.3 Gender identity – the Equal Opportunity Act 2010

Under the Act, gender identity means:

The identification on a bona fide basis by a person of one sex as a member of the other sex (whether the person or not the person is recognised as such) by:

- assuming characteristics of the other sex, whether by means of medical intervention, style of dressing or otherwise; or
- living, or seeking to live, as a member of the other sex; or

the identification on a bona fide basis by a person of indeterminate sex as a member of a particular sex (whether or not the person is recognised as such) by:

- assuming characteristics of that sex, whether by means of medical intervention, style of dressing or otherwise; or
- living, or seeking to live, as a member of that sex.<sup>4</sup>

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<sup>2</sup> Murray Couch et al, *Tranznation: a report on the health and wellbeing of transgendered people in Australia and New Zealand* (2007) 9.

<sup>3</sup> Australian Human Rights Commission, *Addressing sexual orientation and/or gender identity discrimination – consultation report* (2011) 10.

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<sup>4</sup> *Equal Opportunity Act 2010* (Vic) ss 3-4.

## 1.4 Legal protections for intersex people

Intersex status is not protected as a separate attribute under the Equal Opportunity Act.

However, as noted above, people of indeterminate sex who identify as a particular gender are protected from discrimination based on their gender identity.

There have been no cases decided at the Victorian Civil and Administrative Tribunal on the scope and application of the Equal Opportunity Act to intersex status as part of a protected attribute. However, given the evolving understanding of intersex status as a person's 'sex' and concerning the physical sex attributes of a person, intersex people may also be protected from discrimination on the basis of 'sex' under the Equal Opportunity Act.

While many of the good practice tips included in this guideline are relevant for all employers and employees, this guideline does not consider the specific experiences of intersex people. If you have an employee who is intersex, you can contact the Commission for guidance on how the Equal Opportunity Act applies.

Appropriate legal protection from discrimination for intersex people remains a contentious issue. Being intersex is a matter of biology, not gender identity, and existing legal protections from discrimination do not necessarily reflect the views and preferences of the intersex community.

The Commission acknowledges that transgender and intersex people experience different forms of discrimination, even though both are currently addressed under the term 'gender identity' in the Equal Opportunity Act.

As of 1 August 2013, the Commonwealth *Sex Discrimination Act 1984* specifically protects people who are intersex as a separate attribute. This is discussed further at page 17.

## 1.5 What other terms should I know about?

This guideline focuses specifically on discrimination against transgender people under the Equal Opportunity Act. However, a broader understanding of terminology for groups of people who can face discrimination based on their gender identity can also help you to meet your obligations.

This section provides some commonly used terms. It is not an exhaustive list and is intended as guidance only. There are some other terms that are declining in usage (such as 'MtF' and 'FtM'),

while others are becoming more common.<sup>5</sup> It is important to recognise that language used to describe gender identity is shifting over time and may also differ across cultures and generations.

As suggested throughout this guideline, if you have transgender workers, it is best to ask them what terms they prefer to use.

### Sex

Sex refers to a person's physical sex characteristics – the state of being either physically male, female or being intersex.

### Gender identity

While gender identity has a specific meaning under the Equal Opportunity Act, which involves a person of one sex identifying as a member of the other sex, or a person of indeterminate sex identifying as a member of a particular sex. More broadly, the term refers to the state of being male or female as defined by social and cultural behaviours and assumptions about identity, roles and appearance. Some people also identify with a more fluid understanding of gender that is not specifically male or female.

### Transgender

'Transgender' is used in this guideline as an umbrella term that refers to a person whose gender identity is different to the physical sex assigned to them at birth.

Transitioning refers to the process where a transgender person commences living as a member of another sex. This is sometimes referred to as the person 'affirming' their gender because transitioning means they start living in what they identify as their true gender. This may occur through medical intervention, style of dressing, or anything else that indicates an intention to commence living permanently as a member of another sex.

For people who are transitioning, having their identity fully recognised at work is a crucial part of the experience of living as their affirmed gender.

Individuals may transition in different ways. For example, not all will choose to have sex affirmation surgery<sup>6</sup> for a range of reasons including the availability, cost and desire for surgery. You can read more about transitioning and what this involves in sections 2.2 and 2.3.

5 A 'MtF' transgender woman is a person whose sex is or was male who has a female gender identity. A 'FtM' transgender man is a person whose sex is or was female who has a male gender identity.

6 'Sex affirmation surgery' is the term used in Victoria's *Births, Deaths and Marriages Registration Act 1996* (Vic) and is used throughout this guideline.



## Gender Dysphoria

Is a medical term used to describe people who are transgender, that is, people whose gender identity is different to the physical sex assigned to them at birth. The World Professional Association for Transgender Health (WPATH) prescribes medical standards of care, which include information on diagnosing and treating Gender Dysphoria through gender transition.<sup>7</sup> You can read more about the medical aspects of transitioning on page 9.

## Transsexual

Transsexual is a term that is sometimes used to describe a person who is taking steps or has taken steps to align their physical sex to their gender identity. Older people may be more likely to identify with the term 'transsexual'.<sup>8</sup>

## Bi-gender/androgynous

A person who identifies as bi-gender or androgynous is someone who does not identify as exclusively male or female, regardless of their physical sex.

## Cisgender

A person who identifies with the sex assigned to them at birth.

## Genderqueer

A person who does not identify or express themselves as exclusively male or female. Younger people may be more likely to identify with this term.

## Gender expression

How a person presents themselves in behaviour and dress.

## Gender continuum

Refers to a range of different gender expressions and identities.

## Intersex

Intersex refers to people who are born with physical, hormonal or genetic features that are (a) neither wholly female nor wholly male; or (b) a combination of female and male; or (c) neither female nor male.<sup>9</sup> The term 'indeterminate sex' is used in the Equal Opportunity Act to describe a person with mixed or indeterminate sex attributes.

## Sexual orientation

Sexual orientation refers to sexual and emotional attraction to people of a particular sex or sexes. The Equal Opportunity Act also makes it unlawful to discriminate against someone based on their sexual orientation.

It is important to recognise that sexual orientation is different to a person's sex or gender identity. Some transgender people may encounter difficulties or experience discrimination because of myths and misconceptions about the correlation between their gender identity and their sexual orientation.

### Case Study

Rhonda, a transgender woman, has been working for the same employer since before she transitioned. Her employer and colleagues have generally been accepting and supportive. Rhonda tells a colleague, Michael, that she has recently started dating a woman. Michael says to Rhonda 'why didn't you just stay a bloke if you like women'. Rhonda finds Michael's comments intimidating and offensive and begins to feel uncomfortable about coming to work.

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7 World Professional Association for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People*, Version 7 (2011).

8 Older people may be more likely to identify with the term 'transsexual' for historical reasons. The term 'transsexual' began to be used from the 1950s. 'Transsexualism' was formally recognised in the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* in 1980.

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9 This is the definition that appears in the *Sex Discrimination Act 1994* (Cth) and is endorsed by the Organisation Intersex International Australia.



# Part 2: Discrimination against transgender people in employment

## 2.1 What does the law say?

It is against the law to discriminate against job applicants and employees because they are transgender. Discrimination is treating, or proposing to treat, a person unfavourably because of a personal attribute that is protected by law. In employment, this includes:

- denying training, promotion, or other employment benefits
- not hiring someone or dismissing someone from work
- subjecting an employee to any other detriment.

You can find detailed information on key components of the law relating to gender identity discrimination including liability, victimisation and sexual harassment, the positive duty and exceptions and exemptions in part three of this guideline.

### Examples of discrimination in employment

Jemma, a transgender woman, is threatened with a downgrade in her role if she continues to wear female clothing at work.

Roger works in retail and tells his manager, Joe, that he will soon commence transitioning to become Rowena. Joe does not react well and says he thinks this will confuse customers. A few weeks later Joe calls Rowena into his office to tell her he does not want her serving customers and that from now on she will only be responsible for stacking shelves and receiving stock.

John transitions to affirm his gender. While he is transitioning, he is harassed, laughed at and called by his former female name by other employees. When he makes a complaint about this behaviour to his manager, his employment is terminated.

Donna has worked in a large sales company for a number of years, and recently transitioned to affirm her gender. Her employer holds a meeting to inform other employees about this. Donna experiences verbal abuse and her work manager, with whom she has a long and positive working relationship, becomes highly critical of her work. Donna's manager eventually asks her to resign because of poor performance, but Donna feels her gender identity is the real issue as there is no evidence of a change in her performance.

## 2.2 Issues arising in employment - Frequently Asked Questions

### How can I prevent discrimination from occurring in recruitment?

In order to prevent discrimination when recruiting new employees you need to consider:

- whether recruitment will occur in-house or through an agent, and how to prevent discrimination in that process
- how you will frame your job advertisement and accompanying recruitment materials, such as application forms
- what information you seek from applicants and why you seek it, whether this occurs in the application process or during an interview.

Once you have decided the applicant is the right person for the job based on their skills and abilities and they have accepted the job, then you may ask questions about preferred terminology and how you can support them in their role.

When recruiting new employees, you should not allow personal attributes that are not related to the job, such as a person's gender identity, to influence your decisions. You should only focus on the person's skills and abilities and whether they will be able to perform the genuine requirements of the job.

### **Application procedures and forms**

Discriminatory requests for information can form the basis for a complaint under the Equal Opportunity Act. When seeking information from applicants, you need to be able to show you need the information for a legitimate purpose, such as to determine whether they will be able to perform the genuine requirements of the job.

Be aware of how some methods of applying for a position may disadvantage some people – the focus should be on a fair outcome for all applicants.

For example, you could review categories on any forms relating to a position to determine whether information about a person's sex or gender is relevant before asking for it. You could consider whether you need to collect this information at all, and if you do, provide applicants with the option to self-identify, or not specify at all, rather than only including 'male' and 'female' as only including these categories may disadvantage job applicants who do not identify as either male or female.

You should also be aware that some people may prefer to use Mx as a gender neutral mailing title.

### **Guideline for the recruitment industry and employers: Complying with the Equal Opportunity Act 2010 in recruitment**

You can find more detailed information on preventing discrimination in recruitment in the Commission's guideline for the recruitment industry and employers, which is available on the Commission's website at [humanrightscommission.vic.gov.au/guidelines](http://humanrightscommission.vic.gov.au/guidelines).

### **What do I need to ask and how do I ask?**

Not all transgender people will want to discuss their gender identity at work. These employees may consider discussion about their gender identity is no more relevant than it would be for employees who are not transgender.

In most cases, you will not need to ask employees or job applicants about their gender identity because it will not be relevant to their ability to perform the genuine requirements of the job.

You should carefully consider what to ask employees and job applicants and why you need to ask it. It is against the law for you to seek information from job applicants and employees that could be used to discriminate against them unless you can show that you need the information for a non-discriminatory purpose. For example, once someone has been employed you may be able to show you need information about a person's gender identity so you can plan to prevent discrimination from occurring.

### **A current employee has told me they are transgender and will begin transitioning – what do I need to know?**

You should ask the employee about how they would like you to respond – particularly when it comes to telling other staff members about their transition. You should consider developing a transition plan in consultation with the employee and you may wish to include other support people in this process (see section 2.3).

Often it will not be appropriate to discuss the specific details of the transitioning process. For example, it will generally not be appropriate to ask questions about physical attributes and the specifics of any surgery or other treatment unless the employee is comfortable disclosing that information.

Employees who are seeking medical intervention to transition may need time off for medical appointments, counselling, or surgery. You should deal with these situations in the same way as any other necessary medical appointments for your employees. You can discuss any leave arrangements with the employee when developing your transition plan.

## What is transition?

The transitioning process varies from person to person. For some, dressing as the gender they truly feel themselves to be is enough and they may not feel a need to seek medical assistance when they live permanently as a member of the other sex. However, for those who do seek to transition medically, the steps involved are likely to include the following:

### Initial assessment and consultation about treatment options

- The person consults with a medical professional for assessment. This may occur over several visits.
- Following the assessment the medical professional will generally begin with a recommendation about the use of hormones.
- The aim of this assessment process is to ensure the individual can make an informed choice about medical treatment for gender transition.

Be aware that there may be side effects, such as mood swings associated with hormone use. This is possible with a range of hormone related treatments and is not unique to people being treated for gender transition purposes. It is important to keep an open chain of communication and trust with your worker so that any issues that may arise can be addressed quickly and professionally.

### Sex affirmation surgery

A person may or may not choose to have sex affirmation surgery as part of the transition process.

- It is a medical requirement that a person lives and identifies on a full-time basis in their affirmed gender for a minimum of 12 months before they can have sex affirmation surgery.<sup>10</sup>
- Sex affirmation surgery may include genital surgery or breast surgery.

You will find information on preventing discrimination against employees who are transitioning and developing a transition plan in section 2.3. If you are unsure about whether and how to discuss an employee or job applicant's gender identity or transition, you may wish to seek advice on the best approach (see Part 6).

## What name and pronoun should I use?

The appropriate use of names and pronouns is crucial for all of us, but for transgender people especially. Failing to recognise a person's identity through the appropriate use of names and pronouns may be unlawful. You should always ask employees what name and pronoun they wish to use and, for employees who are transitioning, when they wish to start using it. You may also wish to ask if there are other terms the employee identifies with or which cause offence.

Ask the employee how they would like others to refer to them and then communicate this to your other workers. If the employee is changing their name, ask them when they would like others to start using their new name and how they would like you to communicate this information to others. You can include this information in your transition plan.

Some employees may 'slip up' and use the wrong name if they are used to using the person's previous name. While this is understandable, you should make it clear to your staff that there is a clear difference between 'slipping up' and deliberately using the wrong name. Staff may have a fear of 'getting it wrong' – it is best to be very clear about your expectations.

Once you know what name the employee wishes to use, you should establish procedures to ensure accurate names and pronouns appear in all employment records wherever possible. This may include things such as login details, emails, identification cards and payroll records.

Be aware that some transgender people may have inconsistent information appearing on their records due to barriers imposed by policies and practices, and by legislation.

For example, under Victoria's *Births, Deaths and Marriages Registration Act 1996* a transgender person is not able to change the sex on their birth certificate unless they have completed sex affirmation surgery. This means you may have employees who have transitioned to affirm their gender but this is not reflected on some of their identity documents.

<sup>10</sup> World Professional Association for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People*, Version 7 (2011) 178.

### **Case study – dealing with inappropriate language**

Meredith has begun identifying as a female at her workplace. When she explained her situation to her manager Ted, she was offered a transition plan, but declined, as she 'didn't want to cause a fuss'. However, some of her colleagues have begun to refer to her directly as 'Sir' and she repeatedly overhears comments from them about herself using male pronouns such as 'he', 'him' and 'it'. Meredith has politely asked people to address her appropriately but there are a core group who make no effort to do so.

Before she can raise it with Ted, he overhears these workers and lets them know that such language is not tolerated in their workplace. He requests a meeting with Meredith and explains that he has already begun developing a plan for the workplace. He apologises that she was subject to such behaviour at work and reminds her that counselling is freely available if she needs it. He explains that the plan is as much about dealing with other workers as it is for her and seeks Meredith's input in developing it. In developing a plan for the workplace, Ted recognises that some workers need clear guidance about what behaviours will not be tolerated, while others have reacted very positively and want to know how they can best support Meredith.

### **How do I manage other workers' reactions?**

Because this is an issue that may not arise every day in every workplace it can be new territory for a manager and a team. It may reveal prejudices and deeply held beliefs in your workers. It may also reveal some very supportive and progressive attitudes. Some negative attitudes may stem from ignorance and people may not know any better until they receive good, clear information. Some people may have much stronger negative feelings.

While it is good for employees to have the opportunity to be open about how they feel and what they believe, it is equally important that they understand their obligations not to discriminate against their colleague and the consequences if they do.

The best approach may be to create a safe environment where a range of opinions can be heard and acknowledged, without the transgender worker present. There is no need for your worker to be exposed to negative opinions, especially when these may just be first reactions.

Some employees will have their needs addressed in a larger forum. Others may need one-on-one support.

Effectively addressing any negative reactions from your employees will ultimately benefit everyone, leading to a more harmonious and productive workplace. You can find more information on planning to prevent discrimination from occurring, including specific information on planning to support all of your employees, in Part 4 of this guideline.

### **Which toilets are used?**

Employees should be able to use toilets, change rooms and other facilities that are appropriate to their affirmed gender when they commence transition. This may give rise to some difficult issues in practice. For example, some employees may:

- feel uncomfortable with the idea of using the same toilets or facilities as the transgender employee
- openly oppose the transgender employee using the toilets or facilities that are appropriate to their affirmed gender
- ridicule the transgender employee and make them feel uncomfortable and unwelcome when using the facilities.

If you develop a transition plan with a transgender employee, you can include a strategy for informing other colleagues about the use of toilets and other facilities, including a date when the employee will begin using them.

If you do not develop a formal plan with the employee, you should consult with them about how they would like you to address the use of toilets and facilities as part of your broader plan to prevent discrimination from occurring (see Part 4 of this guideline). If you encounter resistance from other employees about the use of toilets and facilities:

- meet with them to discuss their concerns and attempt to resolve the issue
- remind them that you both have legal obligations to prevent discrimination and that this includes allowing transgender employees to use the appropriate facilities.

In most situations, allowing transgender employees to use toilets and facilities that are appropriate to their affirmed gender should not affect others in the workplace and not allowing them to do so may be unlawful. However, there may be situations where you need to consider the particular needs and circumstances of other employees.



It is generally not appropriate to ask that the transgender employee to use the accessible toilet, as this may send the wrong message that being transgender is a disability. However, there may be situations where, for a transgender employee, using an accessible unisex toilet is their preferred option.

## Case study examples on the use of toilets and facilities

Some of the workers at a firm, XYZ Co., want to know which toilets their transgender workmate should use. Management let staff know the employee will be using the toilets and change rooms of their preferred gender. When some staff say that they have a problem with this, management explain that they need to support the transgender employee and ensure they do not discriminate against them by denying them access to the appropriate toilets and facilities. After discussing the issue with the transgender employee, management agree to redesignate some of the toilets as unisex, for people of any gender to be able to use.

Stephanie is a nurse in a hospital and approaches her supervisor Katherine, complaining that there is a man in the women's toilet. When they go to the toilet, Charlotte is exiting a cubicle.

Stephanie says "that's him".

Charlotte says, "Excuse me but I am not a 'him'."

Stephanie asks Katherine what she will be doing about "this situation".

Katherine explains to the nurse that given Charlotte's clear identification as a woman, she is entitled to use the appropriate toilets and facilities. Katherine apologises to Charlotte and explains that the hospital will be reminding all staff that everybody has the right to be treated respectfully, adding that the hospital has firm policies against discrimination.

Arthur is managing a group of council workers who have concerns about their colleague, Elizabeth, who previously worked with them for five years as Tony. The Council does fire protection work, which sometimes sees employees having to work in remote areas where toilets are not readily available.

When Arthur says to Trevor that Elizabeth will accompany them on a fire protection job Trevor raises concerns about toilet use and working with Elizabeth in the job location saying 'it's okay for us. We can just go behind a tree. What's she going to do?'

A co-worker, Susan, says 'she could just do what I do and go behind a bush. What's your problem?'

Arthur clarifies that as long as all employees are discreet and respect each other's privacy then this should not be an issue.

## What should I do if a customer or supplier raises concerns?

You should ensure transgender employees have a safe and supportive work environment. This includes dealing appropriately with any issues raised by customers and suppliers.

While customers will probably not raise any concerns about a transgender employee, if they do, you should stress to them that their concerns are not relevant to the employee's capacity to do the job and that they are a valued employee. In this regard, you also need to be aware of your obligations to provide a safe work environment under occupational health and safety legislation, which includes the mental health and the psychological safety of your workers.

## Where can I get further advice or information?

If you have further questions that are not dealt with in this guideline or you are having trouble with specific issues in your workplace, such as the use of toilets and facilities, you can seek advice on the best approach to take by contacting the Commission or one of the organisations listed in Part 6 of this guideline.

## 2.3 Preventing discrimination against employees who are transitioning

You should consider developing a transition plan together with individual employees who are transitioning to support them and prevent discrimination from occurring. If the employee does not want to develop a formal plan with you, these guiding questions can also help you to determine your plan of action for the whole workplace, including transitioning employees (see Part 4).

### How do I find out what I need to know?

Firstly, you should ask the employee about what they want. Not all employees will wish to disclose information about their transition or feel they need to develop a formal plan with you. Some employees may also find these discussions difficult or intimidating. A good starting point is to ask them if they would like a support person to attend before discussing the issue or developing a transition plan. You can seek further information and advice from the organisations listed in Part 6.

It may seem odd to you that a person who has chosen to make something so personal so public still wishes to keep certain aspects of themselves private. It is important for the health and safety of your worker that they get to control the flow of information about themselves.

### What should I do if the employee does not want to develop a transition plan?

As an employer, you should still have a management plan in place to facilitate the employee's transition. Your plan will include strategies for managing other workers as well as support strategies for the transgender employee.

If the employee does not want to develop a formal plan with you, reassure them that they should tell you straight away if they experience discrimination or negative attitudes from other employees and let them know that developing a transition plan remains an option. Remind the employee of supports that are available, such as an Employee Assistance Program, and how they can make a complaint if they need to. You should have policies and procedures in place which you can adapt or update to suit the circumstances of individual employees as the need arises, including:

- information in your policies regarding gender identity discrimination
- a management plan for your workers
- a template transition plan.

Using the approach suggested in Part 4 of this guideline, you can examine the profile of your workplace to determine your plan of action. As indicated throughout this guideline, employers have a positive duty to ensure systems are in place to prevent discrimination from occurring (see section 3.2 'the positive duty').

### Download materials

A range of materials that can help you to prevent discrimination against transgender employees will be available from the Commission's website at [humanrightscommission.vic.gov.au](https://humanrightscommission.vic.gov.au).

### Who else needs to know?

You should not disclose any personal information about a person's gender identity or transition to clients or other staff members without first discussing this with the employee. If the employee does want to inform their colleagues, then you should ask them how and when they would like this to occur.

The employee might want to inform other staff members themselves or you can reach an agreement about how you will inform other staff members about their transition. Some people may be happy to share information about themselves and to be approached with questions while others might not be.

### What do other employees need to know?

You should consult with the employee to agree on an approach for advising other staff about their transition. You may wish to come up with questions or topics of discussion that are/are not acceptable as part of a transition plan and communicate this to staff members.

You should avoid relying on the employee to inform you and other employees about gender identity issues. While the employee may wish to discuss their own situation with other employees, it is your responsibility to inform and train other staff about discrimination and gender identity issues generally. This may be more effective if conducted away from the transgender person, at least to begin with, so that workers can more freely express any worries and concerns without fear of censure and without this negatively affecting the transgender worker.

Let other staff know they can come to you with any questions or concerns if they are unsure about raising something with the employee themselves. An option may be to bring your staff together and give them the opportunity to ask any questions. Again, it is important that you reach an agreement with the employee about how this occurs.

You should set a clear expectation that all staff members must respect the privacy of an employee who is transitioning and that discrimination against employees based on their gender identity will not be tolerated. Remind your staff members of their legal obligations and draw their attention to your organisation's equal opportunity and anti-discrimination policies, which should include specific information on gender identity discrimination.

### **When do other staff need to know?**

You should include key dates in the transition plan. This should include starting dates or timeframes for when the employee will:

- begin using a different name or pronoun
- adopt the dress code that is appropriate to their gender identity
- use toilets and facilities that are appropriate to their gender identity
- take time off work for treatment if necessary.

### **Case study – managing other workers' reactions**

Arnold has worked as part of a team for the past ten years. He explains to his boss and human resources that he will transition and will be known as Sharon after returning from leave. Sharon's manager works with HR to set up sessions for staff to discuss the matter before Sharon returns from leave. At the first meeting, some of the other staff are hostile, asking, "When there's only one of her, it or whatever, and there's nearly thirty of us, why is it us who have to be accepting? Why do we have to change?" The manager and HR team work to educate the employees about transgender issues and discrimination, terminology and the acceptable use of names and pronouns. The HR team are successful in gradually resolving the issue, highlighting that it is Sharon's workplace as well as theirs.

### **Case study – supporting an employee who is transitioning**

Kate works in a local council and has just told her employer about her name change and intention to commence living permanently as a female.

Kate's manager, Phil, asks her how she would like them to respond and whether she wants to disclose information about her transition to other employees. They agree to hold a training session to inform staff members about the issue and give them the opportunity to ask any questions during this session. Kate says she is happy to answer any questions as they arise after the session has occurred.

Phil contacts the Commission for assistance in developing training for staff, which is run while Kate is away. During the training staff express opinions ranging from negative to very supportive. The employees feel comfortable they have had the opportunity to express their concerns and be heard. Phil reminds the employees of their legal obligations not to discriminate against Kate.

A particular workmate is identified as having concerns. Phil and the human resources team work closely with this employee so that he understands the consequences of his behaviour as well as reminding him that he, like Kate, is a valued member of the team.

In addition to training other staff members in Kate's absence, Kate and Phil also develop a transition plan and a support person attends these discussions at Kate's request. Phil reassures Kate that she should let him know straight away if she experiences any discrimination or harassment.

# Part 3: Gender identity – the Equal Opportunity Act 2010

This section of the guideline sets out the law relating to gender identity discrimination in more detail. It includes information on liability, victimisation and sexual harassment, the positive duty and exceptions and exemptions.

## 3.1 What does the law say about discrimination based on gender identity?

The Equal Opportunity Act protects people from discrimination based on their gender identity.

People can also be protected from discrimination because they are physically intersex, on the basis of the 'sex' protected attribute.

This guideline is about discrimination against transgender people in employment, however it is also against the law to discriminate against someone because they are transgender in other areas including:

- provision of services and accommodation
- education
- membership of clubs
- sport
- local government.

While this guideline is for employers, the same principles may also assist others, such as accommodation and service providers, to meet their obligations under the Act.

### What is discrimination?

Discrimination can be either direct or indirect.

**Direct discrimination** is when you treat, or propose to treat, someone unfavourably because of a personal attribute protected by law. For example, denying a transgender person a job because you think they will make other employees feel uncomfortable may be direct discrimination based on gender identity.

Under the Equal Opportunity Act, a person does not have to compare how they are treated to how others are treated to establish direct discrimination. They only need to show that they were treated unfavourably because of a protected attribute.

**Indirect discrimination** occurs if a person imposes, or proposes to impose, a requirement, condition or practice:

- that has, or is likely to have, the effect of disadvantaging persons with a protected attribute, and
- that is not reasonable.

For example, requiring all job applicants to identify their sex as male or female in electronic application forms as a compulsory field could disadvantage some transgender or intersex people, and may be indirect discrimination based on gender identity.

## 3.2 The positive duty

The law requires you to 'act', not just 'react'.

That is, you must take active steps to eliminate discrimination, not just respond to complaints that may arise. You must examine your organisation and identify (and put into place) measures that will prevent discrimination from occurring. This requirement is called 'positive duty' under the Act.

Part 4 of this guideline gives you detailed advice on how you can meet your positive duty to eliminate discrimination against transgender employees and job applicants.

Addressing the positive duty will also help you to respond to any claims of vicarious liability against you as an employer.



## 3.3 Who is liable and what are they liable for

### 3.3.1 Vicarious liability

Employers will generally be responsible for the actions of their employees if they are acting in the course of their employment with the organisation or acting on the organisation's behalf. In cases like this, while the employee still bears individual liability for their actions, the employer may have to pay compensation if they are found to be vicariously liable.

To avoid vicarious liability, you must be able to show that you took reasonable precautions to prevent an employee or agent acting in a discriminatory way. These precautions include making sure that you have policies dealing with equal opportunity and anti-discrimination laws, including specific information about gender identity discrimination, and that you familiarise your staff with those policies so that they are put into practice. Another example could include developing a plan for an employee who is transitioning at work, including strategies for informing other employees about their transition so that discrimination does not occur.

### 3.3.2 Personal liability

If a person discriminates against another person they may also be individually (and directly) liable. This means they will be held responsible for their conduct and may be ordered to personally pay compensation to the person they discriminated against. Where that person is acting in the course of their employment, a complaint can be made directly against their employer – the organisation and any relevant management personnel – as well. If a complaint of this nature proceeds to the Victorian Civil and Administrative Tribunal (VCAT) for hearing, the person may be found to have breached the law and ordered to personally pay compensation.

### 3.3.3 Authorising or assisting discrimination

It is against the law for employers to request, instruct, induce, encourage, authorise or assist someone to discriminate against another person.

Authorising or assisting another person to discriminate against someone may also include a situation where an employer is aware discrimination is occurring but chooses not to do anything to stop it, for example, if an employer knows discrimination is occurring but takes no action because there has been no formal complaint. It will depend on the facts, but in some situations, an employer could be found to be implicitly encouraging or authorising discrimination to occur.

Another example could occur in recruitment, for example, if a recruitment agency discriminates based on an employer's instructions. It is against the law for an employer to provide a discriminatory brief, and for the recruitment agency to follow that brief.

#### Example of authorising and assisting discrimination

An employer engages a recruitment agency to employ a Credit Manager. The recruitment agent forwards the details of one of the best applicants, Sharon, who is a transgender woman. The recruitment agent tells the employer she is transgender because he knows Sharon personally. The employer says that they want a woman 'without complications'. Based on this instruction, the recruitment agent does not shortlist Sharon for the job. The employer and the recruitment agency could both be liable for discrimination. For a case with similar facts where discrimination was found see *Farmer v Dorena Pty Limited* [2002] NSWADT 81.

## 3.4 Victimisation

Victimisation is subjecting, or threatening to subject, someone to a detriment because they made a complaint, or helped someone else to make a complaint about something unlawful under the Equal Opportunity Act. It also covers other people who may be involved in proceedings, such as giving evidence in a proceeding or attending a compulsory conference or mediation at the Tribunal. Victimisation is also against the law. For example, if a transgender employee complains to you about the way they have been treated by another employee and you subsequently become highly critical of their work performance, this could be victimisation.

## 3.5 Sexual harassment

Sexual harassment is unwelcome sexual behaviour that could be expected to make a person feel offended, humiliated or intimidated. Sexual harassment can be physical, verbal or written. It may include a range of behaviours including comments about a person's private life or the way they look, sexually suggestive behaviour such as leering or staring, or sexually suggestive comments, notes or emails.

Sexual harassment could also include sexually suggestive or invasive questions, such as asking a transgender person about their sex life, or interrogating them about their physical attributes.

Sexual harassment can occur in recruitment, at work, and at work-related events. It can occur between colleagues, or between managers,

employers, their employees, a person seeking employment at that workplace and clients interacting with the business (because the rules apply to sexual harassment in the course of providing or receiving goods and services).<sup>11</sup>

### Example of sexual harassment

Pamela has lived as a woman for two years and takes leave to have breast implants. When she returns to work, a number of employees make suggestive comments about her breasts and ask if they can 'have a look'. Others make comments such as 'how you going, gorgeous?' which Pamela finds intimidating and offensive.

You can read more about sexual harassment in the Commission's guideline ***Sexual Harassment: Complying with the Equal Opportunity Act 2010***.

## 3.6 Are there any exceptions to the law?

Yes. Under the Equal Opportunity Act, it is not against the law to:

- take special measures to promote substantive equality for groups of people with a protected attribute under the Act.
- make exceptions in the specific circumstances where Parliament has decided that treating people differently is lawful. These exceptions are contained in the Act.
- apply for exemptions from the law for a set period of time.

### 3.6.1 Take special measures

In this case, you may be able to limit a job offer to people with a particular attribute. That is, at some time you may want to target applicants with certain personal attributes because you have identified an opportunity to actively address discrimination or disadvantage.

If you want to create a position for people with a particular attribute, you need to determine whether the action you take is a special measure aimed at achieving substantive equality. You need to ask yourself whether the measure is necessary, genuine and justifiable given the needs of the group who will benefit. The essential attributes of a special measure include that the measure is:

- undertaken in good faith to help promote or achieve substantive equality for members of the group
- reasonably likely to achieve this purpose
- a proportionate means of achieving this purpose
- justified because the members of the group have a particular need for advancement or assistance.

A special measure is not unlawful discrimination.

### 3.6.2 Make exceptions

You may find that, given the type of position you are offering, one of the exceptions under the Equal Opportunity Act applies. Relevant exceptions include:

**Sex discrimination:** recruiting people of a particular sex to preserve decency or privacy in work such as helping customers in fitting rooms or body-searching. Other exceptions are allowed for credibility of dramatic or artistic performances or modelling work. To rely on the sex discrimination exception you would need to show that it is a genuine occupational requirement that an employee has to be of a particular sex.

**Welfare service positions:** offering a position in welfare or special needs services to a person who shares a particular attribute with the people they will be assisting, where it can be shown that the service can be provided most effectively by people with that attribute.

**Religious exceptions** apply to discrimination on the basis of a person's religious belief or activity, sex, sexual orientation, lawful sexual activity, marital status, parental status or gender identity.

Discrimination by a religious body based on these attributes may not be against the law if it is necessary to conform to the doctrines of its religion or is reasonably required to avoid injury to the beliefs of followers of the religion.

A person or body acting on the basis of their religious belief can also lawfully discriminate based on these attributes in directing, controlling or administering a religious school if such discrimination is necessary to comply with the beliefs of the religion, or is reasonably necessary to avoid injury to the religious sensitivities of adherents of the religion.

A person can also discriminate against another person based on these attributes if the discrimination is reasonably necessary for the first person to comply with the doctrines, beliefs or principles of their religion.

Whether religious exceptions may apply will depend on the particular facts and circumstances, including the nature of your organisation and the services it delivers.

<sup>11</sup> *Equal Opportunity Act 2010* (Vic) s 99.

### 3.6.3 Apply for exemptions

Unlike *special measures* and *exceptions*, you need to apply to VCAT if you want an exemption from particular parts of the Act. You will only need to seek an exemption if the action you are taking is not a special measure, or is not covered by one of the exceptions in the Act. In some circumstances, VCAT may still grant an exemption for certain conduct, even though an exception may apply.

A community health service seeks to employ only transgender men and transgender women in certain positions. The positions are to provide health education, welfare and support to sex workers, including those who are transgender. In making its decision, VCAT acknowledges that the welfare service exception could apply to the conduct, but grants an exemption in the interests of certainty. See: *Inner City Health Service (exemption)* [2003] VCAT 1689.

A community organisation seeks to employ only women (excluding transgender women) in a support service providing accommodation to women in transitional and crisis housing facilities. The organisation seeks the exemption because of an incident involving a transgender woman with male genitals who behaved inappropriately in the housing facility, leading to great trauma and distress to the women in the facility. VCAT grants an exemption, but acknowledges that the organisation may not need to use it and will use its discretion in applying it. See: *Hanover Welfare Services Ltd (Anti-Discrimination Exemption)* [2007] VCAT 640. Since this outcome, Hanover have not only altered their policies to be more inclusive for their clients, all staff also receive induction training and updates about dealing with sex and gender diversity and related issues.

### 3.6.4 Federal anti-discrimination laws

As of 1 August 2013 the Commonwealth *Sex Discrimination Act 1984* was changed to provide protection for people who experience discrimination because of their sexual orientation, gender identity or intersex status.

The change means that individuals who want to complain about discrimination on these grounds may also be able to lodge a complaint at the Australian Human Rights Commission.

The Federal law offers clear protection for intersex people who do not identify as being a particular gender, that is, either female or male.

The Sex Discrimination Act provides protection across broad areas of public life, however it does not cover all areas of employment and does not apply to State employees.

As an employer it is important to check what your obligations are under the *Sex Discrimination Act*. You can do this by checking the Australian Human Rights Commission website which contains a link to the Act.

You can find out more about federal anti-discrimination laws more generally by contacting the Australian Human Rights Commission: [humanrights.gov.au](http://humanrights.gov.au).

The changes to the federal law do not change or influence definitions of protected attributes under Victorian state law. The Sex Discrimination Act offers separate protection.

Transgender people who are travelling or moving states should be aware that legal protection from discrimination based on gender identity differs across state and territory legislation. The relevant state equal opportunity or human rights agency can provide guidance on how the law applies.

### 3.6.5 High Court Decision

In April 2014 the High Court of Australia considered the question of whether a person is entitled to nominate that they are of 'non specific' sex rather than registering as either male or female at the Births Deaths and Marriages Registry: *NSW Registrar of Births Deaths and Marriages v Norrie* [2014] HCA 11 (2 April 2014). Norrie, the person involved in the case, was born with male reproductive organs but later underwent a sex affirmation procedure.

Norrie considered that her sexual identity remained ambiguous after she had the procedure and wanted her birth record to be altered to reflect that her sex is 'non specific'.

Initially the Registrar agreed to record Norrie's change of sex in this way but she received a letter at a later time stating that this decision was invalid and her sex would be recorded as 'not stated'. Norrie asked for this decision to be reviewed.

The High Court found that the law recognises a person's sex can be ambiguous and that the Registrar had the power to register Norrie's change of sex from male to 'non specific'. The Court stated that a person who identifies as indeterminate sex should not be required to register inaccurately as either male or female. This case is from another jurisdiction but may give an indication of how courts are interpreting the definition of 'sex' in legislation.

# Part 4: Eliminating discrimination against transgender employees – the positive duty

## 4.1 What is the positive duty?

The positive duty is about being proactive. It means employers must take active steps to prevent discrimination in their workplace, not just respond to complaints if they arise.

Employers must examine their organisation and then identify and put into place measures that will prevent discrimination from occurring. This includes having equal opportunity policies and procedures that effectively deal with transgender employees and gender identity discrimination. You should also provide staff with adequate information and training.

In the same way that occupational health and safety laws require employers to provide a safe working environment, and to take steps to improve procedures, policies and practices to avoid workplace injuries occurring, the positive duty requires employers to take steps to prevent discrimination from occurring. You can't simply wait until there is a complaint of discrimination (or an accident in the case of occupational health and safety), and then take action.

## 4.2 Who does the positive duty apply to?

All businesses and organisations are required to take reasonable and proportionate measures to eliminate discrimination, sexual harassment or victimisation as far as possible. The measures you undertake to prevent discrimination will depend on factors such as:

- the size of the business operations
- the resources of the business
- the nature of the business
- the business and operational priorities
- the practicability and cost of the measures.

This does not mean that smaller employers have less responsibility to prevent and respond to discrimination in their workplace. Employers are required to prevent and respond to discrimination in their workplace to the best of their ability within the context of the factors listed above.

## 4.3 How can I meet the positive duty?

There are a number of specific activities you can undertake to meet the positive duty to prevent discrimination from occurring.

Ensuring you have equal opportunity policies which adequately address gender identity discrimination and communicating this to your employees is an important starting point. However, a 'one size fits all' approach will not necessarily prevent discrimination from occurring and you should carefully consider what measures you need to take based on the profile of your workforce and the circumstances of individual employees. For example, you can examine the profile of your workforce and current levels of understanding through workplace surveys before you develop policies or training. The approach suggested below can help you to meet the positive duty:

### 4.3.1 Scan

- Familiarise yourself with your obligations under the Equal Opportunity Act.
- Familiarise yourself with this guideline.
- Read up about gender identity and issues associated with transitioning for transgender people.
- Use workplace surveys or data to understand any issues regarding discrimination against transgender people, including whether your employees understand issues around gender identity.



## 4.3.2 Plan

### Determine your plan of action

- Determine your plan of action based on the information you have collected from your scan – use this to help you to identify issues and set priorities.
- Outline the objectives you want to achieve to ensure discrimination does not occur.
- Identify policies and procedures you need to update or develop. For example, you may need to update your general policy dealing with equal opportunity and anti-discrimination laws to include sufficient detail on the issue of gender identity discrimination.
- Develop a training plan and strategy – for practical advice on what to include in the sessions contact the Commission or other organisations such as Transgender Victoria, industry bodies or trade unions who may be able to help.

### Plan to support all your employees

Employers have a legal obligation to ensure systems are in place to prevent gender identity discrimination from occurring even if they do not currently have transgender workers on staff. If you have a plan in place, you can effectively deal with reactions from other workers (see section 2.3) and it will be easier to respond to any difficulties if they arise. It will also help your staff understand the needs of any transgender clients. You should include the following information in your plan:

- strategies for managing other workers' reactions
- guidance for employees on how they can support others in the workplace
- strategies for creating a supportive workplace culture
- support for managers and workers at every level
- support strategies for transgender employees including clear information on making a complaint.

### Include specific information on gender identity discrimination in your equal opportunity policies and procedures

- Consult with employees and relevant contacts such as the relevant trade union, your industry body, Transgender Victoria or the Commission when revising or developing your organisation's equal opportunity policy.
- Develop a template transition plan, which you can adapt for current and future employees who are transitioning or may transition in the future.
- You can download a simple pro-forma and read some sample transition plans on our website.

### What information about gender identity can I include in the equal opportunity policy?

- A clear opening statement that sexual harassment and discrimination based on personal attributes protected by the Equal Opportunity Act, including gender identity, is against the law and will not be tolerated by your organisation.
- A clear definition of gender identity and discrimination under the Equal Opportunity and Sex Discrimination Acts.
- Background information based on part one of this guideline, including information on sex, gender, and transitioning and what these terms mean.
- Case studies illustrating examples of discrimination based on a person's gender identity in the workplace.
- Individual responsibilities and rights – the duty to treat others with respect regardless of their personal circumstances, background, or gender identity.
- The consequences for employees if they breach the policy.
- Information about your organisation's informal and formal complaints processes, and where individuals can get help and advice, or make a complaint.

### Include information on bystander reporting in your complaints process.

Many of the same principles that apply to encouraging victims to report apply to encouraging bystanders (such as co-workers) to report and advocate on behalf of victims.

You should include strategies in your plan to encourage others to report discrimination if they witness it. These could include:

- acknowledging the importance of bystanders in reporting discrimination if they witness it
- ensuring that bystanders do not experience victimisation or retaliation if they report discrimination
- keeping their identity anonymous as far as possible, in ways such as requiring the recipient of the informant (for example manager, sexual harassment officer) to keep it confidential – although note that anonymity may limit how you can use the information.
- applying appropriate sanctions or penalties when discrimination has occurred.

This demonstrates that your organisation takes discrimination seriously and can have a profound impact on the likelihood of further reporting if discrimination occurs.

### 4.3.3 Act - Implement your action plan

- Distribute and communicate your organisation's policy and complaints process.
- Distribute the policy to everyone at your workplace, including senior management. You might also ask staff to sign a copy acknowledging that they have read and understand the policy.
- Provide new employees with a copy of the policy as part of their induction.
- Communicate the policy at staff meetings.
- Display the policy in common rooms, notice boards and on the intranet if you have one.
- Make the policy accessible to everyone: that is, ensure it is accessible to employees from different cultural and language backgrounds, employees with disability, or those who work off-site or in remote locations.
- Remind staff about the policy at least annually, and more often if you are actively dealing with issues in the workplace.

**Provide training** – face to face equal opportunity training at least once every two years is recommended.

- Seek information from your employees about how much they know about gender identity issues and what they would like to hear about in your training.
- Take positive steps to train all employees, including all executives, managers and senior staff about transgender issues and equal opportunity law.
- Provide refresher training on gender identity discrimination.
- Shape the content of your training, and deliver it in a way that is engaging and easy to understand.

### 4.3.4 Review

#### Check your results

Examine the effectiveness of your training through feedback forms and staff surveys.

Identify areas for improvement to your training or opportunities to further stamp out discrimination that may be occurring in your workplace.

Check the effectiveness of the plan.

Monitor what happens with the plan, and revisit your approach if necessary – this should be part of the normal business planning cycle. This should include reviewing the complaints process, including strategies for supporting employees who experience discrimination.

Check manager and staff compliance with the policies.

Make any necessary changes to your organisation's policies and procedures that will prevent discrimination from occurring.

#### Examples of the positive duty in practice

A small, not-for-profit community organisation drafts an action plan for meeting its positive duty obligations under the Equal Opportunity Act. A key part of the action plan is an induction program for new employees. The induction program includes a learning module which helps new employees understand their obligations under the Act and includes information on gender identity issues. The organisation also rewrites its equal opportunity policy to include more specific information about gender identity, including notes on terminology and case studies.

A large corporation conducts a comprehensive review of its policies to see how it is meeting its positive duty. As part of the policy review, all staff complete a survey about their understanding of gender identity discrimination and about any challenges in meeting their obligations.

Key areas of uncertainty emerge from the workplace survey, so the corporation provides more frequent, up-to date training about the Equal Opportunity Act including specific information about gender identity discrimination. The corporation also addresses areas of uncertainty about gender identity issues in a revised equal opportunity policy.

The corporation also decides to develop a positive duty action plan. The action plan aims to outline clear goals, objectives, outputs, activities, expected outcomes and accountabilities. It clearly states the organisation's commitment to meeting the positive duty to eliminate discrimination, harassment and victimisation. The action plan includes reviewing and monitoring policies more regularly and clarifying procedures for staff to make a complaint or seek advice.

Staff are reminded about the business's policy at induction, and then on an annual basis, and undertake face to face training every two years.

# Part 5: Preventing and responding to discrimination against transgender employees - checklist

This checklist summarises the information in this guideline, and can help your organisation to meet the positive duty to prevent discrimination against transgender employees and respond effectively to complaints.

Remember, if you need more information or assistance, contact the Commission on 1300 292 153 or visit [humanrightscommission.vic.gov.au](http://humanrightscommission.vic.gov.au).

You can also seek advice from the organisations listed in Part 6 of this guideline.

- Amend all recruitment and employment forms to provide an option to self identify, or not specify at all, rather than including [ ] male or [ ] female boxes only.
- Educate yourself and others about gender identity issues, as well as on obligations under the Equal Opportunity and Sex Discrimination Acts.
- Ensure your equal opportunity policies include specific information on gender identity discrimination. Involve other employees in developing the policy and include senior management or external stakeholders in the process.
- Include a complaints process in your organisation's policy.
- Make the policy available to all staff – translate it and make it accessible for all employees, including those with disability.
- Distribute it to existing staff, and to new employees on their induction.
- Communicate it regularly so all staff understand that non-compliance is against the law. Consider reminders at key times, such as if you have an existing employee who will commence transitioning.
- Plan your organisation's approach for meeting the positive duty to eliminate discrimination, sexual harassment and victimisation in your systems of work.
- Provide a safe and supportive work environment for transgender employees. Consult with employees who are transitioning on how you can support them in this process and prevent discrimination from occurring.
- Ensure staff know about relevant supports that are available, such as an Employee Assistance Program.
- Look at your workplace to understand its culture and detect potential problems. Use data from staff surveys or exit interviews to identify the needs of your workplace.
- Make sure there is strong leadership at a senior level for a discrimination-free workplace and create a respectful culture toward all employees.
- Provide regular training and refresher training that includes information about gender identity issues and obligations under the Equal Opportunity and Sex Discrimination Acts and make them available to all managers and staff.
- Review, monitor and update your policy and complaints processes regularly, and use this information to rectify systemic issues that contribute to discrimination.
- Ensure bystanders are acknowledged in your complaints process.

# Part 6: Where else can I go for help?

## **Victorian Equal Opportunity and Human Rights Commission**

You can call the Commission's Enquiry Line on 1300 292 153 or (03) 9032 3583, or download the Equal Opportunity Act and find information on the Commission's website at [humanrightscommission.vic.gov.au](http://humanrightscommission.vic.gov.au).

## **Australian Human Rights Commission**

You can call the Commission's Enquiry Line on 1300 369 711 or (02) 9284 9600, or find information on the Commission's website at [humanrights.gov.au](http://humanrights.gov.au).

**Right Smart Employers Toolkits:** The Commission has created a suite of free online tools to help you understand and comply with the Equal Opportunity Act.

Simply complete the confidential self-audit tool to assess your equal opportunity compliance and find out where you need to do more. You can also download templates and checklists to help manage specific employment issues.

Visit [humanrightscommission.vic.gov.au/employers\\_toolkits](http://humanrightscommission.vic.gov.au/employers_toolkits) to find out more and access the toolkits.

**Training and consultancy:** Our education, training and consultancy services will help you understand workplace rights and responsibilities, meet your legal obligations and appreciate the benefits of promoting a culture of human rights and equal opportunity in the workplace.

For more information and to register online visit [humanrightscommission.vic.gov.au/training](http://humanrightscommission.vic.gov.au/training) or call (03) 9032 3415.

**Compliance review:** The Commission has the ability, on request, to conduct compliance reviews of an employer's programs and practices to determine and give advice about their compliance with the Equal Opportunity Act. This is another tool that the Commission can use to help you meet your obligations in relation to sexual harassment, discrimination and victimisation.

For more information call the Commission's Enquiry Line on 1300 292 153 or email [legal@veohrc.vic.gov.au](mailto:legal@veohrc.vic.gov.au).

**Australian Government Guidelines on the Recognition of Sex Gender:** These guidelines are only binding on Australian Government departments but may also assist you with terminology in your forms and records

<<http://www.ag.gov.au/Publications/Pages/AustralianGovernmentGuidelinesontheRecognitionofSexandGender.aspx>>.

## **Transgender Victoria**

(03) 9020 4642  
[transgendervictoria.com](http://transgendervictoria.com)

Transgender Victoria can provide you with information and advice on a range of issues and also provides training.



### **Gender Dysphoria Clinic – Monash Health**

(03) 9556 5216

Email [genderclinic@southernhealth.org.au](mailto:genderclinic@southernhealth.org.au)

The Gender Dysphoria Clinic provides an intake service for people who are seeking advice or treatment for Gender Dysphoria, including training for employers on the medical aspects of transitioning for individual employees.

### **Zoe Belle Gender Centre**

(03) 8398 4134

[gendercentre.com](http://gendercentre.com)

The Zoe Belle Gender Centre provides information and resources for anyone interested in the health and well-being of transgender, transsexual and other gender diverse people. This includes a useful 'question and answer' portal about transgender issues.

### **Victorian WorkCover Authority Victoria**

(03) 9641 1444

[victorianworkcoverauthority.vic.gov.au](http://victorianworkcoverauthority.vic.gov.au)

[info@victorianworkcoverauthority.vic.gov.au](mailto:info@victorianworkcoverauthority.vic.gov.au)

Victorian WorkCover Authority deals with Victoria's occupational health and safety laws.





# Contact us

Enquiry Line	1300 292 153
Fax	1300 891 858
NRS Voice Relay	1300 555 727 then quote 1300 292 153
Interpreters	1300 152 494
Email	<a href="mailto:enquiries@veohrc.vic.gov.au">enquiries@veohrc.vic.gov.au</a>
Live chat	<a href="https://livechat.humanrights.vic.gov.au">livechat.humanrights.vic.gov.au</a>
Twitter	<a href="https://twitter.com/VEOHRC">twitter.com/VEOHRC</a>
Facebook	<a href="https://facebook.com/VEOHRC">facebook.com/VEOHRC</a>

[humanrights.vic.gov.au](https://humanrights.vic.gov.au)