

# DISCRIMINATION AND RIGHTS

## WHAT IS DISCRIMINATION?

- Discrimination happens when a person is treated less fairly or bullied because of a personal characteristic they have, are presumed to have, or that people they associate with might have. A person who experiences discrimination because of a particular characteristic is treated worse than a person who does not have this characteristic.
  - For example, a man receiving in home care told his carer that he was in a relationship with another man. After this, the carer stopped helping with essential tasks, such as showering and going to the toilet. The carer discriminated against the man because of his sexual orientation and, it was later discovered, because he believed the client to be HIV-positive.

## HIV AND DISCRIMINATION

- It is unlawful to discriminate against someone on the basis of HIV status or related illness. HIV is recognised as a disability in both Commonwealth and Victorian law. This means people living with HIV are protected from unfair treatment and bullying on the basis of their status.
- People are protected from discrimination related to HIV even if:
  - Their health is not visibly affected by HIV
  - They do not have HIV, but are presumed to be HIV-positive
  - Others believe they may contract HIV in the future (e.g. the incorrect belief that all gay men will get HIV)

- There are very limited circumstances in which a person may be treated differently due to HIV status:
  - There is a real risk to health, safety, or property, and the different treatment is necessary to protect the person with HIV or to protect public health; or
  - The different treatment is needed to assist people with special needs or disabilities.
- In Victoria, certain religious bodies and organisations can still discriminate against people on the basis of gender identity and sexual orientation, lest such bodies be required to act against their religious beliefs or principles. However, religion-based aged care services that are Commonwealth funded are not allowed to discriminate against people on the basis of sexuality or gender identity.

## TYPES OF DISCRIMINATION

- **Direct discrimination:** This happens when someone is treated unfavourably because of a personal characteristic protect by law. It often happens when people make unfair assumptions about what people with certain personal characteristics can or cannot do
- **Indirect discrimination:** This happens when there are unreasonable requirements, conditions, or practices imposed that disadvantage a person or group of people because of a personal characteristic. These discriminatory behaviours can become an entrenched part of an organisation or community and can be reinforced by policies and procedures.

## RIGHTS AND LEGAL PROTECTIONS

If a person experiences discrimination, bullying, or stigma, they have a number of ways to lodge a complaint or assert their rights. In Victoria, the *Charter of Human Rights and Responsibilities Act 2006* (Vic), or the Victorian Charter, lays out several rights all people have. These include:

- Right to equality before the law and protection against discrimination
- Right to privacy
- Right to freedom of expression
- Right to freedom of thought, conscience, religion, and belief
- Right to liberty and security of the person
- Right to practice and enjoy one's culture, religion, and language.

For more information on discrimination can be found at <http://www.humanrightscommission.vic.gov.au/index.php/types-of-discrimination>

In aged care settings, the Victorian Charter can be used to question decisions, practices, and policies of services and health professionals. It cannot be used to take action for a breach of a right on its own; however, it can be used to support other legal actions. It can also be used to make a complaint to the Victorian Ombudsman, the Disability Services Commissioner, or the Health Services Commissioner.

## CHARTERS OF RIGHTS

The Client Charters outline the rights and obligations of clients and health professionals. They don't provide complaint mechanisms, but do provide a guide to the standard of care clients can expect. More information on the different charters can be found at [www.myagedcare.gov.au/financial-and-legal](http://www.myagedcare.gov.au/financial-and-legal)

The Client charters guarantee the right to:

- Safe and quality health care
- Respect, dignity, and consideration
- Be included in the decisions about your health care
- Be clearly informed about services
- Treatment options and costs
- Privacy and confidentiality
- Information on where and how to lodge comments and complaints.

In addition to the Client Charters, Victoria also has the *Victorian Charter Supporting People in Care Relationships*. It promotes respect and inclusion of both the carer and the person receiving care in relation to care plans, treatment options, and service delivery. Both carers and people being cared for have the right to:

- Support
- Recognition and respect, both as individuals and as people in a care relationship
- Be encouraged to take part in care planning and making decisions about care
- Have their views, needs, and cultural identity taken into account in decisions and matters related to care.