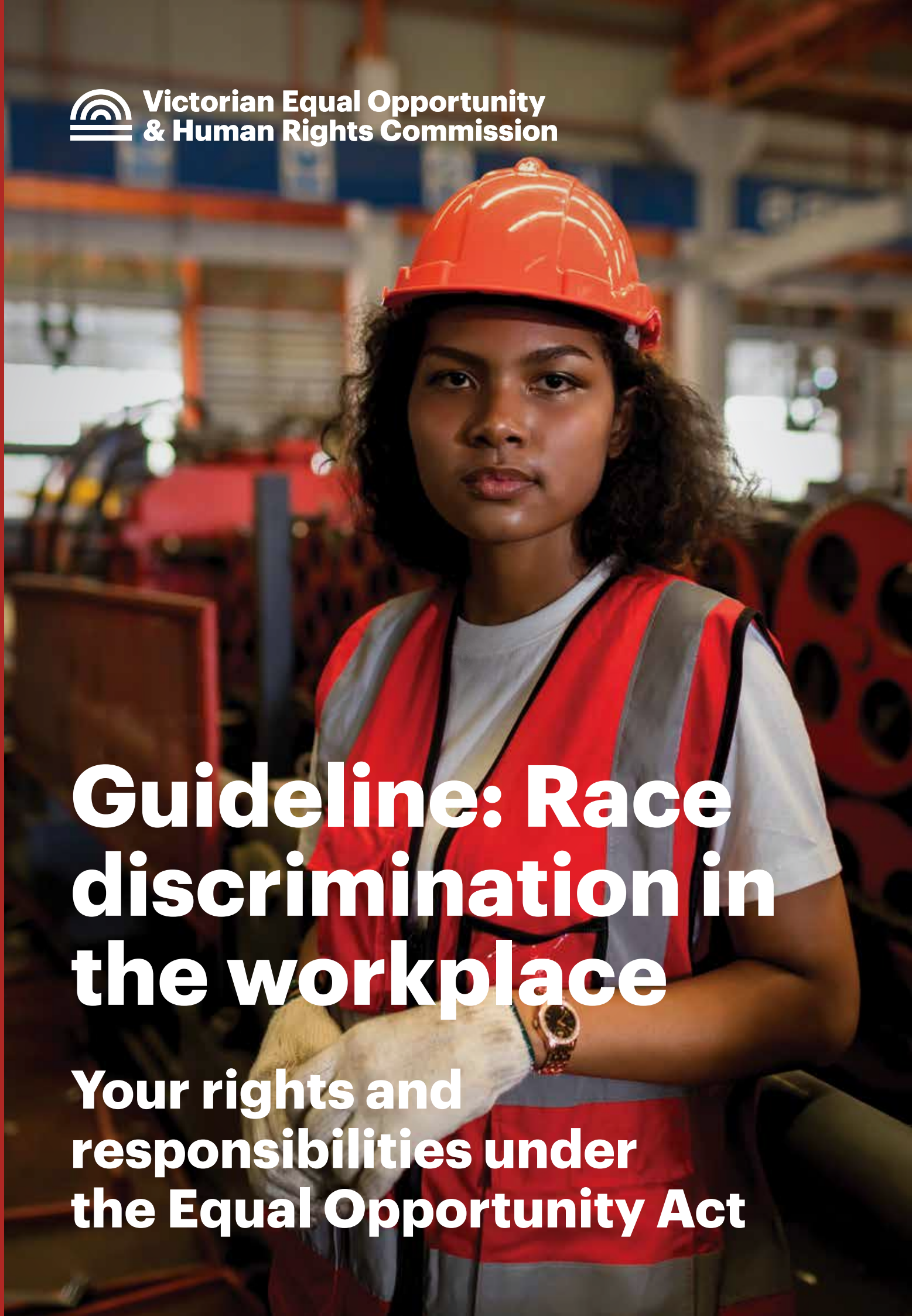
Victorian Equal Opportunity & Human Rights Commission



Guideline: Race discrimination in the workplace

Your rights and responsibilities under the Equal Opportunity Act

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Guideline: Race discrimination in the workplace – Your rights and responsibilities under the Equal Opportunity Act

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Victorian Equal Opportunity
& Human Rights Commission

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Acknowledgement

The Victorian Equal Opportunity and Human Rights Commission acknowledges Aboriginal and Torres Strait Islander people as the First Peoples, Traditional Owners and custodians of the land, skies and waterways upon which our lives depend.

Our office is located on the lands of the Wurundjeri people – the lands on which many of our team members also live and work. We acknowledge and pay our respects to ancestors of this country and Elders past and present. We extend that respect to all First Peoples.

We recognise that First Peoples are disproportionately affected by race discrimination. In moving forward to address race discrimination, it is important to acknowledge the ongoing harms that colonialisation causes to First Peoples communities, including entrenched and systemic racism.

We honour the tireless efforts of generations of First Peoples who have stood against racism and advanced the values of freedom, fairness and equality. It is through the ongoing efforts of First Peoples leaders and communities that language, lore, custom and culture continue and flourish.

We commit to working with First Peoples to try to prevent historical injustices from repeating and continuing, including through truth-telling and developing Treaty.

Content warning

This guideline discusses experiences of race discrimination and racism. We encourage all readers to take care when reading this guideline.

Quick navigation

I want to understand racism and why it happens	Go to section 2.1: *What is racism?*
I want to understand the impacts of racism	Go to section 2.4: *Impacts of racism*
I want to know what the Equal Opportunity Act says about employers' obligations around racism	Go to Chapter 3: *Understanding the law on workplace racism*
I want to know what steps to take to eliminate race discrimination in my organisation	Go to Chapter 4: *Understanding the positive duty*
What are the minimum standards for compliance with the Equal Opportunity Act?	Go to section 4.2: *Standards for compliance with the positive duty*
I want to know what anti-racism training I should implement	Go to standard 1: *Racial literacy*
I need to know what support services are available regarding racism	Go to Chapter 5: *Referral guide*

Commissioner's message

Racism is a persistent and corrosive problem in Victoria. It causes significant and extensive harm to Victorians, and is a barrier for many to reaching their potential in the workplace.

Although racism is prevalent across all areas of public life, it is particularly acute in the workplace. Racism impacts all workplaces and is not unique to specific people, communities or industries. Since 2018, the Commission has received more than 1500 complaints from Victorians who have experienced discrimination or vilification on the basis of their racial background and/or religious belief. In 2023, almost 50% of all complaints of race discrimination received by the Commission happened in the workplace. As barriers exist to reporting racism, we know this represents only a small proportion of what is occurring.

As a settler colonial nation, in Australia racism pervades systems, beliefs and behaviours. The systems we operate within are inherently racist. While this can be confronting for many Australians, without this recognition we cannot move towards a society free from racism.

To develop this guideline, we consulted widely and heard about the prevalence and painful impact of racism in Victorian workplaces. We are indebted to all organisations, communities and individuals that spoke to us about racism in the workplace, especially First Peoples and other racialised individuals who have allowed us to share their stories.

There is an urgent need for meaningful change from organisations to address racism. This means looking beyond popular diversity and inclusion models. While these may improve the representation of First Peoples and other racialised employees, they do not adequately address the underlying systems and attitudes that enable racism to persist.

This guideline is an essential tool for all employers to tackle racism in their workplace. It provides minimum standards that employers must meet to comply with their positive duty to prevent race discrimination under the *Equal Opportunity Act 2010* (Vic). The guideline also provides important information for First Peoples and other racialised employees about their rights.

This guideline challenges employers to look at the core of racism and consider how they can create anti-racist organisations. It is our hope that this guideline will lead to safer and more respectful workplaces that comply with the law and are free from racism.

Ro Allen
Victorian Equal Opportunity and Human Rights Commissioner

1.

About the guideline

Chapter 1 provides information on this guideline including its purpose, the Commission's authority, an outline of the consultation process undertaken and a note on language and terminology.

1.1 Purpose

This guideline assists employers to prevent and respond to race discrimination in the workplace and comply with the Equal Opportunity Act.

In addition to the requirement not to discriminate, employers must take reasonable and proportionate measures to eliminate discrimination on the basis of a person's race under the Equal Opportunity Act. This is known as the positive duty and extends to all forms of unlawful conduct under the Equal Opportunity Act (discrimination, sexual harassment and victimisation).

This means that it is not enough for employers to only respond to reports of unlawful conduct. Employers must take proactive steps to prevent unlawful conduct as far as possible. This guideline sets out 5 minimum standards to eliminate racism that all organisations must follow to comply with the positive duty (see **4.2 Standards for compliance with the positive duty**).

Racial literacy | **Policies and procedures** | **Organisational culture** | **Reporting and response** | **Continuous improvement**

Organisations that comply with the minimum standards will build anti-racist workplaces where everyone is treated fairly.

Who is this guideline for?

This guideline is written for:

- **employers** (and leadership team members, board members, human resource professionals, managers and supervisors) wanting to understand their legal obligations to eliminate race discrimination[a]
- **employees** looking to understand what actions their current or former employer should take to prevent and respond to race discrimination, what their rights are, how to support colleagues experiencing race discrimination at work and where to go for help.[b]

a Where this guideline uses 'employer', it refers to any person or organisation that employs or engages another to undertake work under a contract of services or on commission.

b Where this guideline uses 'employee', it refers to all paid workers and staff including ongoing and fixed-term, casual and contract workers, consultants and paid interns.

1.2 Authority

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

- the Equal Opportunity Act
- the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (the Charter)
- the *Racial and Religious Tolerance Act 2001* (Vic)
- the *Change or Suppression (Conversion) Practices Prohibition Act 2021* (Vic).

Our role is to protect and promote human rights, and to eliminate discrimination, sexual harassment, victimisation and change or suppression practices as much as possible in Victoria.

We have issued this guideline under section 148 of the Equal Opportunity Act. While this guideline is not legally binding, a court or the Victorian Civil and Administrative Tribunal may consider whether a duty holder has complied with this guideline when considering whether discrimination has occurred.[1]

The Commission may also use the guideline to:

- investigate systemic issues of race discrimination in the workplace
- conduct reviews
- educate employers
- assist Victorians to understand their rights.

This guideline does not cover every possible circumstance that employers may encounter. If you need more information, consider seeking legal advice or contact the Commission's free Enquiry Line on **1300 292 153.**

1.3 Consultation

This guideline has been developed in consultation with the community and stakeholders under section 148 of the Equal Opportunity Act including[2]:

- First Peoples and multicultural professional networks
- First Peoples and multicultural advocacy organisations and service providers
- government departments and authorities
- anti-racist and diversity practitioners
- community legal centres
- unions
- employment bodies
- experts in racism and/or workplace discrimination.

The Commission would like to thank everyone for their participation. We acknowledge the emotional cost that accompanies conversations about racism. These consultations demonstrated the pervasiveness of workplace racism and how much work is needed to prevent and address racism, and to support those affected by it.

This guideline draws on our consultation, research, best practice evidence and our own expertise developed through the Commission's services.

All case studies and quotes either are hypothetical or have been anonymised to protect the privacy of those involved.

1.4 Language and terminology

Language is a powerful tool and using certain words can shape our thoughts and behaviours. Terminology and language when discussing racism are complex and contested for this reason.

It is challenging to find the best way to describe people's racial background. There are many terms created (often by those not from these groups) and used to describe people who are 'non-white' or otherwise more likely to experience racism.

These terms include:

- culturally and linguistically diverse (CALD)
- people of colour (POC)
- Black, Indigenous and people of colour (BIPOC)
- non-English-speaking background (NESB)
- culturally and racially marginalised (CARM).

Some terms do not directly refer to race, instead using words that may seem less confronting such as 'culture'. However, using the term 'culture' rather than 'race' can be unhelpful and inaccurate, as it does not always indicate whether someone experiences racism.

For example, a Black woman who has been born and raised in Australia will experience racism due to the colour of her skin, not cultural differences.

Acronyms and other grouping terms ('multicultural', 'diverse' etc.) can also be misleading in their presentation of a single group, as they do not reflect the diversity, unique experiences or existing racial hierarchies of those within the broad grouping. Another critique of these terms is that they position 'whiteness' as the dominant group and all other races or cultures as 'other'.

Language in this space is continually evolving and there are limitations to every term. However, based on current research, community preferences and the context of this guideline, when we refer to groups most likely to experience racism we refer to **First Peoples and other racialised individuals**.

This is a conscious decision to acknowledge that racism is rooted in the active process of racialisation that marginalises some communities based on power and prejudice, not biological fact (see **2.1 What is racism?**). When we say 'racialised' we refer to communities that are marginalised (or negatively racialised).

We distinguish First Peoples because of their unique experiences of racism due to the continuous impact of settler colonialism in Australia (see **2.3.4 Who is affected by racism**).

For information on other terms used in this guideline, see the **Appendix: Key terms.**

Why this guideline refers to racism

Racism is the underlying cause of race discrimination. Employers must adopt holistic anti-racism strategies to effectively follow the Equal Opportunity Act's requirement to take reasonable and proportionate steps to eliminate race discrimination from the workplace as far as possible. To change behaviour, organisations must understand the background and systems that drive and facilitate racism more broadly.

2.

Understanding workplace racism

Chapter 2 provides information on workplace racism, including what racism is, why, where, when and how it occurs, and who it affects. It also provides information on the impacts of racism, barriers to reporting and the lack of available data on workplace racism.

2.1 What is racism?

Racism is a belief that particular races are inferior or superior to others. It is expressed through a complex system of power, societal structures, actions and attitudes.[3]

Racism can be conscious and unconscious, obvious and subtle. It can take many forms and is the result of a combination of individual attitudes, social values and institutional practices.[4]

Race is not a scientific concept that reflects biology – it is a social construct. During European colonisation, it was used to categorise people into 'racial groups' by their skin colour, the languages they spoke, their country of origin, their cultural practices and/or their religion.[5] This categorisation was purposeful and used to justify colonisation, slavery and other forms of subjugation.

When people are categorised based on race, it is called **racialisation.**

Racialisation is a way that the powerful people and organisations that control resources and influence, systematically exclude minorities in order to make themselves more powerful. It is the basis on which hierarchies are structured and racism occurs, where some groups are racially privileged (or positively racialised) and others racially marginalised (negatively racialised).[c]

Poor understanding of racism

Throughout our consultations we heard that there is a low level of racial literacy within Victorian organisations, particularly in leadership.

Racial literacy means understanding of racism. This includes understanding how and when it occurs, having the skills to identify, prevent and respond to it, and understanding that true equality means engaging with anti-racism.[6] Racial literacy is both a conscious and unconscious practice. While some people may have developed an understanding of racism through lived experience, others may need to be educated (see **minimum standard 1**).

In Australia, racial literacy requires acknowledgement of our colonial history and the impacts it continues to have on racial inequality.[7] The Australian community generally has poor understanding of racism and often denies its existence or avoids discussion around racism. Instead, Australia obscures its dark history of colonialism behind conversations on 'multiculturalism'.[8d]

c Throughout this guideline, when the term 'racialised' is used we mean 'negatively racialised'.

d An example of this nationally is the establishment of Harmony Day. Australia is the only country that has rebranded the International Day for the Elimination of Racial Discrimination, which commemorates violence in South Africa that erupted following a peaceful demonstration against apartheid. Our Federal Government removed the reference to race in 1999, shifting the conversation to the more idealistic concept of 'harmony' and diluting the nation's collective understanding of racism.

2.2 Why racism occurs

People are not innately racist. Racism is the result of centuries of economic and political power clashes and practices that have informed present-day systems, attitudes and behaviours.[9] Addressing racism requires grappling with these causes or drivers.

2.2.1 The continued impact of colonisation

The foundation of Australian society centred on European colonialism, which denied the existence of First Peoples and their longstanding ownership of the land. The British Empire declared Australia terra nullius (meaning the land was uninhabited) despite the presence of First Peoples. This was a deliberate act that disregarded First Peoples' sovereignty and personhood in order to take control of the land.[10] These actions were reinforced by racist beliefs about the colonisers' own superiority.[11]

Paternalistic colonial attitudes and systemic racism against First Peoples continue today.[12] For example, racist colonial ideals and practices that underpinned the Stolen Generations, where First Peoples children were forcibly removed from their families to be raised in 'white' environments, are echoed today in the disproportionate removal of First Peoples children from their families. This has led to ongoing trauma for First Peoples communities.

2.2.2 Fear of foreigners and maintaining power

During colonisation and for much of the 20th century, non-white immigrants were largely unwelcome in Australia.[13] This was spurred by entitlement and fear of the outsider taking any power held by white Australians. This is an example of 'intergroup threat': a combination of anxiety and uncertainty about other groups and perceived threats from those groups to wellbeing, safety, power, resources and identity.[14]

Laws and policies of the early 20th century reflected those feelings of intergroup threat. The White Australia policy was a set of racist policies and legislation that aimed to prevent non-Europeans immigrating to Australia in order to 'keep Australia British'.[15] This approach was also reflected in the negative experiences of early European migrants from Greece or Italy in the postwar period as they were not yet considered part of dominant white culture. Today this underlying racism continues to manifest in certain national immigration and asylum-seeker policies and in anti-immigration rhetoric.[16]

2.2.3 Whiteness and white privilege

Whiteness is a social construct that exists in Western countries, where white people are considered to be the norm and non-white people are seen as 'other'.[17] This inherently privileges white people (or those of Anglo-Celtic and some European ancestries) and their stories, religions, identities, values, languages

and cultures, and reinforces social and political power structures in Australian society.[18] The concept of privilege in this context often just means access to basic rights that are denied to First Peoples and other racialised individuals.[19]

This does not imply that white Australians have never struggled or worked for what they have achieved but, rather, that they do not experience the same systemic barriers as non-white Australians and are 'racially privileged'.

On top of these broad societal drivers, there are certain workplace drivers that can reinforce and exacerbate racism in the workplace (see **2.3.3 Where workplace racism occurs**).

2.3 Experiences of workplace racism

Through our consultation we aimed to better understand how racism occurs in Victorian workplaces.[e] This section describes those findings, including how, when and where racism occurs, and who it affects.

What is the difference between racism and race discrimination?

Under the Equal Opportunity Act, race discrimination occurs in certain circumstances when someone is treated unfairly because of their race, skin colour, ancestry, nationality or ethnic background.[20]

Racism is broader than race discrimination, so some experiences of racism will not meet this definition (other expressions of racism include vilification and hate crime). Racism causes race discrimination; as such, any meaningful attempt to prevent and respond to race discrimination requires addressing the underlying racism.

See **Chapter 3: Understanding the law on workplace racism** for more detail.

2.3.1 How racism occurs

> **Wherever racialised Victorians can be found, there will be racism. It just depends on what form that takes. – Consultation participant**

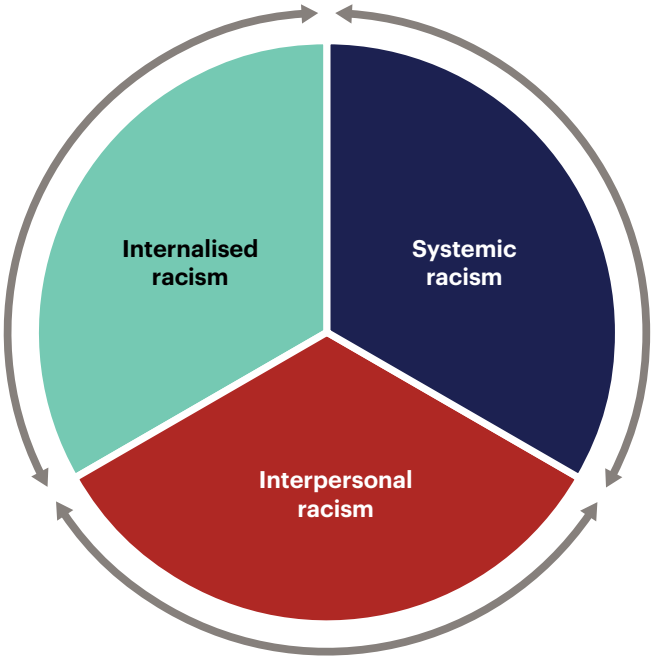
Racism in Victorian workplaces takes many different forms. In consultations, participants recounted a wide range of workplace racism examples, including interpersonal racism (covert and overt), microaggressions, organisational bias, hostility towards cultural needs, internalised racism and much more.

e Many of the experiences we heard about could also amount to race discrimination.

Examples of workplace racism from consultations	
First Peoples	• First Peoples being asked about their skin colour or insinuations made that some First Peoples are not 'black enough' e.g. 'If you're Aboriginal, how come you are white?' • Jokes about First Peoples 'going walkabout' or 'They couldn't possibly have that many cousins' in relation to Sorry Business leave[f] • Negative stereotyping or comments about First Peoples being lazy, criminals or drug-affected
Racialised communities	• Being asked 'Where are you from?' in contexts where it is not relevant • Inappropriate questions on or touching someone's hair without permission • Complaints or comments about someone's cultural food being 'smelly' or 'gross' • Assumptions made about people's jobs because of their race or background e.g. 'Oh you're Indian so you must be working in IT' • Assumptions that they only got their job as 'the diversity hire' • Ridicule for or being barred from speaking in a language other than English • Surprise about how someone is 'so good at speaking English' or making fun of their accent • Being told they are 'playing the race card' if they speak up against racism • Being told they are 'too loud, angry or aggressive' • Stereotypes based on their culture e.g. 'You're not a typical Asian woman – you have an opinion' • Assumptions that they are always the junior employee even if they are the manager or supervisor • Being called the name of another employee of the same race or just another racialised colleague • Racist jokes based on stereotypes • Being told they're not a 'cultural fit' for the organisation • Missing out on job opportunities because they have an 'ethnic-sounding' name • Colleagues being surprised that they do traditionally 'Australian' activities like watching the footy or going to the beach.

f Many First Peoples mourn the loss of a family or community member by following traditional ceremonies and practices known as Sorry Business. For more information, see: commonground.org.au/article/death-and-sorry-business.

Racism can be systemic, interpersonal or internalised.[21] These layers interact and mutually reinforce each other to embed racism in our society.



Interpersonal racism

Interpersonal racism refers to racism between individuals where an individual's beliefs, attitudes and actions discriminate against, exclude or disadvantage racialised people. This can be intentional or unintentional and can include microaggressions or casual racism such as comments, questions, assumptions or actions that perpetuate racist ideas.[22]

Interpersonal racism can also be intercultural or interethnic, which means prejudice or discrimination that exists between 2 or more different ethnic groups.

The nature of workplace racism has changed over time. Consultations suggested that overt racism – while still present in the workplace – has largely been overtaken by more subtle or insidious examples of racism that can be difficult to articulate and challenge.

> **The manifestations of racism may appear subtle initially. However, when aggregated, these acts of discrimination can have a significantly harmful impact. – Consultation participant**

> **I have experienced so many instances of casual racism, whether or not people are conscious of what they've said or not – It's always on you to prove something. I always have to explain myself. – Consultation participant**

Despite the increasingly subtle nature of the conduct – it still amounts to racism. We heard multiple reports of informal racist comments about languages, cultural/religious practices and meals.

> **Racist remarks can actually happen inadvertently. The person may not be intending to be racist, but even common ones like 'your English is great' – the person saying it doesn't realise the impact of that. – Consultation participant**

Spreading harmful stereotypes or beliefs about people through covert or subtle racism is so common that many First Peoples and racialised employees consider experiencing racism from customers, colleagues or managers as just part of the job. This can be the result of either conscious or unconscious racial bias.

Conscious and unconscious racism

Conscious racism	Conscious racism (or conscious bias) is where someone is aware of the racist nature of their conduct or behaviour. An example is a manager choosing not to promote a First Peoples employee because they hold false stereotypical views about First Peoples.
Unconscious racism	Unconscious racism (or unconscious bias) is where someone is unaware of the racist nature of their conduct or behaviour. An example is a team member expressing surprise that a new staff member communicates well because they are Vietnamese.

Managers who hold unconscious bias may disproportionately critique the work and performance of First Peoples and other racialised employees. Managers may also unfairly accuse First Peoples and other racialised employees of misconduct allegations, leading to disciplinary action or formal performance management processes.

Many forms of interpersonal racism can be difficult to identify, as those responsible for the behaviour – and the employers – may not consider these to be racist. However, intention is not relevant to whether conduct is racist.

Microaggressions can be incredibly damaging to the person experiencing them.

> **People look at your cultural and religious backgrounds and start mocking you based on that. That can be really daunting and demoralising for employees. – Consultation participant**

Racial microaggressions

Racial microaggressions are unintentional or intentional 'everyday' instances of racism. This may be comments or jokes based on racial stereotypes and assumptions.

Common examples are:

- questions like 'Where are you from?'
- comments about someone's accent or how they speak English
- jokes about someone's race determining their work ethic or career.

Getting people to acknowledge and identify the harm of microaggressions can be hard because perpetrators of this behaviour often minimise it, arguing they 'didn't mean it', were 'only joking' or 'didn't intend to be racist'. However, intent is not relevant to the impact on those affected.

Systemic racism

Also called structural racism, systemic racism refers to cultural norms, laws, ideologies, policies, procedures and practices that directly or indirectly discriminate against, exclude or disadvantage people from racially marginalised groups and maintain racial inequality.

Systemic racism exists because the systems that society has developed are based on racist principles and practices.

> **I think that employees have a really clear definition of what overt race discrimination is when it comes to things like 'I'm not hiring this person because they have an accent' or 'because they dress like this' or 'because XY&Z'. But I think when it comes to more covert or systemic instances of race discrimination, there is less of an understanding or even inclination to describe it as race discrimination. – Consultation participant**

Some organisational policies and processes may appear neutral but in practice disadvantage people on the basis of race. Systemic racism can occur within recruitment and promotion policies, leave policies and other workplace systems (see **2.3.2 When racism occurs**). These policies and systems are often based on assumptions that every employee has the same cultural requirements.

> **There are lots of things which are embedded and entrenched in organisation culture which are based on white normative [culture] and therefore not considered as racism. – Consultation participant**

Discriminatory policies or norms could include:

- rejection or overlooking of overseas professional qualifications or experience
- prohibition of languages other than English being spoken in the workplace
- restrictive dress codes that forbid certain cultural clothing or hairstyles
- hostility or resistance to meeting other cultural or religious needs.

A common example raised in consultations is cultural leave or bereavement leave policies for First Peoples – both in access to these entitlements and in performance management upon return.

Case study: discrimination in performance management and victimisation

Sam is a First Peoples woman who has worked in a customer service role for 6 months. She notices that her supervisor has unjustly criticised her work and questioned her when she requested personal leave (even though Sam has provided medical certificates for her absences), commenting that First Peoples are often trying to 'game the system'. Sam notes that the manager does not scrutinise her white co-workers to the same extent.

Sam lodges a discrimination complaint with Human Resources due to this unfair treatment, hoping that it can be resolved quickly. However, in apparent retaliation for her complaint, Sam's supervisor recommends that her employment be terminated. Sam lodges a complaint with the Victorian Equal Opportunity and Human Rights Commission, saying that she believes she's experienced race discrimination and victimisation at work.

In response, the employer investigates the issue and finds that Sam has been treated unfairly. Sam is reinstated as an ongoing employee and provided with career counselling and the option of moving to a different office.

Internalised racism

Internalised racism is where an individual believes or even promotes racist beliefs or attitudes directed at their own race or cultural group. Internalised racism can cause people to think badly of themselves, or reject or show hostility towards their own community, such as engaging in lateral violence or not wanting to engage with people of the same race.

This is an effect of racism where First Peoples or other racialised individuals internalise the prejudice they have experienced.

Internalised racism can cause individuals to feel they have to separate themselves from their community or culture in order to fit in or succeed at work.

Entrenched racism in workplace culture can cause First Peoples and other racialised employees to feel that they have to hide parts of themselves or their culture at work. They may feel they have to assimilate or code switch at work in order to succeed. Code switching is when people adjust their behaviours or mannerisms based on the environment, for example, putting on a more 'Australian' accent in the workplace to fit in.

Lateral violence

In consultations, there were also discussions of First Peoples and other racialised employees attacking members of their own cultural group. This is referred to as lateral violence.

Lateral violence is where members of a marginalised group harm others in the same group. The term 'violence' here does not just refer to physical violence but also social, emotional, psychological, economic and spiritual violence.[23] It can include gossiping, jealousy, bullying or shaming others.

It often occurs due to frustration, distress or internalised bias caused by collective historical injustice, experience of trauma and loss of power.

Power imbalances between groups mean that people may consider it 'safer' or more acceptable to attack members of their own group, rather than the dominant group or system, to access what little power is available to them.[24] This can be conscious or unconscious.

Workplace racism can negatively affect the self-worth of First Peoples and other racialised individuals, and impact how they make decisions around their careers. They may make choices in order to avoid or reduce negative or traumatic experiences. For example, First Peoples and other racialised employees may choose not to put themselves up for a promotion or opportunity because they do not want to deal with discrimination in the process or, worse, believe the false narrative of First Peoples or other racialised staff not being good enough for those positions.

> **Self-implemented bias can prevent people from applying for leadership and promotions because they can't see somebody who looks and speaks like them in the leadership position. – Consultation participant**

2.3.2 When racism occurs

Race discrimination can affect employees in different ways during the employment cycle.

Point on employment cycle	Example of how racism can occur[g]
Sourcing of candidates Bias can occur in the ways organisations recruit employees.	Organisations only advertising roles for, or targeting recruitment campaigns at, specific education institutions or professional networks that have low representation of First Peoples or other racialised individuals
Recruitment process Both conscious and unconscious racial bias can affect recruitment decisions based on perceived 'merit'.	A recruitment panel not shortlisting a racialised applicant for a customer-facing role because they assume the applicant's accent will be hard for customers to understand
Onboarding First Peoples and other racialised employees entering an organisation may not feel culturally safe.	A racialised employee being introduced to colleagues by reference to their race rather than their professional background or role
Remuneration First Peoples and other racialised employees may experience a 'racial pay gap' between them and their white counterparts.	A racialised employee being offered a lower salary despite having the same skill set and experience as a white counterpart because their qualifications are from overseas
Development and promotion Employees' access to training, development and other career opportunities may be impacted by having limited connections in the organisation due to their race.	A racialised employee not being able to access the same development opportunities because their boss does not see them as the white normative idea of a 'leader'
Retention Employees are more likely to stay in workplaces where they feel safe, have purpose and can progress their careers.	A racialised employee who has missed out on multiple promotional opportunities despite their skills looking for jobs outside the organisation
Separation First Peoples and other racialised employees may leave the workplace if they are not being valued.	A racialised employee leaving the workplace after experiencing racism that was not addressed and telling others not to work there.

g These examples of how racism can occur may constitute race discrimination depending on the circumstances.

In our consultations, the Commission heard that recruitment, promotion, development, remuneration and retention are particularly problematic parts of the employment cycle for First Peoples and other racialised Victorians.

Recruitment

> **Most of the time position descriptions are made in a way which excludes people from migrant backgrounds altogether because there's so much jargon or waffling of words that doesn't give you a real picture of what exactly they are looking for. – Consultation participant**

Racial bias can prevent First Peoples and other racialised individuals obtaining work despite the fact that workplace diversity is known to increase both productivity and performance.[25]

Research shows that racialised people must apply for more roles to get an interview than white applicants with equivalent qualifications. Recent studies show that racialised applicants receive almost half as many positive responses than white counterparts with the same skills and qualifications listed on an application.[26]

> **Individuals recount instances of having to change their names. Often, when they speak on the telephone, their racial identity may not be immediately apparent. However, upon meeting them in person, there's a noticeable shift in attitude, making it difficult for them to secure desired positions. Consequently, they often find themselves settling for roles they are overqualified for. – Consultation participant**

Racial bias can occur at various stages of the recruitment process:

- **Determining selection criteria:** Requiring formal qualifications (from specific institutions or countries), a written application or Australian work experience can exclude people who do not speak English as a first language (or did not learn English in Australia) and can prevent racialised people obtaining work.[27]
- **Sourcing candidates:** Recruiting through informal channels, such as via referrals from colleagues or networks, can reinforce racial bias in recruitment, as First Peoples and other racialised individuals may not have access to these networks.[28]
- **Application formats:** There is a certain level of assumed knowledge needed to complete applications. This may be in the language used or in what is expected of applicants, such as addressing the criteria in a particular way.
- **Reviewing applications:** Both conscious and unconscious bias (where the selection panel have particular western traits in mind) may result in assumptions being made about a person's ability based on their name, accent, where they obtained their qualifications or cultural, racial or religious background.[29]
- **Interviewing candidates:** Conversational-style interviews may create barriers for racialised applicants who do not speak English as a first language, communicate in different ways or are not comfortable speaking about their achievements if this is considered rude or inappropriate in their culture.[30]

Remuneration

Once First Peoples and other racialised employees secure employment, they are often paid less than their white counterparts.[31] The racial pay gap sees racialised men paid as much as 20% less than their white male counterparts and racialised women paid as much as 36% less.[32]

This can be seen in direct pay discrepancies, but also through First Peoples and other racialised employees being given fewer shifts, being offered roles of comparable value at lower pay or receiving smaller (or no) bonuses. Currently 1 in 4 permanent skilled migrants work in jobs below their skill level.[33] While direct racial bias is a key factor in the racial pay gap, there are other drivers, including casual or informal practices when it comes to bonuses or promotions that leave room for individual bias.

Promotion and professional development

> **As you get further up the ladder, it seems, you know, it's like a thinning out depending on which organisation you're in. There's less diversity generally at the top. – Consultation participant**

First Peoples and other racialised employees may be discouraged from or denied career opportunities due to racial bias and discrimination. A lack of First Peoples and other racialised employees in leadership positions and inadequate support from colleagues (either formally through mentoring programs or informally via encouragement) can be contributing factors.

> **It doesn't matter if you're the best performer you know or the best at your job or you've changed this organisation for the better or you've done these great things. Talent doesn't matter. It's all about relationships and if you can't build relationships with an organisation's largely white leadership... you don't have a chance. – Consultation participant**

Common examples of racial bias towards First Peoples and other racialised employees in promotions and development are:

- **Stereotyping:** being seen as less ambitious or overlooked for promotions because they do not adopt 'Western' leadership traits such as being self-promoting and assertive or direct Australian cultural norms[34]
- **Higher expectations:** being required to have more work experience and prove themselves more than white counterparts[35]
- **Behaviour:** being punished for adopting behaviours that would otherwise be acceptable for white employees (for example, being assumed to be aggressive if they display authoritativeness or assertiveness)
- **Networking:** being denied access to important networking and professional development opportunities.

Case study: racism in promotion and professional development

Aaron worked at a large architecture firm. When he was hired, he was told there were many opportunities to develop as a designer and that employees often received internal promotions.

After 18 months in the role, Aaron was performing his duties well but noticed that he wasn't invited to work functions and was denied access to training. He was looking forward to becoming a manager; however, despite positive feedback from his supervisors, he was overlooked for promotional opportunities while his white colleagues who started at the same time were already becoming managers or being given opportunities to act up.

The Melbourne office wasn't very diverse. Aaron was one of only 5 people from racialised backgrounds at the office, with very limited representation in the leadership team. When he asked his supervisor why he hadn't been promoted, Aaron was told there were 'cultural differences' between him and the others, and that he wasn't the right 'cultural fit' for the leadership team.

Aaron left the company feeling burned out and undervalued. Shortly after leaving, he lodged a discrimination complaint with the Victorian Equal Opportunity and Human Rights Commission on the basis of race. Aaron and the company participated in a conciliation process, resulting in Aaron being awarded damages for stress, humiliation and the loss of promotional opportunities. The company also instituted a new anti-racism training program for all staff and updated its recruitment and retention policies to ensure they were compliant with equal opportunity law.

Retention

Low retention of First Peoples and other racialised employees is a common result of workplace racism. Racialised employees leave workplaces at a higher rate than other employees unless genuine efforts are made to address and prevent racism.

> **[First Peoples' experiences of racism] can have a really significant impact and result in fear and underconfidence to go back into the workplace and stop them from getting really great opportunities in the future. – Consultation participant**

First Peoples employees who have experienced unfair treatment at work are twice as likely to be looking for a new employer in the next year compared to those who rarely or never experience it.[36]

> **People of colour [or those from] diverse cultures etc. leave the organisation because they weren't being valued. – Consultation participant**

There are various reasons why First Peoples and other racialised employees may decide to leave a workplace:

- **Direct experience of racism:** Experiencing or witnessing racism can drive First Peoples and other racialised employees to leave a workplace.
- **Workplace safety:** Many First Peoples and other racialised employees feel unsafe, tokenised or unwelcome in their current workplace.
- **Reporting processes:** Reporting and complaints processes and outcomes often fail to meet the needs of First Peoples and other racialised employees, ultimately protecting the organisation or status quo.
- **Organisational responses:** Organisational responses to workplace discrimination often leave First Peoples and other racialised employees feeling undervalued and unsupported.

- **Workplace culture:** First Peoples and other racialised employees will not stay in workplaces that do not value diversity or commit to addressing racism.
- **Cultural load:** First Peoples and other racialised employees may be expected to lead diversity/inclusion work without the necessary support or sponsorship, leading to burnout.

2.3.3 Where workplace racism occurs

During consultations we heard that racism is not limited to particular industries or sectors, but is prevalent across all Victorian workplaces.

> **I don't think there is such a thing as a concentration of racism, I think it's everywhere. – Consultation participant**

However, there are specific organisational characteristics, drivers and risk factors that increase the likelihood of racism occurring and potentially reinforce or exacerbate it, including the following.

Organisations with skewed workforce composition

We heard in consultation that industries with a higher concentration of migrants or workers on working/temporary visas such as manufacturing, warehousing and processing are common hotspots for racism. This is linked to the frequent power imbalance between employers and employees. Our consultation raised themes of adverse or exploitative working conditions, including poor roster times, dangerous or unappealing tasks and lower wages given to racialised employees.

Conversely, organisations with few First Peoples or other racialised employees may lack cultural safety, causing those employees to feel isolated or tokenised.

> **Where you've got a scenario where the vast majority of people are from an English-speaking cultural background, but you've got a small minority in there, then that can be a recipe for exclusion. – Consultation participant**

Systemic racism has created a lack of representation in leadership, with recent studies finding that approximately 95% of senior leaders in Australia have an Anglo-Celtic or European background.[37] A lack of racial diversity in leadership can lead to further discrimination, bias (particularly within recruitment, promotion and professional development) and reduced impetus for system change.

Small businesses and/or organisations without dedicated human resources

Human resources staff help organisations manage accountability and employer–employee relationships, but are often considered a specialised and expensive investment. Small businesses and organisations often operate without them. Limited resources, oversight and internal support systems – including those traditionally provided via human resources staff – can leave First Peoples and other racialised employees susceptible to isolation, exploitation and workplace racism.

Therefore, when First Peoples and other racialised employees experience racism, there is often no reporting pathway other than the manager/owner, who may themselves be the perpetrator of the conduct or victimise the employee for coming forward.

Customer-facing organisations

> **Customer abuse and violence or racial harassment is common. There is this real culture of 'It's just another day in retail' or, you know, 'That's just part of the job'. – Consultation participant**

We identified in our consultations that employees working in industries or organisations with frequent customer interaction such as services or hospitality are also more likely to experience workplace racism. Employees can be exposed to customers' racist beliefs or behaviours, which may not be adequately managed or prevented by employers.

Organisations with informal working arrangements

> **[Racialised workers are] already likely to be clustered in forms of employment in industries where exploitation is rife, so they also don't necessarily see that there are alternative options. – Consultation participant**

Employees working in industries with informal business models and/or gig economy workers including rideshare, courier and other subcontracting industries often lack transparent contracts and regulation.[38] As a result, such employees are prone to racism and exploitation, without the proper avenues to report racism from customers, colleagues or employers.[39]

Organisations with a lack of racial diversity data

Most organisations do not collect cultural or racial diversity data. This can indicate an organisation's unwillingness and/or inability to engage with the issues of systemic racism. It also prevents organisations from having full oversight of the issues and therefore addressing poor racial diversity as a driver of racism.

> **In our workplaces, even if the data is not there, you can clearly see it. If everyone just went to their senior leaders or executive board meetings, you will be the only person of colour talking to a sea of white people. – Consultant participant**

While the *Gender Equality Act 2010* (Vic) requires Victorian organisations to collect gender-related data to address gender equality, there is no such requirement for race.[40] This limits organisations' understanding of First Peoples and other racialised employees, including their experiences, wellbeing and career progression.

Organisations with a lack of racial literacy

Workplaces that do not have a good understanding of racism are more likely to demonstrate racial bias and discriminatory behaviours.[41]

In many organisations there is a focus on promoting diversity and inclusion. However, these concepts do not engage directly with racism or address structural issues in the workplace, so this focus has limited impact.[42]

> **[People] don't quite understand how it happens in normal day-to-day life. They can talk about it conceptually, but can't connect it to harmful behaviours and biases in everyday life, communities and workplaces, especially their own. – Consultation participant**

If people do not experience racism themselves, it can be hard for them to identify it. White employers often have difficulty identifying racism within their work systems and everyday practices, leaving the burden on First Peoples and other racialised employees to educate their superiors and other staff. Building this understanding is the first step for organisations to address racism (see **minimum standard 1**).

> **[Workplaces] first of all don't really understand what racism is and second of all don't really have a language with which to talk about it. – Consultation participant**

Cultural load

When an organisation has low racial literacy, it often falls on the shoulders of First Peoples and other racialised employees to educate the organisation – this is referred to as cultural load.[43]

This is an additional workload which is often carried by First Peoples and other racialised employees who are expected to educate their colleagues and leaders about cultures, experiences and perspectives. This can include having to undergo the exhausting or even (re)traumatising process of recounting their experiences of racism.[44] This additional load can be especially challenging for First Peoples employees.[45]

See **minimum standard 2** for how to address cultural load.

Organisations with a lack of cultural safety

Cultural safety is a concept created by Māori practitioners which has been adapted to the Australian context by First Peoples.[46] It refers to a positive environment where someone's cultural identity is not threatened but, rather, valued in the workplace.[47] This means that people treat others with respect and professionalism regardless of race or culture, and that workplaces encourage flexibility and value different ways of being.[48]

Culturally unsafe workplaces disregard or ignore the experiences of First Peoples and other racialised employees, are unlikely to have supportive or trusted reporting processes and often have poor workplace cultures overall.

2.3.4 Who is affected by racism

Racism is experienced in Australia by people outside the dominant white culture. Although there might be negative assumptions made about white people, such assumptions are not racist because racism is linked to systemic and social power structures and, in this European colony, white people hold the position of power in the racial hierarchy.[49]

Physical and cultural characteristics are contributing factors to whether individuals are racialised, including: skin colour, hair texture, facial features, accent, name, religion, dress and country of birth or heritage.

People more likely to experience racism include:

- First Peoples
- migrants and refugees born outside of Australia
- second- and third-generation migrants
- people practising faiths other than Christianity
- international students and people on restricted visas
- non-English speakers and those whose first language is not English.[50]

Each group or community is likely to be racialised and experience racism in different ways, determined by historical context, demographics, and domestic and geopolitical events. How one individual experiences racism will not necessarily be the same as another.

Where people have other personal characteristics that may be marginalised (such as disability or LGBTIQA+ status), their intersecting identities will compound and change their experience of racism (see **3.1.3 Intersectional discrimination)**.

Racialised Victorians[h]

Some racial groups in Australia experience racism at higher rates. In 2023, 28% of people born overseas reported experiencing racial or religious discrimination in the last year. This increased to 39% for those from non-English-speaking backgrounds and 40–50% of people from Africa, China and India.[51]

Significant historical, social and geopolitical factors affect the communities that are more likely to experience racism over time. For example, during COVID-19, Asian Australians were subjected to historically high rates of anti-Asian hate and racism.

This is exacerbated by the use of negative stereotypes in the media and commentary that can creates a false narrative of racialised workers (especially migrants and refugees) as invasive, cheap and disposable labour.[52]

As the categorisation of who is 'white' or 'racialised' can shift, groups that were once racialised can later be considered 'white' and go on to perpetuate the cycle of racism themselves (see **2.2 Why racism occurs**).

> **Race is mobile and ever-changing. But ultimately, it serves to maintain white supremacy. – Alana Lentin[53]**

First Peoples

First Peoples in Australia have experienced persistent and ongoing racism since colonisation, facing violent dispossession of land, deprivation of resources, destruction of family and community structures, and active efforts to erase languages, cultures, customs and traditions.[54] Colonial systems and structures continue to cause harm to First Peoples, including through ongoing political debates, and national and statewide policies. This has led to the ongoing stigmatisation and disenfranchisement of First Peoples.[55]

This colonial context leads to assumptions that First Peoples are responsible for the problems affecting their communities and that they themselves are the 'problem to be solved', rather than the systems and institutions that perpetuate and embed racism and disadvantage.[56] This can be described as 'deficit discourse' – a pattern of thinking that represents First Peoples through deficiency and failure rather than recognising that, despite ongoing racism and impacts of colonisation, First Peoples endure as one of the oldest living civilisations and cultures on Earth.[57]

> **Aboriginal staff face barriers to just hitting the ground running. They not only carry the internal burden of cultural load and external cultural obligations, but they face a system and leadership that not only ignore this, but actively undermine the cultural nuances of Aboriginal Peoples. – Consultation participant**

h When this guideline says 'Victorians', this refers to everyone in Victoria – rather than just those who live here.

This racial bias persists in the workplace. The Gari Yala report found that 38% of surveyed First Peoples reported having been treated unfairly in the workplace because of their background and 59% reported having experienced appearance-based racism (that is, based on perceptions of what First Peoples should look like).[58]

In consultations, the Commission heard that First Peoples are frequently required to defend their jobs or positions, as well as their identities, history and culture. They are simultaneously expected to manage the cultural load of educating others about cultural practices or customs due to lack of racial literacy in the workplace.[59]

Case study: cultural load

Gary is a First Peoples man. He is an experienced professional in his field and for the last 12 months has worked in an Aboriginal-identified role assisting young First Peoples.

Although he loves his job, Gary finds his co-workers often make the mistake of thinking he is responsible for all work regarding First Peoples, ask inappropriate questions and make casually racist comments. He is often asked to do tasks that are outside the confines of his role just because they relate to First Peoples or issues.

Gary feels a lot of cultural load, being tasked with representing the views and opinions of all the diverse First Peoples communities across Australia. He has recommended that his employer pay for the professional advice of an Aboriginal-led organisation to answer these questions thoroughly and appropriately, but has been met with the response, 'Why would we do that when you're already here?'. Gary is worried that if he pushes back too much, he might lose his job.

Despite making it clear that he doesn't have time for extra work, Gary's workload has increased and he's stressed that he doesn't have time to complete the work he is employed to do. He finds himself not wanting to come to work, worried about what comments people will make. He is exhausted, as all the additional labour has taken time from what he enjoys most about the role.

There are times when Gary feels completely overwhelmed and considers leaving his job.

2.4 Impacts of racism

Impacts of workplace racism can be felt by the individual, the community and the organisation itself.

2.4.1 Individual impacts

> **[Racism] has such financial, mental, physiological and psychological impacts on the person experiencing it. I don't know if there's any other words that can actually describe it, but that isolation that we experience and the prolonged exposure to toxicity, it's exhausting. – Consultation participant**

Racism in the workplace can impact individuals in multiple, often life-changing and debilitating ways. Racism is deeply undermining and destructive to a person's self-worth and dignity.[60] It is unsurprising, then, that workplace racism can affect health, wellbeing, employment, income and a person's sense of place in the community.[61] These impacts are often cumulative and compound the overall harm on the individual.

Psychological impacts

> **Women have said to us [racism] impacts their mental health negatively, to not be able to progress in their careers, to not have that sense of civic belonging. – Consultation participant**

During consultations, the Commission heard widespread impacts of racism on individuals' physical and mental wellbeing including stress, anxiety and depression. This can lead to a loss of purpose, burnout and/or feeling unsafe or isolated in the workplace. The link between racism and poor physical and mental health is identified by VicHealth as a significant public health concern.[62] Experiences of racism can also heighten the existing racial intergenerational trauma of colonialism for First Peoples. The impacts of racism can also be compounded by other intersecting parts of someone's identity (e.g. being a woman or having a disability) (see **3.1.3 Intersectional discrimination**).

Experiencing racism in the workplace can undermine people's self-confidence, performance and ability to work. This, in turn, can reduce their trust in the workplace and aspiration to advance their careers. It can also convince people to internalise or accept racist beliefs or ideas about themselves or their community, straining their personal or cultural identities.

> **Migrant workers are aware of [racism] and try and kind of ease their time in Australia by changing their identity, which is a real shame, really, that it's something people feel like they need to do. – Consultation participant**

Reporting an incident of race discrimination also causes considerable stress and can unfairly require First Peoples and other racialised individuals to justify their experiences to white employers (and systems) that do not understand the nuances of racism. These compounding negative experiences frequently leave First Peoples and other racialised individuals exhausted by the process and unable to trust their own experiences.[63]

Economic impacts

Loss of income is another impact of racism. This can result from someone being forced to leave a paid role, not being granted a promotion, being paid a lesser wage or having their employment terminated. A person may also experience other costs as a result of related medical expenses, including counselling.

Loss of income or employment can place a person in a precarious financial situation and have flow-on effects to accommodation, mental and physical health, and the ability to support families, and even jeopardise visa conditions.[64]

The economic impact of racism is particularly severe for many First Peoples and other racialised individuals who already work in low-income jobs and fields due to structural inequalities, perpetuating the cycle of disadvantage.[65]

2.4.2 Community impacts

Work is an important symbol of belonging and contribution to society. The impacts of racism are not just experienced by the individual, but also by their families and communities. The effects of workplace race discrimination can flow on to families witnessing and sharing in the negative experience of how their community is treated.[66]

> **It's not just one thing which is being impacted by [racism] , it impacts the whole sphere of their life and the relationships they have and how they operate within their networks as well. It trickles down to the community. – Consultation participant**

As a result, First Peoples and other racialised employees sometimes feel they must tolerate workplace racism, assimilate, adjust their behaviour or suppress their identities to conform to the workplace culture. This normalises workplace racism, breaking down trust in systems for all racialised employees.

2.4.3 Organisational impacts

Racism impacts the employer and the workplace more broadly. Individual employees' experiences of workplace racism can reduce effort, productivity and aspiration, affecting organisational performance, morale and output for the whole team or organisation.[67]

> **People get disengaged from work, dissatisfied, less productive and more easily burnt out. All those things then translate into costs to the company that can't be retrieved. – Consultation participant**

This can lead to the organisation facing legal risk, absenteeism, reputational damage and high staff turnover – all of which can incur large additional costs to employers.[68]

Workplaces committed to anti-racist efforts have more racially diverse teams that will be loyal to the organisation and therefore improve overall performance. A recent McKinsey study found that the more racial diversity in a team, the better it performs, with the top quarter of businesses with racially diverse teams outperforming the lowest quarter by 36%.[69]

Case study: cumulative impact of racism

Devi is an Indian woman working as a financial consultant in a large firm. She loves her work and brings great skills to the organisation, but is drained by having to deal with countless incidents of racism from colleagues and her manager.

She is often confused for the other Indian woman in the office and asked inappropriate questions about her life and culture. For example, when her husband came to an end-of-year party, a colleague asked 'if it was an arranged marriage'.

She notices that she is not given the important or interesting cases and her work is critiqued more than that of white male colleagues. She also finds out that her annual bonus is almost half what others received. Devi begins to second-guess herself and develops severe anxiety. She starts having panic attacks when getting ready for work and begins to take days off, feeling lethargic and unable to leave her apartment.

Devi feels stuck – she has to pay her mortgage and support her family, but she can feel her mental health getting worse.

When she mentions her concerns to a human resources representative, they brush her off, saying, 'It's a tough industry and maybe you're not cut out for it'. Devi ends up leaving the organisation.[i]

i This is also an example of intersectional discrimination based on both race and gender see **3.1.3 Intersectional discrimination**.

2.5 Reports and data

2.5.1 Barriers to reporting

> **[In our network's experience] there has never been a time when a grievance about racism has reached a successful resolution that satisfies both parties involved. – Consultation participant**

Throughout our consultations we heard that racism is severely under-reported in the workplace. Participants identified a number of reasons for this, including:

- a lack of racial literacy in the organisation
- the tendency to deny, deflect or ignore racism[70]
- normalisation of racism leading to people feeling they do not need to or should not complain[71]
- poor or non-existent reporting policies
- racialised employees not knowing how to make a complaint[72]
- lack of trust in the complaints procedure being able to effectively resolve complaints[73]
- fear of retribution, disciplinary measures, victimisation or negative impacts on career prospects or (in some cases) visa status
- lack of systematic support or support from bystanders
- the administrative burden and length of the complaints process
- exhaustion at the tedious repetition of experiencing racism and having to complain
- not feeling racially, culturally or psychologically safe in the complaints process
- racial trauma or race-based traumatic stress in both retelling of racist incidents and dealing with authority
- the high burden of proof needed to 'prove' racism has occurred.[74]

These factors all contribute to employers having an inaccurate or obscured understanding of what workplace racism is occurring and, in turn, what they need to do about it. For staff to feel safe to make complaints or reports of racism, employers should be aware of these barriers and ensure they are working to remove these in their own processes.

See **minimum standard 4** for suggestions on developing an organisational complaints process.

Case study: complaints process

Zara experienced race discrimination at the company where they work, in the form of race-based bullying from another colleague, Tania.

Though Zara gave a full account of what occurred, their manager was initially sceptical, saying, 'Tania just wouldn't have meant it in that way' and 'Are you sure it wasn't her attempt at an ironic joke?'. Zara lodged a complaint with Human Resources, but three months on has yet to receive an indication that the matter is being investigated or progressed in any way.

Zara follows up numerous times with Human Resources and their manager to understand what the next steps are, filling out different report forms and being referred to multiple people within the organisation, and having to repeat their story multiple times. Exhausted by the process, Zara begins to feel like their manager was right and they shouldn't have made a fuss. Zara is fearful of encountering Tania on a daily basis, so takes numerous days of unpaid leave, feeling the brunt of this issue emotionally and financially.

Finally, four months on, the employer responds to Zara's complaint by asking Tania to undertake cultural safety training. However, by this time Zara is exhausted from the levels of bureaucracy and lack of action, and has lost a lot of trust in their employer.

2.5.2 Lack of data

> **Data is at the core of identifying systemic racism. And right now, there is not a lot of data out there or data processes for understanding discriminatory patterns in businesses. – Consultation participant**

Currently, there is little data about racism and its impacts in Victorian organisations. Only 17% of respondents to the Diversity Council Australia's Racism at Work survey stated their organisation collected data about workplace racism.[75] Existing complaint data is often inadequate or incomplete.

There are several reasons for this, including complicated and unsafe processes, an organisation's unwillingness to progress a complaint and reports not being taken seriously. In some cases organisations dissuade individuals from even making a complaint, not wanting the potential reputational damage.

The lack of reliable complaint data is problematic for a variety of reasons:

- Workplaces and employers are unable to track trends in misconduct and make needed systemic changes.
- Repeat perpetrators are harder to track and hold to account.
- Specific incidents are harder to investigate and resolve.
- From a regulator perspective, this makes it difficult to see which industries or areas experience the highest levels of racism and therefore need the greatest level of support to improve.

Racial diversity data is also rarely tracked accurately, meaning systemic racism in recruitment or representation in leadership cannot be tracked.[76] Understanding the current state of workplace racism is critical to its prevention. See **minimum standard 5** on collecting data.

2.5.3 Use of non-disclosure agreements

> **Of the matters we have settled, almost all of them have settled with NDAs as a prerequisite to settlement. Several workers end up abandoning their claims because of the barriers (perceived or real) in navigating the system in the absence of a negotiated settlement. – Consultation participant**
>
> **Speaking about racism becomes a threat to [organisations]. A threat to their reputation and ability to make money. – Consultation participant**

When settling a complaint of discrimination, an employer may ask the complainant to sign a non-disclosure agreement (NDA) or include a confidentiality clause in a settlement agreement. These agreements prohibit the parties from talking about the settlement (except in limited circumstances) and in most cases about the existence of the complaint itself.

In consultations we heard that NDAs were common in settling race discrimination complaints, which presents challenges. On the one hand, NDAs can help by providing a complainant with confidentiality and privacy, and can also be useful bargaining chips for complainants looking to reach favourable early resolution of their complaints. However, they have also been used to protect the reputation of organisations at the expense of complainants' wellbeing.

NDAs also mask the prevalence of discrimination, obscuring crucial data, which in turn hinders public awareness and comprehension of the true extent of racism in the workplace. NDAs can contribute to a culture of silence and limit the ability for individual complaints of racism to create systemic change.

See **minimum standard 4** on the use of NDAs.

3.

Understanding the law on workplace racism

Chapter 3 provides information on the law on workplace racism, particularly the Equal Opportunity Act regulation of race discrimination and other forms of unlawful behaviour. It also provides information on liability and other relevant laws.

3.1 Workplace race discrimination

Racism in Victoria is regulated by a variety of laws. Race discrimination is a form of racism prohibited by the Equal Opportunity Act. Under the Equal Opportunity Act discrimination occurs when someone is treated unfavourably because of a personal characteristic that is protected by the law such as race. The Equal Opportunity Act prohibits both direct and indirect discrimination.

'Race' is defined under the Equal Opportunity Act to mean a person's:

- colour
- descent or ancestry
- nationality
- ethnic background
- any characteristics associated with a particular race.[77]

Discrimination is unlawful if a person is 'presumed' to have that attribute, that is, someone is discriminated against because they are presumed to belong to a particular race.

Discrimination is also unlawful if someone is discriminated against because they have a personal association with someone who has such an attribute, for example, someone is discriminated against because they have a partner who belongs to a particular race.[78]

Where is discrimination unlawful?

The Equal Opportunity Act protects Victorians from discrimination in particular areas of public life, including education, accommodation, the provision of goods and services, and employment.

Discrimination is unlawful at any point in the employment cycle.[79]

Employees are protected:

- at work (that is, on work premises as well as in other common areas such as carparks, lifts, entrances and reception areas outside of the work premises)
- at work-related events, meetings or where people are carrying out work-related functions or activities outside of the physical work premises (for example, at an end-of-year party, conference or when travelling to work)
- in online spaces and through technologies and social media platforms where the conduct is in connection with the employment (for example, during remote work)
- when sharing the same workplace (for example, contractors engaged by your employer).

Who is protected?

In a workplace, the Equal Opportunity Act protects all types of employees, contract workers and job applicants.

This means that the Equal Opportunity Act applies even if you are a casual employee who is being unfairly fired or a job candidate who has been overlooked on discriminatory grounds. However, under the Equal Opportunity Act unpaid workers and volunteers are not legally protected against discrimination in the area of employment.

The Equal Opportunity Act also includes a positive duty that requires organisations, including employers, to take reasonable and proportionate measures to eliminate discrimination, sexual harassment and victimisation as far as possible. This includes race discrimination.

For a more detailed look at the positive duty, see **Chapter 4: Understanding the positive duty**.

3.1.1 Direct discrimination

Direct discrimination at work happens when someone is treated unfavourably because of a personal characteristic protected by the law such as race.[80] Direct discrimination often happens because of prejudicial attitudes and unfair assumptions about what people of certain races can or cannot do.

Discrimination may be unintentional or unconscious. The motive and intention of the person or organisation discriminating are not relevant – only that someone has been treated unfavourably.

Case study: direct race discrimination

Jae-sung is a Korean man working in a textile factory. He often brings in Korean food for lunch. Almost every time he does, one of his colleagues, Andrew, makes fun of what he is eating, saying, 'It smells disgusting', and gets angry at him for 'stinking up the microwave'.

When Jae-sung mentions these exchanges to his boss, she tells him 'Just ignore him'. However, the next day when he goes to get his lunch from the fridge, he finds it thrown in the bin with a note on the microwave saying, 'Aussie food only'.

This is an example of direct discrimination on the basis of Jae-sung's race.

3.1.2 Indirect discrimination

Indirect discrimination happens when there is an unreasonable requirement, condition or practice that applies to everyone but disadvantages some people because of a personal characteristic.[81]

In the workplace, this might take the form of a policy, practice or process that on the surface may not seem discriminatory but indirectly disadvantages some groups when applied. Common examples of these are recruitment or promotional processes that may preference white, Australian-born applicants.

Case study: indirect race discrimination

Tom is a First Peoples man working at a large company based in Melbourne. He gets the news that his uncle has passed away. Tom lets his boss know immediately that he needs to take Sorry Business leave[j] to mourn for his uncle and will be away for at least a week to support family and for cultural reasons.

He requests approval to take the 2 days of compassionate leave with the rest made up from his accrued annual leave. His boss tells him that while he is entitled to 2 days compassionate leave, he won't approve any other days as the company has a policy that any annual leave must be agreed 2 weeks in advance.

This requirement may be an example of indirect discrimination as it disadvantages First Peoples who may need to take additional time for Sorry Business. It may not be reasonable if, for example, the employer has necessary resources available to cover annual leave taken at short notice.

3.1.3 Intersectional discrimination

Employees who experience discrimination on the basis of their race can also simultaneously experience discrimination on the basis of other personal characteristics protected under the Equal Opportunity Act such as sex, gender identity, physical features, sexual orientation or disability. This overlapping, known as intersectionality or intersectional discrimination, compounds the impact of discrimination on the individual.[82]

A person's experience of intersectional discrimination can change at different times in their life and in different social contexts. The Equal Opportunity Act recognises intersectional discrimination by allowing for a complaint to be made on the basis of multiple attributes.

Case study: intersectional discrimination

Mia is a young Sudanese lawyer who applies for a role in a consulting firm. At the end of her interview, she is asked whether she's planning to have children and the interviewer insinuates that African women tend to have large families and a lot of family commitments, which makes it riskier to invest in their training.

This is an example of unfavourable treatment on the basis of both Mia's race and sex.

j Many First Peoples mourn the loss of a family or community member by following traditional ceremonies and practices known as Sorry Business.

3.1.4 Religious belief or activity discrimination

In Victoria it is against the law to discriminate against someone for their religious belief or activity. This discrimination can be direct or indirect. Religious belief or activity discrimination and race discrimination are frequently linked because religion has strong ties to geographical areas and ethnic groups. For many racialised communities, religion is inseparable from, or an extension of, their ethnic identity and culture. Perpetrators of discrimination rarely distinguish between those from the same race with religious beliefs and those without them.[83]

Reports of religious belief or activity discrimination in Victoria are rising, with multiple religious organisations pointing to the impact of global conflict and tension on discriminatory attitudes and behaviours.[84]

In 2023, 76.9% of complaints received by the Commission regarding religious belief or activity were employment-related.[85]

Some examples of workplace discrimination regarding religious belief or activity are:

- forcing non-Christian employees to participate in or observe Christian traditions or events
- refusing to hire people because of their religious dress (hijab, dastaar, yarmulke)
- scheduling important events and gatherings during periods of religious significance.

Case study: religious belief or activity discrimination

Amira is a young Syrian woman. She is offered the role as a sales assistant at a cosmetic store. However, when she arrives for her first shift wearing a hijab, she notices her new manager seems visibly surprised and asks whether she has to wear that when dealing with customers. Amira explains that she does, so her manager asks her to unpack deliveries in the stockroom instead. Amira asks later in the day if there is a quiet room she can use for her daily prayers and her manager makes a comment about other staff not getting that many breaks.

Amira spends the day unpacking stock without any contact with customers or other staff and, when she returns home that night, feels humiliated and is thinking about resigning. This may be an example of direct discrimination based on religious belief or activity.

3.2 Who is liable

Liability refers to the legal responsibility for unlawful discrimination.[k]

Identifying who is liable determines who is responsible for the discrimination and must be accountable for responding to the discrimination and its impacts, such as issuing an apology or paying compensation to the complainant.

For example, if a team manager makes racist comments about an employee, the employer may be legally liable for that behaviour.

3.2.1 Individual liability

Under the Equal Opportunity Act, individuals and unincorporated associations or organisations can be held liable for discrimination, victimisation or authorising or assisting discrimination, depending on the circumstances. However, in the case of discrimination in employment, it will generally be the employer who is liable. Employee's may be liable under their organisation's code of conduct or other policies.

3.2.2 Vicarious liability

If a person discriminates in the course of their employment or while acting as an agent for an organisation, their employer or principal (a person who contracts another person for work) can be held legally responsible for their conduct. This is known as vicarious liability.

An employer or principal can also be found to be vicariously liable if they have not taken reasonable precautions to prevent discrimination.

See **Chapter 4: Understanding the positive duty** for how organisations can comply with the positive duty and avoid being vicariously liable.

Remedies

Under the Equal Opportunity Act, complainants can either seek to conciliate their complaint at the Commission or lodge a complaint directly with the Victorian Civil and Administrative Tribunal (VCAT).[86]

Where a complaint has been successful at VCAT or successfully conciliated at the Commission, remedies (or outcomes) may include:

- an apology (verbal or written, private or public)
- financial compensation
- a job reinstatement or reference
- access to a previously denied job opportunity or service
- an agreement to change or stop behaviour, amend or develop policies, or undertake training.[87]

k Employers can be held liable under vilification laws in certain circumstances (see **3.4.1 Vilification**).

3.3 When discrimination is lawful

3.3.1 Exceptions

There are certain situations where an exception applies – conduct that would otherwise be unlawful discrimination is considered to be lawful under the Equal Opportunity Act.[88]

The exceptions set out below may be relevant to race discrimination.

Discrimination authorised by court or law[89]

Discrimination will not be against the law if it is necessary in order to comply with an order of a court or tribunal, or is authorised by legislation (also known as the statutory authority exception).

Example

If a manufacturing employer conducts a risk assessment under work health and safety (WHS) laws and finds that particular forms of religious dress pose WHS risks in the context of their equipment, they may seek to rely on this exception.

Discrimination authorised in domestic or personal services[90]

An employer may discriminate in determining who should be offered a job in domestic or personal services (including the care, instruction or supervision of children) either in the employer's home or at the request of the person whose home it is.

Example

A Japanese-Australian woman contacts an agency that employs gardeners to provide personal services and requests a Japanese gardener to carry out work at her home. The agency may discriminate in determining who should be employed as the woman has requested this and it will occur in her home.

Welfare services[91]

When an employer is providing welfare services that are special measures (see below) or that meet the needs of people with a particular characteristic, they may discriminate to select employees that best meet the needs of the clients.

Example

A support service for refugees might want to ensure its counsellors are from the same cultural group.

Artistic or dramatic performance[92]

An employer may limit the offering of employment in relation to a dramatic or an artistic performance, entertainment, photographic or modelling work or any other employment to people of a particular race if it is necessary to do so for reasons of authenticity or credibility.

Example

A performance requires actors from particular racialised backgrounds to tell a story about people from that racial background.

3.3.2 Special measures

The Equal Opportunity Act recognises that when we treat everyone the same, it can have a different outcome or unequal results for people because of their attributes.[93]

Accordingly, the Equal Opportunity Act allows and encourages people and organisations to treat people differently in specific situations if they are taking action to address genuine equality for disadvantaged groups.[l]

This action is called a special measure and it aims to achieve 'substantive equality'.

Substantive equality means recognising that some groups have been disadvantaged by inequality and past discrimination, and some groups may need special assistance to address this, rather than simply being treated the same. Exceptions are not relevant as a special measure is not considered to be discrimination.

Designated roles

A common example of a special measure is a 'designated role' or 'identified position', a job that is to be filled by a person with a particular attribute such as a specific race.

In Australia, designated positions are commonly used for positions identified for First Peoples. These positions are used by organisations to help eliminate inequalities, increase employment opportunities for First Peoples or meet a specific need within a community such as having First Peoples working with certain community groups.

The cultural knowledge and experience of First Peoples employees are invaluable where roles require informed and culturally grounded understanding of First Peoples communities and are beneficial for both First Peoples and the broader community. This may be relevant in systems and organisations with historically poor outcomes for First Peoples such as the justice system.

Examples are a First Peoples–specific graduate round of recruitment at a financial institution to address the lack of First Peoples employees and a First Peoples–specific recruitment for a lawyer to support First Peoples clients at a community legal centre.

l A person or organisation seeking to establish a special measure to advance a group of people must have evidence to show that they meet each of the requirements set out in section 12 of the EOA.

3.4 Other forms of unlawful conduct

3.4.1 Vilification

Racism may also involve conduct that falls outside the definition of discrimination like vilification, a type of hate speech or hate conduct. Racial and religious vilification is unlawful under the Racial and Religious Tolerance Act. Vilification occurs when something is done in public (that is, not in private where it was to be seen or heard only by the person saying it) that incites people to hate or ridicule the target individual or group based on their race or religion.[94]

Vilification in the workplace could include behaviour such as:

- speaking about a person's race or religion at work in a way that could make other people hate or ridicule them
- publishing claims that a racial or religious group is involved in serious crimes without proof on a staff forum and encouraging violence against them
- encouraging people to hate a racial or religious group using flyers, stickers or posters in the lunchroom.

While race discrimination and racial vilification are separate types of unlawful conduct, racism encompasses both. The conduct may amount to one and not the other, or in some cases both discrimination and vilification.

Under Victorian law, race discrimination and racial vilification can be distinguished by:

- where the conduct occurs (vilification protections cover any public conduct; discrimination only covers conduct in specific areas of public life – there can be overlap)
- who it is directed at (vilification does not have to be targeted at a particular individual; discrimination is targeting someone, or a group of people based on their race).

Employers can be held liable for vilification committed by an employee where it occurs in the course of employment. In this situation, both the person and the employer would be deemed to have contravened the provision.[95]

Case study: vilification and race discrimination

Ola is of Nigerian descent and is an office manager at an organisation with an intranet and chat service where people post articles and relevant updates on their work. Ola has noticed that a colleague, Matt, has started to post racially inflammatory articles and reactions to global events.

One afternoon, Matt makes a post saying offensive things about African people and encourages others in the organisation to say offensive things about African people, expressing his anger about having to work with them because they are 'aggressive' and 'untrustworthy'. Ola feels that Matt is speaking about them as there are no other African staff in the organisation.

This could be an example of both race discrimination and vilification.

3.4.2 Victimisation

> **Some of the experiences shared within our network involve individuals facing adversity after speaking out or fearing to do so due to the risk of being perceived as disruptors for raising concerns within their organisation. This unfortunate perception often leads to their victimisation. – Consultation participant**

Victimisation means treating or threatening to treat someone badly because they have:

- made a complaint or allegation of race discrimination (or other unlawful conduct under the Equal Opportunity Act) or it is believed they might make a complaint
- helped someone else make a complaint of race discrimination (or other unlawful conduct under the Equal Opportunity Act)
- refused to do something that might contravene the Equal Opportunity Act.[96]

The Equal Opportunity Act makes it unlawful to victimise someone. Similar protections to those for victimisation also exist under vilification law.[97]

Victimisation was raised repeatedly throughout consultations as it both acts as a barrier to reporting incidents of race discrimination and punishes individuals when they do.

For advice on avoiding victimisation, see **minimum standard 4**.

Case study: victimisation

Muhammad is an Egyptian man working as a general practitioner (GP) at a small clinic in Ballarat. He has been experiencing racism from the other staff – they have made fun of his accent, excluded him from social engagements and he overheard one of the other GPs calling him a 'terrorist'.

Muhammed makes a complaint to the clinic manager, making it clear he is feeling bullied and just wants the behaviour to stop so he can do his job. However, he notices that after this he is getting fewer patients assigned to him, his shifts have decreased and the racist incidents have ramped up.

It's clear his complaint hasn't been kept confidential and, when he returns to speak to the manager, they say, 'Maybe it's best to look for work elsewhere, you just don't fit in here, mate'.

This is an example of unlawful discrimination and victimisation.

3.4.3 Sexual harassment

Sexual harassment is unwanted conduct of a sexual nature towards another person which could reasonably be expected to make the other person feel offended, humiliated or intimidated. Sexual harassment is unlawful under the Equal Opportunity Act.[98] It can be physical, verbal or written (including electronic communication).

While gender inequality underpins sexual harassment, other attributes such as race increase the likelihood of a person being sexually harassed.[99]

Research has identified that racialised women are more likely to experience sexual harassment in the workplace than white women. The Australian Human Rights Commission national survey of sexual harassment found that 55% of First Peoples women had experienced sexual harassment in the workplace compared with 39% of all women. A 2023 ANROWS report found 46% of migrant and refugee women had experienced sexual harassment in Australian workplaces in the last 5 years.[100]

Examples of sexual harassment towards First Peoples or other racialised employees are:

- a staff member making an inappropriate joke about an item of cultural dress being revealing
- a comment from a manager comparing a staff member's skin to chocolate
- an intern being sexually propositioned because a staff member says all girls from where the intern is from are promiscuous.

For more information on sexual harassment, see **the Commission's Guideline: Preventing and responding to workplace sexual harassment**.[101]

3.4.4 Authorising or assisting discrimination

It is against the law for any person, including an employer, to request, instruct, induce, encourage, authorise or assist someone to discriminate against another person.[102] For example, it is unlawful for an employer to instruct their staff to not offer promotions to people of a particular race.

Authorising or assisting another person to discriminate against someone may include a situation where an employer is aware discrimination is occurring but chooses not to do anything to stop it or prevent it from recurring.

For example, if a manager receives multiple reports that one member of the team is saying racist things to another, tells the perpetrator that complaints have been received but takes no action to investigate the allegation or sanction the perpetrator, the manager may be found to have authorised and assisted discrimination.[103]

3.4.5 Discriminatory requests for information

It is against the law for a person to request information from another person that could be used to discriminate against them unless they can show they need that information for a legitimate purpose.[104]

For example, it is against the law for an employer to ask someone what race they are as part of deciding on a job application except if it is allowed by law or reasonably required for some other purpose. Examples of where it may be reasonably required include where a role involves significant engagement with racialised communities and lived experience is relevant or the employer is collecting demographic data to identify trends in recruitment.

3.4.6 Discriminatory advertising

It is an offence under the Equal Opportunity Act to publish or display, or authorise the publication or display of, an advertisement or notice that indicates an intention to discriminate unlawfully.[105]

For example, it is against the law to advertise for a job stating all applicants 'must be Anglo' and 'speak English as their first language' unless an exception applies.

3.5 Other relevant laws

Employers must comply with all legislation. A person seeking to make a complaint should consider seeking legal advice regarding how to choose the jurisdiction that is most appropriate for them.

	Other relevant law	Description
VICTORIA	***Racial and Religious Tolerance Act 2001 (Vic)***	The Racial and Religious Tolerance Act aims to promote racial and religious tolerance in Victoria. The Racial and Religious Tolerance Act makes it unlawful to vilify a person or group of people because of their race or religion. Refer to **3.4.1 Vilification** for further detail.
	Charter of Human Rights and Responsibilities Act 2006 (Vic)	The Charter is a Victorian law that sets out rights, freedoms and responsibilities for all people in Victoria. The Charter sets out 20 human rights and requires public authorities, such as Victorian state and local government departments and agencies, and people delivering services on behalf of government, to act consistently with the human rights in the Charter.[106] In relation to racism, the key human rights include the right to equality, the right to privacy and cultural rights. The right to equality includes the right for every person to enjoy their human rights without discrimination. The definition of discrimination is drawn from the Equal Opportunity Act.[107] Although complaints about a breach of Charter rights cannot be made independently, they can be attached to other proceedings such as a complaint of race discrimination.
	Occupational Health and Safety Act 2004 (Vic)	The Occupational Health and Safety Act provides that an employer must maintain a work environment that is safe and without health risks for their employees, so far as reasonably practicable. This includes by identifying or assessing hazards and risks to health or safety.[108] Psychosocial hazards are factors that increase the risk of work-related stress and can lead to psychological or physical harm. Workplace misconduct, including discrimination (such as racism), bullying and sexual harassment, are considered common psychosocial hazards.[109]

COMMONWEALTH	***Fair Work Act 2009 (Cth)***	The Fair Work Act protects employees from unlawful workplace discrimination under the general protections when an employer takes adverse action against an employee or prospective employee because of their race.[110]
	Racial Discrimination Act 1975 (Cth)	The Racial Discrimination Act makes it unlawful to discriminate against a person or vilify them because of their race, colour, descent, national origin or ethnic origin, or immigrant status.[111] The Racial Discrimination Act protects people from racial discrimination in many areas of public life, including employment. The Racial Discrimination Act and Equal Opportunity Act overlap and, where a Victorian person wants to make a complaint of race discrimination, they can choose whether to make it under the state or Commonwealth law. However, the laws apply in different ways (e.g. the Racial Discrimination Act does not have a positive duty) and have different time limits and processes involved.

4.

Understanding the positive duty

Chapter 4 provides information on the positive duty and outlines the 5 minimum standards for employers to follow to prevent and respond to race discrimination in the workplace.

4.1 Positive duty

The Equal Opportunity Act requires employers to take proactive steps to eliminate race discrimination in the workplace through what is known as the 'positive duty'. To comply with the positive duty, employers must not only respond to complaints of race discrimination, but also take reasonable and proportionate steps to prevent it from occurring in the first place by targeting systemic racism.

The positive duty encourages best practice and has a range of significant benefits for both employees and employers, including increased employee wellbeing, retention and productivity. Complying with the positive duty helps organisations to create safe and respectful cultures free from discrimination, sexual harassment and victimisation. This is similar to the way work health and safety laws create a safe working environment by requiring duty holders to take a preventive approach to work health and safety.[112]

Where employers do not comply with the positive duty, they may be held liable for discrimination if it occurs. The Commission also has the power to conduct investigations into whether employers have complied with the positive duty in specific circumstances.[113]

4.1.1 What do employers need to do?

Employers must take 'reasonable and proportionate' steps to prevent race discrimination.[114] What is considered 'reasonable and proportionate' will depend on factors such as:

- the size of the business or organisation
- the nature and circumstances of the business or organisation
- available resources and budgets
- business and operational priorities
- the practicality and the cost of measures.

Within the context of this guideline:

- a small organisation has fewer than 20 employees.
- a medium organisation has between 20 and 199 employees.
- a large organisation has 200 or more employees.[115]

The positive duty is not just about technical compliance with the law, but also about building upon best practice interventions for addressing workplace racism. Model employers will consider the needs of their organisation and implement the most effective tailored actions, rather than just aiming for minimum compliance.

4.1.2 Minimum standards

The Commission has developed 5 minimum standards that organisations must meet to comply with the positive duty to prevent race discrimination in the workplace.[m]

For each standard, we identify the expectations and actions that employers must address to comply with the positive duty based on the size of their organisation. Organisations are only required to take steps that are reasonable and proportionate. While these standards are specific to race discrimination, employers should take an intersectional approach where possible to address race discrimination alongside other forms of discrimination in their organisations.

These standards are not about 'fixing' or changing First Peoples or other racialised employees or seeing them as a problem that needs to be solved, but about improving the systems and processes within a workplace so that both they and the organisation can thrive.[116]

Remember: while the Equal Opportunity Act is the legal framework for addressing race discrimination, organisations need to focus on best practice prevention strategies to eliminate racism in the workplace to fulfil their obligations under the Equal Opportunity Act.

For each minimum standard, the guideline outlines:

- key expectations
- actions to implement the standard.

m These minimum standards have been adapted from the Commission's general minimum standards and tailored to provide specific guidance on race discrimination.

Standard 1 is about understanding how to identify race discrimination.

Standards 2 and 3 are about how to prevent race discrimination from happening.

Standards 4 and 5 are about how to respond to race discrimination when it happens.

The actions under each minimum standard build on each other:

SMALL ORGANISATIONS should complete the first tier of actions.

MEDIUM ORGANISATIONS should complete the first and second tier of actions.

LARGE ORGANISATIONS should complete all actions.

4.2 Standards for compliance with the positive duty

Standard 1: Racial literacy

Organisations understand both the subtle and obvious ways that racism occurs, as well as their obligations to eliminate race discrimination.

Expectations

- Organisations are appropriately trained in identifying racism and understand that racism is widespread and can be subtle.
- Organisations understand the key drivers, risk factors and impacts of racism, and understand what constitutes race discrimination under the Equal Opportunity Act, including their positive duty obligations.
- Leaders know how to prevent, identify, eliminate and respond to racism in their workplace.

Type of organisation	Actions
SMALL ORGANISATIONS MEDIUM ORGANISATIONS LARGE ORGANISATIONS	• Read this guideline and related resources to understand what racism is and what it looks like, including the drivers, risk factors and impacts, and how to identify and respond to race discrimination. • Understand how race discrimination is regulated under the Equal Opportunity Act, including the positive duty to eliminate race discrimination. • Provide this guideline and related resources to employees.

MEDIUM ORGANISATIONS
LARGE ORGANISATIONS
	• Incorporate information on racism into staff induction materials.
	• Subscribe to updates from regulators and peak bodies to keep abreast of updates to the law and best practice.
	• Provide anti-racism training to all employees, aligning with the best practice elements outlined below, including:
	  • comprehensive training on racism and respectful workplace behaviour for all employees (available yearly and ad hoc if necessary)
	  • specialist training for leaders, managers and staff in support roles or involved in complaint handling on the drivers and impacts of racism and how to talk about it, prevent and respond to it.
	• Ensure that employees know race discrimination is unlawful and know where to access information about it (see **Chapter 5: Referral guide**).

LARGE ORGANISATIONS	• Hold dedicated meetings or information sessions to encourage staff to familiarise themselves with the anti-racism actions contained in these minimum standards. • Establish systems to monitor and communicate developments in anti-racism, equal opportunity law and best practice across the workplace.

Building racial literacy

Developing racial literacy within an organisation is the first step to addressing race discrimination.

A lack of racial literacy can lead to a denial of racism, either downplaying the extent of the issue or saying it is only caused by some people, and denying its systemic nature. It is critical that employers develop a racially literate workplace where everyone understands how to identify racism, why it is harmful and where to go for help.

Spectrum of racial literacy[117]

Employers should assess their organisations for racial literacy on this spectrum to ensure any training options are appropriately tailored.

Racial literacy basics

Employers and employees should know:

- what race is
- about their own racial identity and biases
- what racism is
- how racism impacts workplaces and organisations
- the causes or drivers of racism
- the legal obligations and protections around race discrimination in the workplace
- the employer's positive duty to eliminate race discrimination
- the employer's obligation to respond to race discrimination complaints
- the processes for resolving complaints of race discrimination internally and externally (see **minimum standard 4**)
- where to go for further information, advice and support (see **Chapter 5: Referral guide**).

Building racial literacy – a resource

Building racial literacy must start with critical reflections that involve learning about and exploring a person's own racial identity, blind spots and biases. Building racial literacy must also involve actively standing up to and challenging racism.

See **humanrights.vic.gov.au/resources** to download.

Training

Employers can build racial literacy in their organisation by providing evidence-based training.[118] Below are options on the types of training available for organisations to prevent and address race discrimination. Training alone should not be used as a catch-all for eliminating racism and should be undertaken together with a suite of measures designed to drive systemic change.[119]

For organisation-specific knowledge, employers should consult and engage with staff. See **minimum standard 2** for how to do this safely.

Types of training	
Anti-racism	Anti-racism training focuses on addressing anti-racist attitudes and actions, and engages with racist power distribution and social dynamics.[120] This is considered leading practice training for organisations wanting to combat racism, as it is an active process where participants are challenged to discuss racism and acknowledge problematic social dynamics rather than individual attitudes.
Diversity, equity and inclusion Also known as diversity training or diversity and inclusion training	Diversity, equity and inclusion training provides education and tools to create diverse and inclusive organisations where all people are represented, treated fairly, given equal opportunities, and feel welcome and supported.[121] This approach emphasises raising awareness over action to address systemic racism. Therefore, it is not a comprehensive approach to addressing racism and should be supported by anti-racist teaching approaches.[122]
Unconscious bias Also known as implicit bias	Unconscious bias training teaches participants that people do not inherently have negative biases but develop them consciously and unconsciously over time.[123] Unless delivered within a comprehensive anti-racism program, unconscious bias training may have limited long-term effectiveness. In some cases, it may even hinder participants improving their racial literacy if they feel they do not need to worry about bias because they have done the training or, alternatively, that as everyone has bias it can never be eradicated.[124]
Cultural capability Which can encompass cultural competency, cultural awareness, cultural intelligence and cultural sensitivity training	Cultural capability training focuses on becoming aware of and developing sensitivity to cultural difference and diversity. It aims to improve cultural awareness by building knowledge, attitudes and values that demonstrate openness and respect for other people and other cultures. While it improves understanding of cultural differences and how to engage with others, without engagement with power dynamics it risks creating a fixed understanding of other cultures, perpetuating a sense of 'otherness' and the possibility that racism is simply 'cultural misunderstanding'.[125]

Aboriginal cultural capability	Aboriginal cultural capability training is about individuals and organisations becoming aware of the impacts of their cultures and cultural values on Aboriginal people and how to create a safer environment.[126] Aboriginal cultural capability training encompasses cultural awareness, cultural safety and cultural competence.[127] It can lead to improved practices of cultural understanding and inclusion in workplaces and relationships between First Peoples and non-First Peoples colleagues. This approach should be undertaken alongside anti-racism training to ensure it engages with the legacy of colonisation and ongoing structural barriers.[128]

Best practice elements of race discrimination training

Deciding on the most suitable training approach will depend on an organisation's specific needs and learning objectives.[129] All training delivered to eliminate race discrimination should be factual and follow the best practice training elements. It is important that leaders, not First Peoples or other racialised staff, are the ones to follow up on and implement the training.

Best practice elements	
Learning objective	The organisation and participants should have a clear understanding of what the training is intended to achieve at the outset.
Context	Training should be integrated into the organisational context, including strategic priorities and broader inclusion measures to achieve long-term outcomes.
Commitment	Training should be underpinned by an organisation-wide commitment to anti-racism.
Leadership	Leaders should model and encourage meaningful participation in training and embedding learnings.
Trainers	Trainers should be highly skilled, racially diverse and external to the organisation to avoid overburdening First Peoples or other racialised staff. Trainers with their own experience of being racialised (sometimes referred to as 'lived experience') bring unique perspectives to race discrimination training that racially privileged people cannot.
Respect and empathy	Training should encourage respectful and empathetic interaction among people from different racial backgrounds to create curiosity and learning.
Safety	Training must be psychologically and culturally safe for First Peoples and other racialised employees to engage in open and frank discussions. This may involve the trainer being clear at the outset about what is going to be asked of First Peoples and other racialised employees and letting them know that they can leave at any time.

Openness	Subject to psychological safety considerations, there should be open conversations wherever possible and participants should be encouraged to reflect on how racism impacts their identity, privilege or marginalisation and their attitudes and prejudices.
Frequency	Training is more effective when delivered iteratively, allowing time in between sessions for reflection, and periodically rather than just delivered as a one-off.[130] The Commission recommends annually with ad hoc sessions also available if needed.
Method	Multiple methods should be used, including organisation-specific, scenario-based examples informed by lived experience. Blending a learning method which includes an in-person component is ideal to enable participants to interact.
Participation	All employees from different positions within the organisations should collectively participate in training, with tailored sessions for staff in specialised and management roles.
Feedback	Participants should be given the opportunity to provide feedback after training sessions, ideally with the option to provide it anonymously.
Evaluation and improvement	Training outcomes of improved racial literacy and wellbeing should be routinely tracked, and improvement should be acknowledged and celebrated.[131]
First Peoples specific	Organisations should have specific training on First Peoples issues. Try to choose a local Aboriginal training provider that has knowledge of local history and culture. Organisations can contact their local Traditional Owners or local Aboriginal community–controlled organisation to discuss training options.

Standard 2: Policies and procedures

Organisations have systems, policies and procedures operating to eliminate race discrimination.

Expectations

- Organisations undertake a risk assessment and take steps to prevent race discrimination, and document these in relevant and tailored plans, policies and procedures.
- Employees are aware of, and can readily access, policies and procedures related to racism.
- Organisations consult with employees and employee representatives on appropriate measures to eliminate race discrimination including any gaps in current policies and procedures.

Type of organisation	Actions
SMALL ORGANISATIONS MEDIUM ORGANISATIONS LARGE ORGANISATIONS	• Complete a documented risk assessment of race discrimination in the workplace every 2 years and detail how to address the risks. • Develop a documented policy to address race discrimination with procedures and systems in place to support the policy (see anti-racism policy below). • Review all policies and procedures regarding racism annually. • Consult with employees and employee representatives when identifying risks and developing policies, procedures or systems. • Communicate relevant policies, procedures and systems with employees and ensure employees know how to access them.
MEDIUM ORGANISATIONS LARGE ORGANISATIONS	• Develop a documented race discrimination prevention plan that details the steps taken to address workplace risks of race discrimination identified in the risk assessment and embed prevention of race discrimination in day-to-day practice. • Include information on race discrimination policies, plans and procedures in formal and informal training or information sessions for staff.
LARGE ORGANISATIONS	• Include the following elements in the race discrimination prevention plan: measurable actions, accountabilities and outcomes that are publicly reported against. The prevention plan should address how risk will be continuously evaluated and mitigation strategies improved (see **minimum standard 5**).

How to review systems, policies and procedures

Reviewing relevant policies and procedures will highlight whether the system is working and whether there are tools missing or if they need updating and enable organisations to adapt to changing circumstances.

The process for reviewing systems, policies and procedures should be included in the organisation's business plan and prevention plan (where applicable – see below) and allocated to staff members to action.

Reviews should be carried out at least annually and, depending on the organisation, may include:

- ensuring policies and processes (for example, policies relating to discrimination, policies regarding recruitment and complaints policies) satisfy the organisation's legal obligations, are free from indirect discrimination, and are clear and accessible
- ensuring documentation is up to date; for example, any cited position titles and contact details are correct
- improving policies, staff training and complaints process
- effectively communicating with staff when policies or processes have been changed
- identifying a date for the next review to be carried out and making that clear in the documents.

Organisational policies and procedures

Document[n]	Purpose	Who needs one?	Review period
Racism risk assessment	Outline risks of racism in the organisation.	All organisations	Every 2 years
Anti-racism policy	Outline behavioural expectations and consequences for racism such as disciplinary action.	All organisations	Yearly
Complaints procedure[o]	Outline process for complaints of racism.	All organisations	Yearly
Racism prevention plan	Outline the organisation plan to prevent racism.	Medium to large organisations	Yearly

n These documents may be encompassed in a single 'anti-discrimination' or 'respectful behaviour' policy, but should still include each aspect outlined below.
o See **minimum standard 4** for information on this procedure.

How to perform a risk assessment

All organisations must undertake a risk assessment. Employers must regularly identify and assess risk factors for race discrimination. The Commission recommends this is undertaken every 2 years. Employers should scan the organisation for risks by consulting with leaders, employees and their representatives on the risk indicators below.

Risk assessments should identify the likelihood of different forms of racism and race discrimination occurring and the potential harm that would flow to employees if the risk were realised.

Where possible, employers should carry out anonymous and confidential workplace surveys, and use data from exit interviews, to identify the prevalence and nature of racism in the workplace and any contributing factors (see **2.3.3 Where workplace racism occurs**).

The purpose of a risk assessment is to identify whether:

- employees feel safe at work and free from racism
- employees know what racism is
- employees know what to do if they experience or witness racism
- there are any potential barriers to reporting racism, both for people experiencing it and for bystanders.

Risk indicators

Risk indicators are aspects of a workplace that point to an increased likelihood that racism will occur (or is occurring) and are used to assess the level of risk.

Even where an organisation has not received any reports of racism, it cannot assume that racism is not an issue. There are many reasons why employees may not have raised concerns (see **2.5.1 Barriers to reporting**).

The following is a list of risk indicators that are associated with a higher risk of racism within an organisation.

Potential risk indicators of racism	
Workplace composition	• There is a lack of racial diversity. • Most supervisors and/or managers are white. • Staff and leaders do not understand racism or race discrimination. • The workplace is hierarchical and leaders have unquestioned authority.
Workplace characteristics	• The workplace is isolated or remote. • Work is insecure and/or casual. • Disrespectful behaviour is generally accepted or common. • It is a small business where confidentiality and confidence to raise issues may be difficult to achieve.

Workplace systems	• There is no anti-racism policy or code of conduct. • Previous racist behaviour has not been responded to adequately. • There are no dedicated human resources. • Demographic data is not collected and/or employee surveys are not disaggregated by race.

These are risks we identified in our consultation and research; however, this is not an exhaustive list and every workplace will differ. Employers should consult with staff to understand their own specific risk factors, as well as utilising other available tools (see **Chapter 5: Referral guide** and **2.3.3 Where workplace racism occurs** to inform risk assessment).

Guide to developing an anti-racism policy

All organisations should have an anti-racism policy (this may be inside a broader anti-discrimination policy). This policy should set expectations for the workplace, highlighting a complaints process and the consequences for breaches of the policy.

This is different from inclusivity or diversity policies, which, while they may have good intentions, have been found to not adequately address the systemic nature of racism in an organisation.

An anti-racism policy should include:

- a statement that racism is unacceptable and that the employer is committed to providing employees with a safe working environment
- a statement that sets the standard of behaviour that all employees and others in the workplace (such as clients or contractors) are expected to meet
- a statement confirming that the employer has a legal obligation to eliminate discrimination and victimisation
- a definition of race discrimination with reference to the Equal Opportunity Act and examples of racism tailored to the organisation
- an acknowledgement that viewing whiteness as the norm is a driver of race discrimination
- consequences if the policy is not complied with, including any disciplinary action that may be taken if race discrimination or racism is found to have occurred
- how and where to report race discrimination and racism (including references to external regulators such as the Victorian Equal Opportunity and Human Rights Commission)
- a statement confirming that the safety and wellbeing of the person disclosing or formally reporting race discrimination are the employer's priority
- information about confidentiality and privacy in reporting
- information about external organisations that can provide advice, information and support on racism and race discrimination
- when the policy will be reviewed.

Guide to developing an anti-racism policy – a resource

Organisations without a current anti-racism policy can use our guide to develop their own.

See **humanrights.vic.gov.au/resources**

Guide to developing a prevention plan

All organisations need to think about prevention; however, in order to comply with the positive duty only medium to large organisations are required to develop formal prevention plans (also called action plans). These are plans that map how the organisation will proactively address race discrimination particularly within its systems and processes.

A prevention plan should:

- assess the drivers, risks and gaps in responses to racism (see 2.3.3 Where workplace **racism occurs** and the risk indicators above) and will likely include compliance measures across these standards
- be based on a risk assessment by the employer, with input from employees and representatives
- set out clearly articulated and measurable actions, with a clear line of accountability of what the employer needs to do to prevent racism and discrimination
- include contributions from employees and their representatives.

Employees need to understand the plan and know where to find it. Leaders within the organisation should be clear on their responsibilities and accountabilities in implementing this plan. Determining the content of the plan will require consideration of both prevention and response measures that employers will adopt, including those in these standards.

Guide to developing a race discrimination prevention plan – a resource

Organisations without a current race discrimination prevention plan can use our guide to develop their own.

See **humanrights.vic.gov.au/resources**

Engaging with employees

Employers need to engage with staff to identify realistic and appropriate measures to eliminate racism. Strong engagement helps organisations to tailor their policies and procedures.

In discussions around racism, the voices of First Peoples and other racialised individuals (for example, those with lived experience of racism) are often overlooked. However, best practice approaches to addressing racism centre marginalised voices, allowing them to actively participate in decision-making processes that affect them.[132] This also aligns with self-determination principles for First Peoples.

Employers should also consult with employee representatives, including the relevant union, equal opportunity contact officers, and work health and safety representatives (where applicable), to draw on their experience and knowledge.

How to safely engage with employees and employee representatives

- Create a safe environment where people can speak up; for example, employees who have experienced racism may wish to share their experiences anonymously together with employee networks.
- Establish clear parameters or scope for the engagement and how employee views will be considered and incorporated.
- Ask open-ended questions to encourage staff to share insights.
- Give examples of what can constitute racism and race discrimination.
- Share information in plain language that can be easily understood by all employees, including translated materials where appropriate.
- Give employees the opportunity to express their views and provide feedback through a variety of pathways (for example, staff forums, one-on-one discussions, emails, anonymous surveys or submissions).
- Make sure that employees' views are considered in a non-tokenistic way.
- Provide follow-up information about the policies and how employees' views have been incorporated.
- Comply with industrial instruments such as enterprise bargaining agreements and contracts of employment.
- Ensure that external support services are made available to staff (see **Chapter 5**).

How to prevent cultural load in consultation

Organisations should be informed by staff with lived experience of racism when developing policies and procedures. However, employers should consider the following measures to avoid placing an unreasonable cultural load on First Peoples or other racialised employees:

- Do not expect employees to be involved in consultation (or speak for a community) because of their racial background. All consultation should be voluntary.
- Ensure consultation is culturally safe and will not leave employees feeling excluded, marginalised or harassed[133] (see **minimum standard 3** on embedding cultural safety).
- Employers should recognise the extra work and responsibility that some employees undertake to improve the workplace culture, taking into account extra time spent to balance workloads, and compensate them accordingly and/or ensure consultation is part of employees' remunerated work. For example, it could occur during work hours and not need to be completed during a lunch break.
- Time spent contributing to staff networks and advisory groups should be recognised in staff professional development plans (or relevant comparisons) and taken into account in terms of awarding First Peoples and racialised staff bonuses and promotion opportunities.

Guide to recruitment processes

A key process to be assessed through an anti-racist lens is the organisational recruitment process. Preventing and eliminating racism in recruitment may impact a variety of staff and processes in the organisation and therefore need to be championed by leaders.

There are several key actions an organisation can take:

- Develop and adhere to an anti-racism policy.
- Ensure recruitment panels understand their obligations under the Equal Opportunity Act and, where possible, have representation from First Peoples and other racialised communities.
- Ensure job advertisements are drafted clearly and disseminated through a variety of accessible channels to attract a diverse pool of applicants.
- Ensure recruitment panels consider ways to accommodate cultural needs and have completed anti-racist and Aboriginal cultural capability training.
- Avoid collecting personal information that is irrelevant (or could be used in a discriminatory way) without a legitimate purpose in the application process.
- Follow clear selection criteria to make the process as objective as possible and less susceptible to unconscious bias or discriminatory decision-making.
- Keep clear records of the decisions made and the justification for those decisions.
- Provide training to employees on anti-racist recruitment practices.

As with the recruitment process, the approach to retaining and developing First Peoples and other racialised staff needs to be nuanced. Improving recruitment processes cannot happen in a vacuum. Employers must also ensure there is a culturally safe workplace for candidates to work in.

First Peoples and other racialised employees cannot, and should not be expected to, bear the burden of trying to create a culturally safe workplace on their own.

See **minimum standard 3** on embedding cultural safety to support retention of racialised employees.

Standard 3: Organisational culture

Organisations have a culture of equality, respect and anti-racism.

Expectations

- Leaders model respectful workplace behaviour, set clear expectations and are held accountable for preventing and responding to race discrimination.
- Leaders encourage and support bystanders to speak up if they witness or hear about racism.
- Organisations demonstrate and promote an anti-racist workplace culture.

Type of organisation	Actions
SMALL ORGANISATIONS MEDIUM ORGANISATIONS LARGE ORGANISATIONS	• Leaders model respectful workplace behaviour and communicate clear expectations that racism and victimisation will not be tolerated. • Communicate what constitutes racism, race discrimination and victimisation. Communication may involve speaking with staff, sending emails and/or displaying posters, notices or brochures in the workplace. • Leaders act when they witness racism in the workplace, and encourage and support other bystanders to do the same.

MEDIUM ORGANISATIONS
LARGE ORGANISATIONS
	• Leaders drive a culture of respect and build organisational capability by:
	  • reinforcing the lessons of anti-racist training in team meetings, supervision and internal communications on policies and practices
	  • speaking about racism and appropriate workplace behaviour in team meetings and making it clear how people can report race discrimination
	  • embedding anti-racist principles, including by adapting organisational values, employee contracts, codes of conduct, induction processes and resources on noticeboards and the intranet (where applicable)
	  • providing the Commission's race discrimination bystander guide to all staff to create an environment that supports others to speak up
	  • creating opportunities for staff to provide feedback comments on leadership behaviour and culture, such as through employee reference groups or anonymous pathways.

LARGE ORGANISATIONS

- Provide additional dedicated training for leaders and managers, including information on:
  - how to initiate conversations with employees on racism
  - identifying resistance and backlash to anti-racism measures and best practice approaches to address it.
- Hold managers accountable to implement the race discrimination prevention plan, such as by including it in contractual requirements or performance targets.
- Include obligations about race discrimination and respectful work behaviour in job descriptions, performance goals, bonus structures, and recruitment and promotion processes.
- Ensure existing employee forums incorporate discussions on race discrimination or create a dedicated employee reference groups to support human resources or people and culture and hold leadership accountable.

Organisational leadership

Leaders play a central role in setting expectations for staff of respectful behaviour in the workplace and shaping organisational culture. Leaders at all levels of the organisation should communicate the organisation's commitment to anti-racism, champion policies and procedures, and model appropriate behaviour, so employees can see the organisation's commitment.[134]

Where leaders do not adequately respond to reports of racism, this can create a workplace culture where racism is normalised (see **minimum standard 4**).[135] This can erode trust in organisational complaints procedures, with employees fearing that reporting may lead to nothing or even negatively impact their career.[136]

Organisations that authentically commit to having a culture of equality and respect are less likely to experience racism.[137] These organisations have:

- leaders who are racially literate and call out racism when it occurs[138]
- leaders who understand how lived experience for First Peoples and other racialised employees relates to career progression
- leaders who create opportunities such as mentorship for career progression and development for First Peoples and other racialised employees[139]
- non-tokenistic representation of First Peoples and other racialised employees in leadership positions to ensure lived experience influences decision-making.[140]

Accountability

Leaders must prioritise and be held accountable for anti-racism.[141] Large organisations should have an executive leader that is directly accountable for anti-racism strategies and policies in both their position description and key performance indicators. This will ensure the organisation gives anti-racism efforts the priority and sponsorship they require (for example, the diversity and inclusion lead).[142]

Additionally, all leaders should commit to anti-racism so that no one person carries all responsibility for anti-racism.

Bystanders

A bystander is anyone who witnesses racism at work but is not directly involved in it. An active bystander is someone who witnesses a situation and takes action. Active bystanders play an important role in preventing racism in the workplace. Any time a bystander calls out racism, they help create an anti-racist workplace by indicating that behaviour is not acceptable.

Leaders should call out racism in the workplace and encourage others to do so. This will create a culture that encourages employees to call out and report racism, rather than requiring First Peoples and other racialised employees to bear the load of speaking up about racism.[143]

Bystanders can act to prevent racism in different ways: supporting racialised employees, calling out racism, reporting racist incidents or simply showing zero tolerance for it in the workplace.[144]

How to be an active bystander – a resource

Organisations can provide our active bystander guide to staff on how to safely call out racism in the workplace.

See **humanrights.vic.gov.au/resources**

Embedding cultural safety

Cultural safety is an important aspect of anti-racist workplaces and a key theme that emerged in consultations (see **2.3.3 Where workplace racism occurs**). Workplaces should be culturally safe and inclusive to ensure that First Peoples and other racialised employees succeed. This is less about the employees and more about the culture of the organisation as a whole. A lack of cultural safety can affect employee wellbeing and result in lower employee satisfaction and retention rates.[145]

A culturally safe workplace means:

- The cultures of First Peoples and other racialised employees are acknowledged and respected.
- First Peoples and other racialised employees feel comfortable to practise their cultures, express their cultural beliefs and take cultural leave free from discrimination.
- Racism of all kinds is not tolerated.
- First Peoples' and other racialised employees' skills, perspectives and experiences are valued.[146]

To build cultural safety in an organisation:

- Undertake genuine discussion with staff to understand the state of cultural safety and how it can be improved.
- Respond to complaints of racism quickly and effectively[147] (see **minimum standard 4**).
- Work with employees with lived experience to improve cultural safety (see **minimum standards 2 and 3**).
- Embed racial literacy (see **minimum standard 1**).

Addressing backlash and resistance

Experiencing resistance and backlash is a normal part of implementing new ideas within a workplace. People may feel uncertain or threatened, or disagree with what is being proposed. Backlash can be explicit or implied, conscious or unintentional, and can occur at all levels of the organisation including leadership.

The idea that a person's racial privilege may have contributed to their professional success or provided an advantage over others may be confronting (see **2.2 Why racism occurs**). As a result, calling out systemic racism can provoke defensiveness, resistance from racially privileged employees or backlash.

Resistance and backlash can look like a range of defensive behaviours, including:

- denying that racism is a problem
- disputing their role in racism
- negative comments, either online or in person
- diminishing the merit of someone's appointment
- other behaviour that undermines or resists anti-racism measures.

Leaders or staff may feel that because they as individuals 'are not racist', the organisation cannot be – but systemic racism goes deeper than individuals. In organisations, it is often about what is not done to address racism.

Although some may complain that measures taken to support First Peoples and other racialised employees and to increase diversity may amount to 'reverse racism', it is important to clarify how racism is supported by systems of power and how these measures are creating substantive equality and will lead to positive change for all.

What to do

Planning ahead is the first step to reducing the risk of backlash. Employers should engage with staff early in the process to reduce the risk that people will be alarmed or feel threatened by changes. Communicating the purpose and extent of any changes and providing avenues for constructive feedback will create a smoother process.

Some actions that employers can take in preparation include:

- ensuring that all leaders are on board with the change process
- gathering information about the attitudes of staff to understand how ready the organisation is to implement change
- collecting data, resources and information to respond to staff questions and concerns
- developing a frank and open communication strategy that strengthens the shared commitment to anti-racism.

Finding the right way to respond to resistance and backlash can be difficult and is not a one-size-fits-all situation.

Some actions that employers can take to respond to backlash include:

- understanding that resistance and backlash are normal parts of the process for creating change, especially when challenging existing power structures
- ensuring leaders are prepared to protect First Peoples and other racialised employees from being the target of resistance
- acknowledging resistant staff members' concerns and responding to their questions
- ensuring all staff understand the overall organisational and societal benefits of anti-racism
- looking for common ground and using any information prepared beforehand to remind resistant staff of the importance of this work
- making time for self-reflection on discussions with resistant staff.

Standard 4: Reporting and response

Organisations' responses are fair, timely, confidential, victim-centred and anti-racist.

Expectations

- A reporting and complaints procedure is developed in consultation with employees and communicated effectively, with options to report anonymously where possible.
- Responses to reports and complaints about race discrimination are fair, timely, culturally safe, anti-racist, victim-centred and confidential.
- Organisations record complaints of racism and race discrimination, and steps taken in response.

Type of organisation	Actions
SMALL ORGANISATIONS MEDIUM ORGANISATIONS LARGE ORGANISATIONS	• Develop a documented reporting and complaints procedure with staff (and relevant representatives) that reflects the key principles outlined in this standard. • Ensure the complaints procedure is in plain English with translations available (if necessary) and accessible, including providing an accredited interpreter where necessary. • Clearly communicate the procedure to all staff (and representatives) and ensure they understand how to make a complaint through multiple avenues (including information on external options; see **Chapter 5: Referral guide**). • Recognise when the organisation is too small to impartially manage complaints and commit to engaging external services (such as an investigator) e.g. if the owner receives a complaint about their own behaviour or that of a family member. • Record complaints (and reports where appropriate) and the responses confidentially. • Ensure that both the complainant and the respondent have the option of a support person during the complaints process.
MEDIUM ORGANISATIONS LARGE ORGANISATIONS	• Keep a formal register of complaints and establish systems to confidentially record and report on complaints for accountability and learning e.g. have a standing agenda item at senior management meetings to review and discuss complaint trends, any organisational risks and what can be done to prevent further incidents. • Provide training to all contact officers and those handling complaints, ensuring they have the knowledge, skills and support to conduct sensitive conversations on racism and manage complaints and reports properly. • Ensure anti-racism training includes information on how employees can safely report racism in the workplace when it occurs (see **minimum standard 1**).
LARGE ORGANISATIONS	• Establish anonymous or other supported reporting pathways to address power imbalances within the workplace.

Complaints and reports

A **complaint** is a formal request or allegation made to an organisation or to an external body which requires follow-up action. All complaints should be collected in a formal register and follow a transparent complaints process.

Examples are making a complaint of race discrimination to an employer or lodging a complaint at the Commission.

By contrast, a **report** raises a concern or allegation informally, may be made by a witness or bystander and may not require follow-up action (unless action is required by under the Equal Opportunity Act or OHS law e.g. the report identifies a risk of psychological or physical harm). Reports should be collected only if the person reporting consents (and the option to make a report anonymously should be available).

An example is an employee talking to a trusted colleague or manager about a racist incident.

In this section, when talking about the complaint process, we refer to 'complainants' and 'respondents'. Employers should use this language when responding to complaints to ensure the process is fair and impartial.

Key principles for handling complaints and reports

A procedure for handling reports and complaints of racism and race discrimination is an important tool in reducing racism in the workplace.[148] Employers should consult with employees, particularly First Peoples and other racialised employees, to ensure that procedures are accessible, culturally safe and fit for the workplace.

A reporting and complaints procedure should be as follows.

Principle	Description
Victim-centred	• Processes are designed to minimise harm to complainants (e.g. limiting how many times they must tell their story) and take into consideration any cultural or accessibility requirements. • All parties have the option of a support person and are otherwise supported through the process.
Anti-racist	• Managers and any staff who receive reports or complaints must understand racism and be able to recognise when a complaint of inappropriate behaviour may be based on racial prejudice.
Confidential	• Information should be appropriately stored and limited to those who need to know. • If the complainant wishes to remain anonymous, care should be taken not to disclose identifying information.

Impartial and fair	• The people responsible for investigating or deciding the outcomes of the complaint are impartial (e.g. they do not have a close personal relationship with either party). • The respondent is provided with the right to reply to the allegations and any decisions made about them.
Accessible	• The procedure must be in clear and simple language, and available in other languages (if appropriate). A flow chart may help. • Any requirements a complainant or respondent may require, such as an interpreter or translator to participate or a change in format, should be considered.
Flexible	• There are a range of reporting and response options available, including self-management (where the complainant resolves the matter on their own), informal or formal internal management and external management, and appropriate options to report anonymously. • The procedure should outline a range of contact people in different roles whom a report or complaint can be made to e.g. managers, human resource personnel, equal opportunity contact officers, work health and safety representatives or union representatives.
Timely	• The procedure should outline that responses to reports and complaints will be timely (within 3 months wherever possible) and aim to resolve matters before they escalate. • The procedure should outline a commitment to regularly updating everyone involved.
Transparent and accountable	• Both sides are given sufficient information about the allegations, investigation and/or decision-making process, and what to expect including potential outcomes. • The reasons for actions and decisions should be communicated to everyone involved (where safe and appropriate) and subject to appropriate oversight. • Actions and outcomes are proportionate and hold respondents to account appropriately.
Continuously improved	• Where appropriate, methods for improving systems and processes should be considered by management after a complaint is investigated and resolved. • Even if disciplinary action is not taken, reports and complaints of racism should be addressed holistically by the organisation, for example through additional training or updating of processes.

A lack of racism complaints in an organisation does not necessarily indicate that no racism is present. Rather, it may mean that people are afraid or unwilling to report incidents of racism. Once a trusted reporting and complaints process is established within an organisation, reports and complaints of racism are likely to increase before they decrease. This may seem contradictory; however, as an organisation becomes increasingly safe and successfully embeds anti-racism measures, reports and complaints should begin to decrease again (see **2.5.1 Barriers to reporting**).

A reporting and complaints procedure should include:

- the types of conduct it covers, including examples of what types of behaviour amount to race discrimination
- the types of complaints or other conduct it does not cover (for example, safety breaches and disciplinary action for poor work performance)
- reference to other relevant workplace policies (for example, an anti-racism policy if separate)
- a commitment to fundamental principles of complaint handling (see above)
- a range of pathways for reporting and response options
- an explanation of how related documents will be treated (including in what circumstances information will be recorded, the management of confidential information and privacy obligations)
- a statement confirming that a person making a report or complaint will not be treated badly (victimised) because they make a complaint
- when an investigation will be conducted and the factors that will be considered, including the wishes of the complainant
- the possible outcomes of an investigation, including what workplace action could be taken, both disciplinary and non-disciplinary, and how that information will be recorded and shared (for example, with the complainant)
- information on how investigations will be conducted, how parties will be kept updated and the decision-making process
- the date the document came into effect and a date for review.

Anonymous reporting

Organisations should allow staff to make anonymous reports of racism where possible. This should allow staff to make reports of interpersonal racism and/or raise concerns about systemic racism without identifying themselves (see **2.5.1 Barriers to reporting**). All reports should be added to a database to allow organisations to address these issues systemically.

Despite this being an important option for organisations to have, anonymous reporting is not always possible, nor is it a fix-all. Staff in small demographic groups can feel highly visible (especially in smaller organisations) when making complaints about racism. Methods to de-identify reports or reduce identifying information should be utilised if necessary (for example, using a reporting template with multiple-choice options rather than free text).

Organisations should aim to make responses to anonymous reports where possible through organisation-wide responses such as training or reviewing policies/processes.

Anonymous reporting processes should still follow the key principles listed above and are required for large organisations.

When should an external process be used?

In some circumstances, handling a racism complaint internally may be impractical, counterproductive or irresponsible.

For example, it may not be appropriate to handle a complaint internally where:

- The complainant does not want the matter dealt with internally.
- The employer does not have the capacity or expertise to effectively manage the complaint internally.
- The organisation is too small to be able to maintain all parties' trust and confidentiality and remain impartial; this includes where the investigator has a personal connection to the parties and cannot objectively consider the evidence.
- There are multiple allegations or multiple respondents, revealing a systemic or complex issue at the organisation.
- The respondent is the manager, chief executive officer or another senior leader.
- There are allegations that the employer has not managed complaints properly in the past, which mean the parties and/or broader workforce do not trust the process or outcomes.
- The matter involves criminal behaviour and/or the employer has legal obligations to report it externally.

External agencies such as the Commission or Victoria Police (for criminal matters) can receive complaints and referrals from employees (see **Chapter 5: Referral guide**). Employers may also choose to engage a reputable independent specialist investigator to gather evidence objectively and make findings.

Alternatively, where appropriate employers can seek expert advice to assist them to deal with matters. Referring a complaint externally does not mean the employer has discharged their positive duty – employers must still carefully consider any further actions or risks to address within the workplace.

Preventing victimisation

Victimisation is an issue that needs to be addressed proactively by employers. First Peoples and other racialised employees told the Commission in consultation that they were fearful of making complaints due to the likelihood of victimisation despite it being unlawful under the Equal Opportunity Act (see **2.5.1 Barriers to reporting**).

To prevent victimisation, following a complaint or report, employers should ensure that:

- Leadership sends a clear message that victimisation is unlawful and will not be tolerated.
- At the beginning of a complaints process, parties are reminded that victimisation will not be tolerated.
- A victim-centred approach to resolving complaints is taken.
- Following a complaint, there is monitoring for victimisation including by having open, regular communication with the complainant and other employees.
- Employees are encouraged and supported to report victimisation.
- Swift and decisive action is taken to discipline workers engaging in victimisation.

When should an NDA be used?

Non-disclosure agreements should be used sparingly and not as a general rule. NDAs remove the ability for organisations to be transparent and make systemic change based on complaints (see **2.5.3 Use of non-disclosure agreements**).

Employers should carefully consider the circumstances of each case when determining whether an NDA is appropriate, including:

- who is requesting confidentiality and whether there is a clear reason why it is required
- who benefits from the requirement
- the benefits of not using an NDA or confidentiality clause
- the potential impact of the agreement on the complainant and the workplace culture.

When used (for example, when a complainant has requested confidentiality regarding their experiences), they should be carefully tailored to the needs of both parties to only prohibit certain disclosures.

If an NDA is used, systemic change such as anti-racist or Aboriginal cultural awareness training can be incorporated into the settlement agreement to redress the lack of individual data and drive system change.

Standard 5: Continuous improvement

Organisations' systems, culture and responses to race discrimination are continually improved and staff are confident that race discrimination is being eliminated in the workplace.

Expectations

- Organisations regularly collect reporting and complaints data, and other relevant information, and assess it for trends and risk factors.
- Organisations regularly review and update policies and procedures that address race discrimination.
- Organisations are transparent about trends, risk factors and lessons with employees, boards and key stakeholders to build staff confidence.[p]

Type of organisation	Actions
SMALL ORGANISATIONS MEDIUM ORGANISATIONS LARGE ORGANISATIONS	• Complete an annual, scheduled review of policies, procedures and programs that are relevant to race discrimination and communicate any changes to employees. • Regularly conduct a risk assessment of race discrimination (every 2 years) and update plans, policies and procedures accordingly (see **minimum standard 2**). • Communicate transparently trends, risk factors and lessons with employees, boards and key stakeholders (where safe and appropriate).
MEDIUM ORGANISATIONS LARGE ORGANISATIONS	• Regularly review and update the race discrimination prevention plan and other policies, procedures and systems (yearly). This should involve considering complaints and other relevant data to identify key trends and risks in the workplace. • Implement a process where complaints trigger a review of workplace policies and practices to uncover additional systemic issues. • Use exit interviews as an opportunity to ask departing staff about their views of the organisation's compliance with race discrimination policies and any unmitigated risks of race discrimination.
LARGE ORGANISATIONS	• Conduct anonymous, confidential surveys on a regular basis to assess staff knowledge on, experience of and willingness to report racism and race discrimination. • Integrate race discrimination into current monitoring and evaluation frameworks and implementation plans. • Conduct compliance audits on a regular basis.

p This should only be shared if organisations can ensure no complainants are identifiable.

Importance of collecting and analysing data

There is currently a lack of data about racism in the workplace (see **2.5.2 Lack of data**). Employers should regularly collect and assess data, including racial background, reports and complaints, and other relevant data. It is important to invest in robust data collection, reporting and evaluation to determine what works and what needs to be improved.

Data employers should collect:

- reporting and complaint statistics and prevalence of discrimination, victimisation and sexual harassment (disaggregating First Peoples and other racialised staff)
- employee views and safety (wellbeing, cultural safety, stress, etc)
- racial backgrounds of staff (by anonymous survey)[q]
- racial backgrounds of leadership
- any trends in pay inequalities based on race
- promotions and other benefits based on race
- work segregation based on race
- data on who has left the organisation (disaggregated by race)
- views/information on workplace racism from exit interviews.

Leading employers should identify trends, patterns and lessons that can be implemented to drive continuous improvement if initial efforts to address race discrimination fail to produce results.

How should employers collect data?

Cultural and racial diversity data[r]

The best way to collect diversity data about a workplace is either initially through onboarding protocols or through an all-staff anonymous survey, which, if designed well, ensures that staff cannot be identified from the information collected. These surveys should be completed on a voluntary basis, as some employees may feel uncomfortable providing this information and should not be compelled to provide sensitive information.

Employee opinions

Employee opinion surveys should be anonymised. The size of the workplace may determine whether people feel safe to be candid (and truly anonymous). For small organisations with few First Peoples or other racialised employees, it can be difficult to keep employee opinion surveys anonymous.

q Personal information revealing racial or ethnic origins is considered 'sensitive information'. Where data is sensitive information, consent must generally be obtained from employees to comply with Australian Privacy Principle 3.3.

r For advice on collecting racial and cultural backgrounds of employers, see the Diversity Council Australia's guide on Counting culture **https://www.dca.org.au/research/counting-culture-2021.**

Employers should ensure that this information remains confidential and inform employees what steps will be in place to ensure this. One option is giving racialised employees the ability to complete surveys together, for example, one response for the employee network, reducing the risk of individuals being identified.

Complaints and reports

All complaints should be recorded, preferably collected in a register (required in medium and large organisations) that collects information on the subject and theme of the complaint so the organisation can track trends. Any reports of racism should be collected in the register only with the specific consent of the person reporting.

Employers should communicate the positive benefits of collecting this data in order to manage expectations and perceptions among staff. This will allow staff to feel more confident about providing personal information.

Make reviewing 'business as usual'

Employers should review data and trends regularly to drive continuous improvement. These reviews should occur at least annually, even for a smaller organisation. Reviewing of data should be embedded in processes and included in business plans.

Leaders should also have responsibility for driving data reviews and analysis, and this should be core business for some leaders (for example, leaders in people and culture).

Tracking trends

Once data is collected, a baseline can be established which provides a starting point for the organisation against which change can be measured.

Suggested steps:

1. Start by analysing the workforce data as a whole and noting any insights when you disaggregate employees based on race.
2. Consider whether the leadership team is racially diverse.
3. Identify whether there are pay discrepancies between employees based on race.
4. Consider the number of discrimination, sexual harassment and victimisation reports and complaints received and what this says about the organisation.
5. Consider survey data and whether there are differences in the way the survey was responded to based on race.
6. Consider the data collected relating to people who have exited the organisation – are there any trends related to race? What do employees report in exit interviews?

Transparency

Employers need to be transparent about trends, patterns and lessons with staff, boards and key stakeholders to build trust and promote accountability. This means providing visibility of the steps that employers take to prevent and respond to race discrimination, as well as the success or failure of those steps. It also means having open conversations with employees and inviting them to ask questions. Transparency should always be balanced with the need for confidentiality and privacy.

Transparency should be expressed through:

- annual data published and communicated to employees and stakeholders
- staff notification of updates to policies and procedures, and the justification for these
- information in relevant plans and policy documents regarding discrimination and victimisation
- communication to boards, governing bodies or external agencies (in larger workplaces) on data and trends that indicate the prevalence of racism.

Transparent organisations are more likely to strive for and achieve improvement, as success is measured and they are held to account. Transparency and candour are also things that employees look for in a prospective employer and will improve workplace culture.

4.3 Maintaining records

Maintaining records is an important responsibility of all employers. Records are also important for organisations to demonstrate their progress and compliance against the minimum standards. Records help to identify trouble areas and potential risks so that they can be addressed, and help to ensure that actions are fair and informed.

Without these records, it is difficult for organisations to understand where they are, conduct audits and successfully address issues relating to racism. Employers need to develop clear guidelines on how they will maintain records and communicate this to employees, including in relation to upholding their privacy.

Records of compliance should include:	
Standard 1: Racial literacy	• organisation-specific examples of race discrimination • emails to staff or meeting notes communicating information on race discrimination including organisational policies or training updates • attendance records for anti-racism training • information available on intranets about racism and race discrimination.
Standard 2: Policies and procedures	• emails to staff or meeting notes regarding policies and procedures about race discrimination and where to find them • tools and resources, including how they were distributed to staff • anti-racism policies, prevention plans, and/or other policies and procedures.
Standard 3: Organisational culture	• emails to staff or meeting notes regarding expectations for respectful workplace behaviour, the organisation's position on racism and how leaders are working towards building racial literacy • staff feedback pathways • leadership position descriptions or work plans • anti-racism working group (or relevant employee network) terms of reference.
Standard 4: Reporting and response	• a complaint and reporting procedure • communication of complaints pathways to staff (for example, emails or posters) • attendance records for equal opportunity contact officer training sessions • a complaints and reports register, including the response taken and the outcome.
Standard 5: Continuous improvement	• meeting notes • survey results and data reports • reporting and complaints registers • monitoring frameworks and evaluation reports • revised race discrimination prevention plans and/or related policies and procedures.

5.

Referral guide

Chapter 5 provides information on organisations relevant to race discrimination in Victoria.

5.1 Relevant organisations

Victorian Equal Opportunity and Human Rights Commission

The Commission is Victoria's state human rights regulator, responsible for helping embed and enforce the Equal Opportunity Act. The Commission provides information to Victorians about their rights and obligations. The Commission also has a Reporting Racism Chatbot, an interactive online chatbot to help you understand your rights and report race discrimination or vilification.

- phone: 1300 292 153 or (03) 9032 3583
- website: **humanrights.vic.gov.au**
- chatbot: **humanrights.vic.gov.au/education/reducing-racism-hub/resources**

Australian Human Rights Commission

This is the national human rights regulator, which investigates complaints about discrimination and human rights breaches. The Australian Human Rights Commission also has a resource hub dedicated to helping people better understand racism, providing tools and information.

- website: **humanrights.gov.au**
- resource hub: **itstopswithme.humanrights.gov.au/resourcehub**

Fair Work Commission

This is Australia's workplace relations tribunal, which provides confidential conciliation and mediation services for disputes in the workplace and regulates registered organisations. The Fair Work Commission can provide guidance about workplace issues.

- phone: 1300 799 675 (not for legal advice) Monday to Friday 9 am – 5 pm
- website: **fwc.gov.au**

Fair Work Ombudsman

This is the federal independent statutory agency that enforces the Fair Work Act and other legislation related to pay and conditions at work. The Fair Work Ombudsman provides education, guidance and information about the Fair Work Act, including information about discrimination in the workplace.

- phone: 13 13 94 Monday to Friday 8 am – 5:30 pm
- website: **fairwork.gov.au**

WorkSafe Victoria

This is Victoria's health and safety regulator, responsible for ensuring compliance with Victoria's workplace occupational health and safety laws. WorkSafe can receive complaints from workers and has a range of enforcement powers including workplace inspection and investigation.

- phone: 1800 136 089
- website: **worksafe.vic.gov.au**

Diversity Council Australia (DCA)

DCA is an organisation that advocates for many diverse and marginalised communities including racialised people. DCA regularly shares diversity and inclusion research, analysis and information.

- website: **dca.org.au**

Relevant resources

- **Inclusive Recruitment Tools**
- **Gari Yala: report on First Peoples workers**
- **Racism at Work report**
- **Counting Culture: What to ask to measure cultural diversity in your organisation**

5.2 Legal help and information

Victoria Legal Aid (VLA)

VLA provides free legal services to support people with legal problems including race discrimination, harassment and bullying.

- phone: 1300 792 387, Monday to Friday 8:45 am – 5.15 pm
- website: **legalaid.vic.gov.au**

Victorian Aboriginal Legal Service (VALS)

VALS provides free legal information, referrals, advice and casework assistance to Victorian Aboriginal and Torres Strait Islander Peoples on a range of legal issues including discrimination.

- phone: (03) 9418 5999, 1800 064 865 (toll free)
- website: **vals.org.au**

JobWatch

This organisation provides legal information and support on issues related to employment rights, including discrimination.

- phone: (03) 9662 1933 (metropolitan), 1800 331 617 (regional Victoria)
- website: **jobwatch.org.au**

Federation of Community Legal Centres (FCLC)

The FCLC is the peak body for Victoria's community legal centres and Aboriginal legal services. Workers seeking a community legal centre in their area to assist with a legal problem can contact the FCLC for information.

- phone: (03) 9652 1501
- website: **fclc.org.au**

5.3 Support and wellbeing

Lifeline

This is a national charity providing all Australians experiencing emotional distress with access to 24-hour crisis support and suicide prevention services.

- phone (24/7 crisis support): 13 11 14
- website: **lifeline.org.au**

Beyond Blue

This is an Australian mental health and wellbeing support organisation that provides support to address depression, suicide, anxiety disorders and other mental illnesses.

- phone: 1300 22 4636
- website: **beyondblue.org.au**

Multicultural Centre for Women's Health

This organisation provides a telephone service specifically for women from migrant and refugee backgrounds on health topics including women's health, work health and safety, and wellbeing.

- phone: 1800 656 421
- website: **mcwh.com.au**

Victorian Aboriginal Health Service (VAHS)

VAHS offers a range of health and counselling services to First Peoples.

- phone: Fitzroy 9419 3000, Epping 8592 3920, Preston 9403 3300
- website: **vahs.org.au**

Asian Australian Mental Health Practitioner List

Shapes and Sounds is a mental health resource for Asian Australians. As well as providing education and programs for Asian Australian mental health, it has compiled the Asian Australian Mental Health Practitioner List.

- website: **justshapesandsounds.com/vic**

Our Directory – Directory of Mental Health Support for Mob, Māori and BIPOC

This is a community-generated directory of mental health support for First Peoples, Māori and racialised people in Australia and New Zealand.

- website: **linktr.ee/ourdirectory**

5.4 Making a complaint or reporting racism

Victorian Equal Opportunity and Human Rights Commission

If you have experienced discrimination or vilification on the basis of race and would like to report it or seek information about your rights, or want to help someone you know with these issues, you can contact the Commission.

You can lodge a complaint by:

- phoning 1300 292 153 Monday to Friday 10 am – 2 pm
- completing the **online complaint form**
- emailing **complaints@veohrc.vic.gov.au**
- getting translation support: **humanrights.vic.gov.au/translations**

If you would like to tell us about your experience but do not want to make a formal complaint, you can make a report to us using our community reporting tool.

- **humanrights.vic.gov.au/get-help/community-reporting-tool**

Victorian Civil and Administrative Tribunal (VCAT)

Victorians who have experienced unlawful discrimination, sexual harassment, victimisation or vilification can apply to VCAT under the Equal Opportunity Act. Through VCAT, applicants can go through mediation or compulsory conference, or present their position at a hearing to reach an agreement or decision on a dispute.

- phone: 1300 018 228
- website: **vcat.vic.gov.au**

Victoria Police

Serious experiences of racial or religious vilification or physical abuse should be reported to Victoria Police.

- phone: 000 (emergency), 131 444 (non-urgent reports)
- website: **police.vic.gov.au**

Appendix: Key terms

Anti-racism	This is the process of recognising racism as a powerful system of advantage and disadvantage based on race that has been embedded in society throughout history. It includes reflecting on your own part in racism, including gaps in racial literacy and how to address them.[149]
Bystander	This is someone who witnesses an incident taking place and has the choice to respond, intervene and/or report the incident.[150]
Colonisation	This is the establishment of a colony or colonies in a country or area that dispossesses First Peoples of their traditional lands.[151]
Contact officer	This person is the first point of contact to provide information for someone who thinks they may be experiencing or witnessing discrimination, sexual harassment or victimisation in their workplace.
Cultural safety	This refers to a positive environment where someone's cultural identity is not threatened but, rather, valued.[152]
Culture	This is a set of distinctive spiritual, material, intellectual and emotional features of a society or a social group. It encompasses lifestyles, ways of living, value systems, traditions and beliefs.[153]
Discrimination	Under the Equal Opportunity Act, discrimination is when a person is treated unfairly because of certain personal characteristics. See 3.1 Workplace race discrimination for more information.[154]
Employee	Under the Equal Opportunity Act, employee refers to paid workers and staff including ongoing and fixed-term, casual and contract workers, consultants and paid interns.[155]
Employer	Under the Equal Opportunity Act, employer refers to any person or organisation that employs or engages another to undertake work under a contract of services or on commission.[156]
Ethnicity	This refers to a shared identity or similarity of a group of people based on distinguishing characteristics such as languages, shared geographical origins, history, traditions and customs.[157]
Internalised racism	This is when someone believes or accepts negative/racist things about themselves or their group, affecting their individual and collective sense of worth or value.[158]
Interpersonal racism	This is racism between individuals where an individual's beliefs, attitudes and/or actions discriminate against, exclude or disadvantage racialised people.
Intersectionality	This refers to how a person's life can be made up of or influenced by multiple intersecting and layered identities, e.g. gender, sexual orientation, socioeconomic background, and therefore how the discrimination they may experience is often specific.[159]
Microaggressions	These are often indirect and unintentional displays of prejudice, e.g. off-handed or loaded questions, compliments or interactions.[160] They often rely on stereotypes about racialised communities.

Multiculturalism	This concept acknowledges that a country's society and national identity are made up of multiple cultural, racial and ethnic groups with diverse migration histories that should be recognised.[161]
Nationality	This is the concept of being a citizen of a nation or country, attained at birth, after living in a country for long to become a citizen or through ancestry.[162]
Perpetrator	This is a person who has acted unlawfully (e.g. used hate speech) against another person.[163]
Race	Under the Equal Opportunity Act, race means a person's: • colour • descent or ancestry • ethnicity • nationality or any other characteristics associated with a particular race.[164]
Racialisation	This is a political and social process of defining other groups by their race.[165] It seeks to attribute differences to, or highlight discrepancies between, groups according to their race, often subjugating marginalised groups and so affecting their ability to participate fully in society.[166]
Racism	This is commonly recognised as actions, attitudes and beliefs that target, harm or affect someone or a group based on their race, ethnicity, culture and/or skin colour.[167]
Religious belief	Under the Racial and Religious Tolerance Act, religious belief means holding or not holding a religious belief, view or faith that is not against the law.[168]
Systemic racism	This is how racism is upheld by systems, policies and practices that harm or marginalise communities while they inform and direct the functioning of society.[169]
Victim	This is a person who has experienced a form of unlawful behaviour such as discrimination, vilification or hate speech.[170]
Victimisation	This is when a person is treated badly or unfairly because: • they have made a complaint • it is believed they intend to make a complaint, or • they have helped someone else to make a complaint.[171]
Vilification	This is behaviour that incites hatred against, serious contempt for, or revulsion towards or severe ridicule of a person or a group of people because of their race or religion.[172] See **3.4.1 Vilification** for more information.
White privilege	This refers to an advantage or protection that is only available to white people or groups. The concept acknowledges that white people receive many advantages and protections that are not given or not equally given to other groups due to current and historical practices such as colonialism.[173]
White supremacy	This is a false belief system that considers people with white skin and their cultures, identities and religions to be superior to other racial groups or the norm.[174]

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