



**Victorian
Public Sector
Commission**



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Government

Guide to hiring with special measures in the public sector

A special measure is a lawful way to try and give an employee or candidate substantive equality.

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Types of equality and special measures

Before we explain what a special measure is, you need to understand the legal terms of formal equality and substantive equality.

Formal equality

Formal equality is when regardless of a person's circumstances, you:

- treat everyone the same way
- give everyone the same opportunities and levels of support

Substantive equality

Substantive equality is when you think of a person's circumstances and:

- make it fairer for them
- look at what you can do to address disadvantage and discrimination they experience

A special measure uses the principle of substantive equality to try and achieve equality in the long term.

What a special measure is in the Victorian public

sector

In the [Equal Opportunity Act 2010](#), a special measure is a lawful way to try and give an employee or candidate substantive equality.

It's one way to help people who work in the public sector to have the same chance to succeed, based on their needs.

In the public sector, we have workforce strategies that aim to make our workforce reflect Victoria's diverse population, such as:

- [Barring Djinang: Aboriginal Employment Strategy for the Victorian public sector](#)
- [Getting to work: Victorian Government disability employment action plan 2018-2025](#)

This means you have an obligation to make your recruitment as inclusive as possible. You can use a special measure to help.

To limit the use of special measures to those who need them, the law has:

- a list of protected attributes that apply
- criteria a person from a group must meet

Special measures protected attributes

Protected attributes are what the [Equal Opportunity Act 2010](#) says you can consider if you want to use a special measure.

The protected attributes are:

- age
- breastfeeding
- employment activity
- gender identity
- disability



- industrial activity
- lawful sexual activity
- marital status
- parental status or status as a carer
- physical features
- political belief or activity
- pregnancy
- race
- religious belief or activity
- sex
- sexual orientation
- an expunged homosexual conviction
- personal association (whether as a relative or otherwise) with a person who is identified by reference to any of the above attributes.

Special measures criteria

The [Equal Opportunity Act 2010](#) has rules and criteria you must meet to use a special measure.

A special measure must:

- be taken for the purpose of promoting or realising substantive equality for members of a group with a protected attribute
- be undertaken in good faith to help promote or achieve substantive equality for members of the group
- be reasonably likely to achieve this purpose
- be a proportionate way of achieving the purpose
- be justified because the members of the group have a particular need for advancement or assistance

You must meet all these criteria to justify your use of a special measure. You must keep

a record of your reasons for using it, in case of a complaint.

If you can't justify your reasons for using a special measure, your action may be discriminatory.

You don't have to get permission to use a special measure but talk with your HR or legal team to assess if you've met these criteria and your use of the special measure complies with any internal policies. You can also use our checklist.

If you can't meet these criteria

If you can't meet these criteria but still want to use a special measure, you must apply for an exemption at the [Victorian Civil and Administrative Tribunal](#).



When to use a special measure

You don't tie a special measure to a person or a role in an ongoing way. If the role becomes vacant, you can consider if you still need a special measure.

Most of the time, you'll use a special measure when you hire to:

- define who can apply for a role
- deliver work that needs lived experience, cultural and/or religious expertise
- increase the number of employees from a specific group of people
- prioritise a group of people in a selection process
- work with people from a specific group

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You can use a special measure when you hire for any role.

If you have a role that will work with a specific group, you don't need to use a special measure when you hire.

If you need candidates who share a lived experience of that group, you may want to use a special measure.

If you use a special measure in your hiring process, try to have a person with lived experience on the selection panel.

How to use special measures in role design and advertising

If you want to use a special measure, you must work with your HR team to design the role.

Special measures and role design

If you want to use a special measure, you must work with your HR team to design the role.

You must comply with the law and embrace diversity and inclusion.

Think about:

- entitlements, such as cultural leave that may feature in your Employee Agreement
- [inherent requirements](#) of the role
- position description with clear content and language
- support for workplace adjustments
- work arrangements, such as flexible work

Also think of the other hiring stages, such as:

- assessment methods
- interviews
- selection process
- training for the selection panel
- where and how you advertise

Read more at:

- [Create an inclusive workplace](#)
- [Recruiting and inducting Aboriginal staff](#)
- [Workplace adjustments and flexibility](#)

Special measures and advertising

When you advertise a special measures role, target your ads at the group you want to attract.

You can use places like recruitment websites and notice boards for your group visits.

Use images of your target group in your ads, such as people in that group who work in your organisation. But always get consent!

Advertisement wording

If you design a special measures role, let candidates know you designed the role with them in mind.

There's no exact wording, but you should:

- be clear you're using special measures
- tell candidates how this will affect the hiring process

There are 3 ways you can label your role to help people who want to apply:



Special measure type	Example wording
Prioritised role: Anyone can apply but you'll assess and shortlist candidates from your special measure group first.	"If you have a disability, please apply. We'll give you priority consideration, as per the Special Measures provision of the Equal Opportunity Act 2010 ."
Designated role: Only people from your special measure group can apply	"This is a special measures role and only Aboriginal and/or Torres Strait Islander peoples are eligible to apply, as per the Equal Opportunity Act 2010 ."
Identified role: Anyone can apply but you strongly encourage people from a group to apply. This doesn't have to be a special measures role.	"We strongly encourage people from the LGBTIQA+ community to apply for this role."

Example words for embracing diversity

Use this wording for all your roles:

"We embrace diversity and inclusion, so apply if you're:

- A person with disability
- Aboriginal and/or Torres Strait Islander
- Culturally and linguistically diverse
- LGBTIQA+"

Jobs and Skills Exchange requirements

When you advertise a Victorian Public Service role, you need to put it on the [Jobs and Skills Exchange](#).

But if the role has a special measure, you can seek approval to publicly advertise the role while it's on the Jobs and Skills Exchange.

You must seek approval from a Secretary, Deputy Secretary or equivalent position.

Read more about this in the [Jobs and Skills Exchange Recruitment Policy](#).



Checklist to create a special measure

Before you start, check if your organisation has a special measures process.

If your organisation doesn't have one, you can use this checklist to see if you meet the criteria to use a special measure. Document your process so your organisation can use it in the future.

Our checklist doesn't cover everything. If in doubt, speak with your HR or legal teams.

As you go through this checklist, you must document your evidence.

This is so you can justify your use of a special measure if someone makes a complaint.

To help you with this checklist, review the [Equal Opportunity Act 2010](#).

As some of the language in the Act is complex, get advice from your legal team.

Step 1: identify the group and protected attribute

Is the special measure for a group of people who share one or more of these protected attributes from Section 6 of the [Equal Opportunity Act 2010](#)?

- age
- breastfeeding
- employment activity
- gender identity
- disability
- industrial activity
- lawful sexual activity

- marital status
- parental status or status as a carer
- physical features
- political belief or activity
- pregnancy
- race
- religious belief or activity
- sex
- sexual orientation
- an expunged homosexual conviction
- personal association (whether as a relative or otherwise) with a person who is identified by reference to any of the above attributes

Would you describe the special measure as any form of discrimination as described in Part 4 of the [Equal Opportunity Act 2010](#)?

Step 2: confirm why you're using a special measure

Is your special measure to promote or realise substantive equality for members of the group you have identified?

What is the nature of inequality the group currently experiences?

How will using a special measure assist in reducing that inequality or disadvantage?

Is the special measure for more than one purpose? If so, how do the purposes interact or overlap? Is one more important to your organisation than the other?

Will you use the special measure to design a hiring pathway program?

If the special measure is for hiring, when will you use it in the hiring process?

Are you using the special measure for shortlisting candidates or selecting someone for the role?

Step 3: check your special measure is proportionate

Has the special measure been designed to achieve only the purpose you intend or will there be other outcomes?

How do any other outcomes relate to the purpose?

Does your special measure go too far in over-representing a group?

Step 4: show the need

How will the special measure help address the inequality experienced by members of the group?

How do you know the group has inequality?

Are there statistics, studies or reports which explain the inequality and cause?

Has your organisation seen or had an experience that demonstrates the inequality?

Have you run a pilot or has a similar organisation shown that a special measure will help achieve the purpose?