DISCRIMINATION & Children's Services

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Profile of Network

With over 30 years of experience, Network supports Out of School Hours care services to develop the knowledge, skills and attitudes they need to deliver quality Out of School Hours care services. Network has the expertise to support services to develop their management skills, such as financial management, strategic planning, leadership skills, and conflict resolution and team management. We provide professional support to enable services to strengthen their ability to become inclusive services and to ensure children with additional needs can participate in care services and activities.

Professional Support Coordination Unit: Children’s Services Central

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Children’s Services Central is the Professional Support Coordinator for NSW. Children’s Services Central is managed by the Alliance of Children’s Services to perform the operational role of the PSC in NSW. The Alliance of Children’s Services is a consortium of seven key organisations that resource and represent the various sectors of children’s services in NSW:

- Community Child Care Cooperative Limited NSW (lead agency)
- NSW Family Day Care Association
- Network of Community Activities
- Contact Incorporated
- Ethnic Child Care
- Family & Community Services Co-operative Limited
- Child Care NSW
- Semann and Slattery

Children’s Services Central’s main role is to ensure our service delivery is supporting the provision of professional inclusive quality children’s services.

With thanks to the input and suggestions of the reviewers drawn from across the Children’s Services Sector.

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Disclaimer

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Foreword

Supporting children and families is an important role for all staff working in Children’s Services. However, when it comes to inclusion of all children and families we are often challenged by the diverse range of needs presented to us.

This resource is for management committees, Directors, Coordinators and staff working in children’s services such as long day care, family day care mobiles and out of school hours care. It provides a general overview of discrimination laws that apply in NSW and explains the concepts of discrimination, harassment, victimisation and vilification. The focus is on best practice and practical guidance for children’s services on operating a non-discriminatory service that promotes equal opportunity.

Services that have a culture of respect and fairness are much more likely to be free of discrimination, harassment, vilification and victimisation. By promoting equality of opportunity they are more able to focus on what is important – providing high quality care in a safe and harmonious environment for children.

We hope that this resource serves as a useful document that will educate and inform services to provide care for children in an environment that promotes equality of opportunity and diversity - both important principles in all our lives.

Robyn Monro Miller

Executive Officer
Network of Community Activities
What is Discrimination?

Discrimination is conduct that disadvantages or has an unfair impact on people from particular groups. Discrimination laws focus on the basis for the way services treat or propose to treat those who use their services or work for them. For example, a service’s admission policy may give priority to some groups of children and exclude or make it harder for other groups to obtain the service.

What laws apply?

In NSW both state and federal discrimination laws apply. These are listed below.

- Anti-Discrimination Act NSW 1977
- Racial Discrimination Act 1975
- Sex Discrimination Act 1984
- Disability Discrimination Act 1992
- Age Discrimination Act 2004

In NSW the licensing laws for most children’s services require services to have regard to the NSW Anti-Discrimination Act [section 202 Children and Young Persons (Care and Protection) Act 1998]. However this is just as important for unlicensed services and should be adhered to because it is law.

Both state and federal industrial law also include protections against discrimination. Generally speaking awards and industrial agreements must not contain discriminatory clauses or requirements and employers cannot terminate people on discriminatory grounds.

What kinds of discrimination are against the law?

Discrimination law only applies to discrimination done for some reasons, so not everything people may think is unfair is covered. Generally it is against the law to discriminate on the basis of a person’s:

- Sex;
- Pregnancy, potential pregnancy or breastfeeding;
- Race, including nationality and ethno-religious background;
- Marital status;
- Sexuality;
- Age;
- Disability – broadly defined to include physical, mental and intellectual disabilities, includes current and past disabilities as well as those a person may get in the future or that you presume people have;
- Transgender status; and/or,
- Family responsibilities – for example, caring for a child, parent or other family member.

In employment there is also some coverage of discrimination on the grounds of religion, political opinion, trade union activity, medical record and criminal record under federal discrimination and workplace laws.

You can get more detailed information about these forms of discrimination from the Human Rights and Equal Opportunity Commission at www.hreoc.gov.au.
Discrimination can be direct or indirect...

What is direct discrimination?

Sometimes discrimination is fairly clear cut and people from particular groups are treated, or will be treated, in a less favourable way than those from other groups.

**Examples**

- Cathy, a director of a mobile service, refuses to employ any Aboriginal staff as she is concerned about how some of the parents in her area react. Her approach means that Aboriginal applicants are treated unfairly on the basis of their race in comparison to applicants of other races. If an Aboriginal applicant is the best person for the job, then refusing to employ them will be direct discrimination.

- Rob, a family day care coordinator, is reviewing the admission policies and the waiting list for the service. Recently he has had some difficulty with a Greek family who were not satisfied with his service. He thinks that Greek families are very difficult to deal with and decides to put any applications from a Greek family for child care at the bottom of the waiting list. He is making an assumption about Greek families and treating them in a less favourable way than families of a different racial background.

- Aisha is recruiting staff for an occasional care centre. She has decided not to appoint any men to the service as she is concerned about employing a paedophile. That is an example of direct discrimination on the grounds of sex. She has made an assumption that men cannot be trusted with children and decided to exclude them and only recruit women. Child Protection Issues should not be addressed based on the sex of a staff member. A comprehensive child protection policy is a more appropriate method of ensuring children’s safety in a service.

All of these are examples of direct discrimination. By modelling non-discriminatory behaviour, management can assist their staff, as well as the children and families using their service, to see the benefits of a non-discriminatory approach.

What is indirect discrimination?

This kind of discrimination is sometimes harder to spot. On the surface everyone in a group is being treated the same but a particular requirement, policy or rule may disadvantage one group covered by discrimination law in comparison to another. Generally, if that requirement, policy or rule is not a reasonable one it will be against the law.

**Example**

Sami is in a wheelchair and requires after school care. The entrance to the out of school care centre has three steps and the doorway is narrow. To access the centre’s service everyone must be able to get up the steps and go through the doorway. That requirement is the same for everyone, however children, those picking them up and staff with disabilities affecting mobility cannot comply with it. Sami is not able to get into the centre and therefore not able to attend the service even though he and his family would like to participate. See ‘Providing a service to children with disabilities’ later in this resource for further discussion about the requirements to accommodate disability.
What about discrimination on the basis of people’s associates?

It is also against the law to discriminate against people on the basis of the characteristics their friends, relatives or other associates have.

**EXAMPLE**

A service refuses to take a child who has a gay parent as the Management Committee does not believe that gay people should parent children. The child is being discriminated against on the basis that their parent is gay.

What kinds of activities are covered?

All aspects of providing a service are covered including admission, the way the service is delivered and how children are treated while using the service as well as the exclusion of children from the service.

Children’s services are employers and discrimination laws also cover all aspects of employment. That includes recruitment, the way people are treated and how they treat each other at work, salary and other benefits, access to training, development and promotional opportunities, and termination of employment.

What is Harassment?

Harassment is unwanted behaviour that offends, humiliates or intimidates a person.

Discrimination laws cover harassment on the basis of any of the characteristics set out earlier in this resource. For example, harassing a person because of their disability, their race or homosexuality is against the law.

Harassment can occur by many means. Sometimes it happens “person to person” or people may leave offensive material for someone or circulate documents about them. Increasingly mobile phones, email and internet sites are being used to harass people and service providers need to be aware of this. Harassment can be a one-off incident or ongoing. Behaviour that may appear humorous or unimportant to one person may be highly offensive to another.

Most people are aware that sexual harassment is against the law. Any form of sexual conduct by adults towards children in their care is clearly inappropriate and generally is a criminal offence. Service providers will have clear child protection policies that cover this kind of conduct.

Sexual harassment is also specifically covered by discrimination law. Service providers need to be aware that harassment may occur between staff. In some instances those using a service such as family members or members of the public may harass staff. Under discrimination law sexual harassment is unwelcome sexual behaviour that a reasonable person anticipates would offend, humiliate or intimidate someone. It is not sexual harassment if the behaviour is consensual. Common examples include making sexually suggestive or explicit comments; jokes with sexual innuendo, asking intrusive personal questions regarding people’s sex lives or touching people inappropriately.
Trinny is an occasional care worker. She enjoys a joke with the children and her co-workers. Adam, another worker at the centre, begins telling her jokes while they are setting up before the children arrive. Over time his jokes start to include sexual references. She begins to feel uncomfortable but does not want to offend him. She tries to ignore the jokes and hopes he will stop telling them. The sexual references become more explicit as time goes on. Then he starts asking her questions about her boyfriend and makes comments with sexual innuendos about their relationship. She is upset about that and tells him that she does not want to discuss it and they should focus on their work. The next day he puts his hand on her knee and tells her she is very attractive. Trinny feels really uncomfortable and goes to talk to the centre director.

This conduct is unwelcome and of a sexual nature. A reasonable person looking at all the circumstances could anticipate that Trinny would feel offended, humiliated and/or intimidated by that conduct. Consequently, it is likely to be sexual harassment. Services need to make it clear to all staff that such conduct will not be tolerated and to let staff know what to do if they are concerned about someone’s conduct towards them or others.

Where possible it is best to identify such conduct early on and deal with it at that time so that it is less likely to develop in the way that Adam’s conduct did. In this situation it is quite likely that some of his jokes were overheard by other staff. Where staff see inappropriate conduct towards a co-worker it is important that they have a way to raise any concerns they have. Services should have a grievance handling policy for staff. It is also useful to have some information on counselling services that can be provided to staff if appropriate. See ‘How can I prevent discrimination in my service?’ and ‘What if someone complains of discrimination, harassment, vilification or victimisation?’

Mark is 10 years old. He has learning difficulties and is eager to be accepted by peers of his own age. Some children at the out of school hours centre suggest inappropriate things for him to go up to other children and say. When he does it they laugh at him. The workers see what is happening and comfort Mark and the children who are victims of this behaviour but do not intervene to stop the behaviour of the other children.

Services need to work to prevent this kind of conduct. If it occurs they need to pick it up quickly and deal with it. This behaviour is not acceptable and all children need to be spoken to about their conduct. If services develop and implement an ‘Anti-Bullying and Discrimination Policy’ they will provide families, children and staff with clear expectations on social behaviour. Mark needs additional support to empower him to say no to peer pressure and to be given strategies to remove himself from the situation.

Sometimes those who experience harassment may not feel able to complain about the conduct, and services need to be alert to it. Children who harass others need to get a clear message that their conduct is not acceptable. When incidents such as these occur, services have an opportunity to explore how children feel about having children with disabilities present and to work through their attitudes. It is helpful to assist children to focus on a child’s abilities and value as a person and clear up any misconceptions or fears they have about a particular disability.

Because discrimination laws also cover employment practices, services need to ensure that the working environment is not hostile to their staff. Subjecting staff to an environment that is hostile to people on the basis of their race, sex, disability, homosexuality or other characteristics covered by discrimination law is also against the law. Employers should also be aware of their responsibility under occupational health and safety laws to provide a safe workplace. Generally if a service promotes the values of respect and dignity and models non-discriminatory behaviour, it is less likely to be a service that will experience these kinds of difficulties.
What is Vilification?

Vilification happens when a person incites hatred, serious contempt or severe ridicule of particular groups in a public way.

In NSW racial, homosexual and transgender vilification are against the law. It is also against the law to vilify on the grounds of HIV/AIDS. There are also federal laws against public acts that are racially offensive or abusive. In some circumstances vilification can be a criminal offence.

Example

Joanna, a parent of children at the out of school hours centre, is really concerned about terrorism. She is convinced that most Arabic people are either supporters of terrorist organisations or may even be terrorists themselves. She begins a public campaign to reduce the number of Arabic families in her area and puts out leaflets and emails saying that Arabic people have links with terrorism. She calls for their deportation to save Australia from a terrorist act.

Her children Jasper and Isobel go to the out of school hours care centre. They support their mother’s campaign and begin to distribute the leaflets among the children there. Abdul, one of the children at the centre, used to love going to the centre. Recently he has not wanted to go and one day he tells his family that he is never going there again. He says he can’t take it any more. Then it all comes pouring out. Kids at out of school hours care have been telling him that all Arabs are terrorists, that they are dangerous and that he and his family should all go back to where they came from. Jasper and Isobel tell everyone that he smells, his family are terrorists, his uncles make bombs in their back sheds and they need to get rid of him and his kind. When the workers are not looking they hold their noses and chant “terrorist” at him. They send him text messages saying “terrorist” on his phone. They tell the other kids that they will “get” anyone who plays with him. They are also behaving like this towards him at school.

Joanna and her children are inciting others to hatred of Arabic people on the basis of their race. Joanna is engaged in public acts to promote hatred and her behaviour is influencing her children, resulting in the hurt, humiliation and ostracism of Abdul. It is important that the centre acts quickly if this kind of behaviour takes place. As suggested earlier, a policy that makes it clear that bullying and discrimination will not be tolerated and that this has been communicated to children, staff and parents will make it less likely that this kind of situation will occur or be allowed to continue. The centre is also able, with the permission of Abdul’s family, to let the school know what has been happening.
What is Victimisation?

Victimisation happens when someone is treated badly because they have raised a discrimination issue, made a complaint about discrimination or helped someone else make a complaint in good faith.

**Example**

Yusuf, an early childhood educator, overhears one of his colleagues making some racist remarks to an Aboriginal child who attends the centre. He is concerned about his colleague’s conduct. He raises the matter with the centre’s director and asks her to do something about it.

The director is finding it difficult to attract staff. The person Yusuf is complaining about is a long standing employee and will often fill in at short notice. She decides to ignore what Yusuf has told her. Yusuf complains again and then finds that his shifts are cut back.

In this instance, if Yusuf is subjected to any detriment such as a reduction in shifts because he has raised allegations of discrimination in good faith, that will constitute victimisation. It is essential that services have a good complaint handling process and policy in place so that allegations such as Yusuf’s can be dealt with fairly and quickly. See ‘What if someone complains of discrimination?’ in this resource.

Who is liable for discrimination?

Generally speaking, a service provider is liable for any discrimination, harassment, victimisation or vilification that occurs within their service. They are responsible for the actions of their employees and agents unless they can show that they have taken reasonable steps and exercised due diligence in preventing this kind of conduct occurring. That means service providers must have clear policies and provide guidance to staff in this area. They also need effective mechanisms to pick up any complaints quickly and to deal with them effectively.

For further information, see the sections on ‘How can I prevent discrimination in my service?’ and ‘What if someone complains of discrimination?’ in this resource.

Under some circumstances individual staff members can also be held liable for their actions. Consequently it is important that staff and those acting for a service provider are aware of their responsibilities under discrimination law.
Are there any exceptions to discrimination laws?

As with all laws there are some exceptions. The onus is usually on the service provider or employer to prove that they are covered by an exception. Common exceptions to discrimination laws are set out below.

Positive discrimination

If you plan to implement initiatives to redress previous discrimination or to meet a group’s special needs you should contact the relevant agencies at the end of this resource to check whether an exception covers the particular activity you have in mind. An example may be providing a service specifically for Aboriginal children or children with particular disabilities. Sometimes state law may require you to get a formal certificate.

Public health

There are exceptions that allow for measures that are reasonably necessary to protect public health. Consequently, excluding children who have an infectious disease where that is reasonably necessary to protect public health will not be against the law.

Small employers

NSW law exempts those who employ less than 6 people from some, but not all, forms of employment discrimination laws. Generally the federal laws apply no matter how many people you employ. Consequently if you wish to rely on an exception as you employ a small number of people you should get specific advice about your situation. See ‘How can I find out more?’

Religious bodies

There are some limited exceptions for the protection of freedom of religion. Generally services are not required to do anything that would breach their religious doctrines and cause injury to religious sensitivities. Again it is recommended that specific advice is obtained before relying on such an exception.

Private educational authorities. Under state discrimination laws there are some exceptions for private educational authorities. Some pre-schools and kindergartens may come within the definition of a private educational authority; however there is no clear case law on whether long day care or other forms of child care fit within that definition. Exceptions for private educational authorities are much more limited under federal law. Before relying on such an exception, advice about your specific situation should be obtained. See ‘How can I find out more?’

Specific exceptions

There are some exceptions that apply to particular kinds of discrimination. For example, exceptions to age discrimination provisions allow an educational body to impose a minimum age for their service. Generally services can be provided for a particular age group if that is to meet special needs that arise because of their age.

As an employer in some limited circumstances you may be able to discriminate on the basis of sex. For example, an out of school hours centre may wish to ensure that they have a female staff member available to toilet a high support needs girl. That is likely to affect decisions about recruitment and shift allocation. Sex discrimination laws have exceptions that deal with preserving people’s privacy in these situations.

If you think it is necessary to discriminate it is best to get some specific advice about your situation. See ‘How can I find out more?’ in this resource.
Providing a service to children with disabilities

Many services are unsure of what their obligations are regarding children with disabilities. Children with disabilities require the same access to children’s services as other children. They require access to all the benefits and opportunities of receiving a service other children have, for example to go on excursions and take part in activities. It is important that they are not subjected to harassment or a hostile environment.

In some instances parents and carers of children using, or seeking to use, your service, may have a disability. It is important to take their needs into account, for example by ensuring that they are able to drop off and pick up their child.

In order to participate, children with some disabilities may require assistance or facilities that other children do not need. For example, they may require appropriate toilet facilities and access to buildings, assistance with tasks and in some instances particular equipment.

Sometimes very minor changes are needed to allow the child to participate. They may be physical. Examples include moving furniture, buying some new equipment or undertaking some minor changes to your routine. Others are more resource intensive; e.g. where a child requires much more intensive staff time than other children.

Start by talking with the child’s parents or caregivers and the service’s Inclusion Support Team (ISA), and depending on the child’s age, the child themselves, determine exactly what the needs of the child are and how they can be met. Sometimes there is no need to do anything differently or simple adjustments can be taken. Together you may be able to think laterally about how to best ensure that the child’s needs are met. For example, it may be useful to talk to the parents about how they manage the particular issue at home or to find out what they do to ensure that a babysitter is able to care for the child. How do they manage the issue if they are away from home in other situations? They may have equipment that the child can bring with them to your service, or be eligible to access the Federal Government’s specialist equipment pool.

If necessary, you can approach local and other service providers for assistance in ways of managing the child’s needs, and for any equipment. Families of children with disabilities may have links to services you can talk to. There may be particular associations that deal with the specific disability that can provide information, advice, training or equipment. In some instances you may be able to get additional funding from your funding body or another government agency. You may also be able to get assistance from a local club or other body for the purchase or modification of equipment. Some agencies that may be able to point you in the right direction are listed at ‘How can I find out more?’

Anna is 10 and has a disability that means she requires toileting and changing due to high support needs. The out of school hours care service is concerned about their ability to provide that level of care while caring for so many other children at the centre. They are also concerned that their staff have no training and are worried about their liability if any staff member is injured while changing or toileting Anna.

After discussion with the child’s family, Anna, the school and their Inclusion Support Facilitator (ISF) about how to manage the issue, they work out that the child could be toileted at school immediately before arriving at after care. The Occupational therapist that works with Anna is willing to come and train the centre staff on changing and toileting Anna safely so that they are prepared for any rare occasion where it is necessary to change and toilet her at their centre. The Inclusion support agency contacts a funded specialist equipment pool to see if they can get assistance with some lifting equipment to assist staff should they need to lift her. Given that their staff work with children and, on occasion need to lift them as well as moving equipment, they decide to give all staff some training in safe lifting techniques.
Sally is four years old and has an allergy to peanuts. It can cause anaphylaxis, a severe and sudden allergic reaction that can be life threatening. Her family want to enrol her in family day care. The family day care service is concerned about the responsibility this would place on a family day carer and how they would ensure that the carer was adequately trained and able to use an epi-pen in an emergency. They are also concerned about any liability they may have if it was not used properly.

The service will need to work through this situation. The first step is to talk with the child’s family to get detailed information about what the child’s condition is, what needs to be done to manage it and how they manage it at home. There are guidelines put out by the NSW Department of Health and Anaphylaxis Australia which provide clear information about what anaphylaxis is, how to prevent it, preparing an individual plan for a child affected and treatment in an emergency that may be useful to the service. The guidelines, available from NSW Health, cover the use of epi-pens, an aid used to relieve the symptoms designed to be used by people with no medical or nursing experience. The guidelines also cover the question of legal liability.

Once the service has some accurate information about how likely it is to occur, how to minimise the risk, exactly what is involved and what kind of training would be needed, they are in a better position to discuss the issue with the carers. They will also be in a better position to know what the cost of any training would be.

Jed is in a wheelchair. His child attends a long day care centre and sometimes Jed does the drop off or pick up. While the centre itself is wheelchair accessible the sign-in book is placed up high out of reach of small children. Jed cannot reach it from his wheelchair.

The centre talks through the issue with Jed. While they are considering other possible locations for the sign-in book in the short term they and Jed agreed that when he arrives a worker will bring the book over to him to sign in.

Chris has a severe behavioural disorder and when distressed can throw things at children and staff and hurt them. A discipline policy regarding acceptable behaviour is applied to all children at an out of school hours centre. Due to Chris’s disability he has real difficulty in complying with the discipline policy in comparison to children who do not have such a disability. The centre is concerned about the welfare of other children and their staff and is considering refusing to care for him.

It will depend on the circumstances as to whether the centre would be discriminating if they require him to comply with the discipline policy. In indirect discrimination all the circumstances are taken into account in deciding whether the requirement is reasonable including the impact on the child, on other children and staff, the reasons for the requirement and whether there is a less discriminatory alternative.

The centre should take steps to see whether they are able to work out a way to manage the situation. They can be assisted in this through their regional Inclusion Support Agency. They should also consider the information below on accommodating a child’s disability. It is only when the service has all the facts that they can then make an informed decision as to whether they can accommodate the child’s needs.
What if accommodating a child’s disability is too expensive or too difficult?

The general principle is that you should do what you can to accommodate a child’s disability. However, you are not required to provide a service if it will cause you “unjustifiable hardship”. If you want to rely on the “unjustifiable hardship” exception, the onus is on you to prove that providing the service will cause you unjustifiable hardship. All the circumstances are taken into account and these include:

- The nature and effect of the child’s disability;
- What the benefits of your service are to the child and the effect on them of being excluded or having their participation limited;
- What kind of difficulty accommodating the child may cause to the service or anyone else; and,
- The financial circumstances and estimated cost of accommodating the child’s needs.

There is some detailed guidance on this subject on the Human Rights and Equal Opportunity Commission website in the section on disability. See ‘How can I find out more?’ in the appendix of this resource.

Services should also be aware of the Disability Standards for Education 2005. These standards were made under the federal Disability Discrimination Act in 2005 following a long period of consultation. These apply to schools including pre-schools and kindergartens. Educational providers must comply with the standards. If they comply they will not be in breach of the federal Disability Discrimination Act. However Out of School Hours Services may find they need to liaise with the Department of Education to request access to parts of the school that are accessible in order to accommodate a child or family.

The standards cover enrolment, participation, curriculum development, student support, harassment and victimisation. The standards require that reasonable adjustments are made unless they will cause the service unjustifiable hardship.

The standards include some guidance notes for educational providers that will also be useful to other children’s services.

When making a decision about adjustments, the standards advocate a good practice approach. Under the standards it is recommended that educational providers:

1. Consider information about the nature of the disability, any adjustment preferred by the student, any adjustments that have been provided before and any recommended alternatives. The information might come from the student (depending on their age), their family or associates and/or expert advice;

2. Ensure that timely information is given to the student and their caregivers about the process you will use to decide whether the proposed adjustment will cause you unjustifiable hardship;

3. Maintain the dignity, respect, privacy and confidentiality of the student and their caregivers;

4. In making a decision, take into account all the financial and other resources that are reasonably available for the purposes of making any adjustment, as well as the impact of the adjustments on the service’s capacity to provide high quality education to all students and to remain financially viable;

5. Consider the costs and benefits that are likely to result for the service provider, the student and their caregivers and associates and anyone else in the learning or wider community. That will include considering the cost of any additional staffing, resources and modification to the curriculum;

6. Consider costs that result from the student’s participation in the learning environment and any adverse impact on outcomes for the student, other students and teachers;

7. Consider the benefits from the student’s participation, including positive learning and social outcomes for the student, other students and teachers; and,
8. Consider any financial incentives, such as subsidies or grants, available to the provider as a result of the student’s participation.

The standards also recommend that if a provider relies on unjustifiable hardship they give the student or their caregivers a notice stating the reasons for their decision as soon as possible.

You can find out more about these standards by contacting the Human Rights and Equal Opportunity Commission or the federal Department of Education, Science and Training – see ‘How can I find out more?’ in the appendix of this resource.

What are my responsibilities as an employer?

Employers must comply with discrimination law in their employment practices. The previous sections of this resource regarding direct and indirect discrimination, harassment, vilification and victimisation apply to employers. They must not engage in the same types of discrimination as outlined at in ‘What kinds of discrimination are covered?’

As stated earlier in this resource you may be liable for the acts of your employees and others authorised by you to act for you. Consequently you need to ensure that those who work for you understand their responsibilities under discrimination law.

As an employer you must consider all aspects of the employment relationship from advertising and recruitment, the terms and conditions of employment such as salary and any other benefits provided, access to training, promotion and other employment opportunities as well as termination of employment. Employment is defined broadly and includes casual, part time and full time work.

Employing people with a disability?

Generally you cannot discriminate against someone on the basis of their disability and they need to have the same opportunities as others seeking to work for you or that you employ. You need to look at the way you operate, your policies, requirements and practices to ensure that you are not disadvantaging people with disabilities.

If a person is able to do the essential aspects of a job, but requires some assistance to do so, the employer is required to provide that assistance unless it would cause them unjustifiable hardship. See Providing a service to children with disabilities for more detail on unjustifiable hardship.

Think through the job design and what is really essential to the position. Then consider the nature of the person’s disability and what kinds of adjustments, equipment or other changes can be made to enable the person to carry out the essential requirements. Can you alter things so that the person is able to do the job? If you focus on what the person’s abilities are and how they can be enhanced then it becomes easier to see how the person could function in the job.

In many instances a combination of consultation with the person concerned, who usually knows their abilities and ways of managing their disability very well, can lead to some joint problem-solving that works for both.

You can find detailed information on disability and employment on the Human Rights and Equal Opportunity Commission website; see ‘How can I find out more?’.
Other issues for employers

Pregnancy

It is against the law to discriminate on the basis of pregnancy. If issues connected with pregnancy arise, employers should discuss them with the woman concerned.

Generally the approach should be one of accommodating the needs of the pregnant woman. Where specific issues arise, for example, concerns about lifting children and any occupational health and safety risk, it is best to discuss these with the woman concerned. Where appropriate, women will also be able to consult with their medical practitioner. In addition to discrimination law, pregnant women have rights at work under industrial law. Workcover, the NSW occupational health and safety body, produces a Pregnancy at Work Guide, as does the Human Rights and Equal Opportunity Commission. See ‘How can I find out more?’

Observing religious customs & practices

While discrimination on the basis of religion is not covered as comprehensively in NSW as some other kinds of discrimination, generally, industrial law provides a protection against dismissal on the basis of religion.

Race discrimination laws define race to include a person’s ethno-religious origin. Some religions are closely connected with people’s ethnic background and these are covered by race discrimination law – for example, being Jewish or a Sikh.

One issue that may arise is the need for people to comply with the tenets of their religion, for example, to pray at particular times or to fast. Generally these requirements should be accommodated and services should review their practices to ensure flexibility in meeting employee’s religious customs and practices. Often it is possible to organise rosters and breaks to take account of people’s religious obligations.

Accommodating family responsibilities

To the extent possible, employers should adopt a flexible approach to accommodating people’s family responsibilities. Generally speaking, if the person is able to do the essential parts of the job, but requires some changes or flexibility to meet their family responsibilities, for example some roster changes, you should provide that assistance unless it would cause you unjustifiable hardship.

The principles for unjustifiable hardship are similar to those for disability. You will need to consider all the relevant circumstances, for example the impact on the employee concerned and on others including any benefits or detriments they are likely to experience, and the financial impact of accommodating the person’s responsibilities. See also ‘What if accommodating a child’s disability is too expensive or too difficult?’

Children’s services have very strict staff/child ratios mandated by legislation as part of their licensing requirements. They will be an important factor to take into account when making these kinds of decisions.

The best starting point is to discuss the family responsibilities with the person concerned. It is often possible to jointly problem solve to come up with a solution that works for the individual and the service. See ‘How can I find out more?’ for contact details for discrimination agencies that may be able to assist you.
What if someone complains of discrimination, harassment, vilification or victimisation?

It is much easier to deal with a complaint if you have a clear policy on discrimination and a complaints or grievance handling policy to guide you.

Policies need to provide a fair, impartial, fast and confidential process that people can trust. They need to be easily understood and accessible. If you promote a culture that encourages people to speak up if they are unhappy about something early on, you are more likely to be able to prevent issues from escalating.

When considering forms and polices ensure language is inclusive. An example of this might be on your enrolment form instead of requesting details for ‘mother’ and ‘father’ you replace with ‘parent/carer’.

Where you can, resolve issues as quickly as possible. Sometimes a complaint can arise from simple miscommunication and if you clear up misunderstandings quickly you can prevent something escalating, causing people distress and others’ getting caught up in the issue.

Ideally the person who deals with the complaint should be someone who was not involved in, or the subject of, the complaint. They need to be impartial and not have a conflict of interest. That can sometimes be difficult in a very small service and such services may sometimes want to get some external assistance in handling complaints, particularly if they are serious.

You will also need to have some provision for those bringing a complaint to have access to support and or someone to represent them.

Practical tips for dealing with a complaint:

1. **Understand what the person is concerned about**
   It is very important to understand clearly what the person’s main concerns are. Try to listen and hear what their complaint is rather than be reactive.

2. **Find out what would make a difference to them**
   You need to know what would need to happen for the person to feel that their complaint is resolved. What outcome are they seeking?

3. **Make sure you know the facts**
   If the complaint involves someone else make sure you hear their side of the story and that you have all the factual information you need to decide what to do.

4. **Are there any barriers to making the difference they seek?**
   Is there anything that prevents you making that difference? If so what, can it be addressed or can you explain to the person why it cannot be done? If after a fair and impartial analysis of a complaint you decide that it did not have substance it is important that you communicate that clearly to the person who made the complaint.

5. **What are next steps?**
   Keep the person informed about what is happening with their complaint and what the next steps are. Inform them of any outcomes from their complaint.
6. Document outcomes and follow-up action
Except in very minor matters it is best to document the complaint and any follow-up action you take. Make sure that any of this information is securely stored to protect confidentiality.

7. Learn from complaints and use them for continual improvement
You can often learn from complaints made about your organisation and use them to monitor and improve your service. For example, they may indicate areas for staff training or for changes to procedures. You can also communicate to your parent or other bodies that you have taken on board concerns that have been raised and that you consider feedback important for continual improvement. For example, a service might advise families that “as a response to parent feedback”, a change has been made. You can also build in professional development and peer support into the way you deal with complaints. For example, you might choose to have another staff member present when you listen to a complaint. They may be able to give you valuable feedback on how you dealt with the complaint.

What happens if people make a discrimination complaint against you or your service to the NSW Anti-Discrimination Board or the Federal Human Rights & Equal Opportunity Commission?

That body will look at the complaint. If they consider it may be covered under the legislation they will inform you of the complaint and investigate it. In many instances they will attempt to conciliate the complaint by organising a conference with you and the person complaining.

If the complaint is not resolved at that stage then it may go to a court or tribunal for a hearing and legal determination about whether you are in breach of the discrimination laws. If you are found to have discriminated then you may have to pay money to the person to compensate them for the discrimination. You may also have to comply with other orders a court or tribunal can make, for example to apologise, to alter your policies or to reinstate someone. In some circumstances you may also have to pay the person’s legal costs.
How can I prevent discrimination in my service?

You need to ensure that your service does not discriminate. That is important for those who work for you and those who use or want to use your services. A non-discriminatory service is likely to be more productive and provide a much better environment for people who use and work in your service.

As an employer you are liable for discrimination by your employees and agents unless you can show that you have taken reasonable steps to prevent that discrimination occurring. That involves your taking “due diligence” to ensure that discrimination does not occur and acting quickly to remedy the situation if you discover that anything has occurred. There are several steps you can take to reduce the likelihood that discrimination will happen in your service.

**Step One**  Review your principles and values

This is not about words on a page but about the actual principles and values that underpin what you do and that shape the culture of your organisation. Think about how you work and what people’s experience of working with you or using your service is like. Are people treated fairly with respect and sensitivity? Is difference something you value? Are decisions explained clearly? Does your organisation have a “can do” and flexible attitude to dealing with challenges?

**Step Two**  Review your current practices and policies

Do you have practices or policies that could be direct discrimination? For example, do you refuse to take children or staff with particular characteristics such as specific disabilities? If so, you need to find out whether you could be acting illegally or whether there is an exception under the law that applies to you.

You may have requirements, policies and rules that seem fair on the surface but disadvantage some groups; for example, by making it harder for them to access all or part of your service or work in your service. Consider the discriminatory effect of any requirement, policy or rule you have on those covered by discrimination law, for instance, Aboriginal people or those with disabilities. You need to consider why you have these requirements, policies and rules. Are they reasonable in all of the circumstances? How easy or hard would it be for you to accommodate the needs of those disadvantaged by any requirements, policies or rules you have? Could you achieve what you require by other means without disadvantaging particular groups?

For example, you could review your enrolment procedures and forms to check that they are not discriminatory. The language that you use can make a difference. For example, the use of “parent/carer” on a form instead of “mother and father” may feel more inclusive to a diverse range of family groupings. Network with peers and other services so that you can brainstorm and share current practice, policies and ideas.

**Step Three**  Create a policy on non-discrimination or equal opportunity

Networking can be useful as you may find examples of policies that you can adapt for your service.

**Step Four**  Review your grievance handling or complaints policy

Review this policy to make sure it works for discrimination and harassment matters. See above.
Step Five  Implementation

There is no point in having policies if no one knows about them. You need to train your staff to ensure that they understand what the policy says. The policies need to be accessible where people can find them. People need to get a clear message that discrimination, harassment, vilification and victimisation won’t be tolerated.

They need to know the consequences for them if they are found to have engaged in that behaviour. They also need to know what to do if they see it happening, they experience it or someone comes to them and tells them it is happening.

Depending on their role in the organisation the response will be different. Those with a management or supervisory role will need training in ensuring that their approach is non-discriminatory and that they know what to do if an issue of discrimination arises.

Step Six  Make the policy live

It is not enough to develop policies and tell people about them. The policy needs to be revised from time to time to keep it relevant and up to date. New staff need to be made aware of it.

When an issue arises it needs to be dealt with in a speedy, fair and effective way so that people have confidence that the policy is a living one.

Regular professional development will assist in ensuring that all staff are constantly reflecting on their practice and implementing new strategies to promote inclusion of all children and families.
How can I find out more?

ANTI-DISCRIMINATION BOARD OF NSW

A NSW body that administers the NSW discrimination laws. They provide information and training for employers and service providers. They also investigate and conciliate complaints lodged under NSW discrimination laws.

Sydney
Enquiry and Employer Advisory Service: (02) 9268 5544
Website  www.lawlink.nsw.gov.au/adb
TTY (02) 92685522 (TTY – is a telephone typewriting service for people with hearing disabilities)

Rural and Regional areas
Toll free Enquiry and Employer Advisory Service
1800 670 812 (for rural and regional New South Wales only)

Regional offices
Wollongong Office
Phone (02) 4224 9960
TTY (02) 4224 9967

Newcastle Office
Phone (02) 4926 4300
TTY (02) 4929 1489

HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION

A federal body that administers federal discrimination laws and operates Australia wide. They provide information and training for employers and service providers. They also investigate and conciliate complaints lodged under federal discrimination laws.

General enquiries and publications: 1300 369 711
TTY: 1800 620 241

Website www.hreoc.gov.au – contains detailed information on disability, sex, race and age discrimination as well as information on other human rights.

PEOPLE WITH DISABILITY AUSTRALIA INCORPORATED

A non-government body. Their primary focus is to provide advocacy services to people with disabilities. They have up-to-date information about many disability organisations and provide a telephone information and referral service (afternoons only). They will provide information and referral services for children’s services regarding accommodating children with disabilities.

Phone (02) 9370 3100  toll-free 1800 422 015
TTY  (02) 9318 2138  toll-free 1800 422 016

DEPARTMENT OF EDUCATION, SCIENCE AND TRAINING

A federal government department – you can get information on the education standards made under the federal Disability Discrimination Act at the Department’s website.

Website www.dest.gov.au - type “disability standards” in the search area to locate the standards.
WORKCOVER NSW

A NSW Government body that provides guidance on occupational health and safety.
Assistance & Advice Service: 13 10 50
Publications Hotline: 1300 799 003
Website www.workcover.nsw.gov.au

CHILDREN’S SERVICES CENTRAL

Service operated by the Federal Department of Families, Community Services and Indigenous Affairs, provides information and referral for children’s services regarding inclusion of children with disabilities or other specific needs; includes referral to regional inclusion support agencies across NSW.
Toll free number: 1800 157 818

NETWORK OF COMMUNITY ACTIVITIES

Peak body for Out of School Hours Services in NSW with a comprehensive range of fact sheets and publications to assist services working with school age children. Network has a Disability Action Group that meets regularly to discuss issues related to inclusion.
Phone (02) 9212 3244
Website www.netoosh.org.au

NSW DEPARTMENT OF AGEING AND DISABILITY

A NSW Department that provides services to people with disabilities including children. The Department operates an Early Childhood Intervention Program that provides information and referral regarding early childhood intervention and children with disabilities.
Toll free number: 1300 65 68 65
The Department’s website includes information on services that the Department provides and useful links to many disability organisations that may be able to assist children’s services in accommodating children with disabilities.
Website www.dadhc.nsw.gov.au

NSW DEPARTMENT OF COMMUNITY SERVICES

A NSW Department that is responsible for the licensing of children’s services, child protection and other matters. The Department operates a Supporting Children with Additional Needs scheme (SCAN) for services that receive funding from the Department of Community Services. That scheme applies to:
• children of Aboriginal and/or Torres Strait Islander background;
• children of culturally and linguistically diverse backgrounds;
• children with challenging behaviours; and,
• children with disabilities.
The Child and Family Referral Service can provide information about this program.
Phone (02) 9557 0900 or 1800 803 820
The Department’s website provides information for children’s service providers: www.community.nsw.gov.au

NSW HEALTH

The NSW Department responsible for health. They provide information on many health issues that will assist service providers, for example the guidelines on anaphylaxis mentioned in this resource.
Website www.health.nsw.gov.au
<table>
<thead>
<tr>
<th>ISA Region</th>
<th>ISA</th>
<th>Office Location/ Postal</th>
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<tbody>
<tr>
<td>Inner Sydney</td>
<td>SDN Children’s Services</td>
<td>Level 1/3 Linthorpe Street Newtown NSW 2042</td>
</tr>
<tr>
<td>Sydney North</td>
<td>SDN Children’s Services</td>
<td>8 Rodborough Avenue, Crows Nest NSW 2065</td>
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<td>Sydney Central West</td>
<td>SDN Children’s Services</td>
<td>28 Cowper Street Granville NSW 2142</td>
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<tr>
<td>Sydney Inner West</td>
<td>KU Children’s Services</td>
<td>204/398 Chapel Road Bankstown NSW 2200</td>
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<tr>
<td>St George-Sutherland</td>
<td>KU Children’s Services</td>
<td>17/3 Richmond Avenue Sylvania Waters NSW 2224</td>
</tr>
<tr>
<td>Sydney Central North</td>
<td>KU Children’s Services</td>
<td>20/10 Chilvers Road, Thornleigh NSW 2120</td>
</tr>
<tr>
<td>Gosford-Wyong</td>
<td>KU Children’s Services</td>
<td>Suite 4, Building 31, Mt Penang Parklands, Kariong NSW 2250</td>
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<tr>
<td></td>
<td></td>
<td>(Postal) 4/31 The Avenue, Mt Penang Parklands Kariong NSW 2250</td>
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<tr>
<td>Sydney North West</td>
<td>Penrith City Council</td>
<td>601 High Street, Penrith NSW 2750 PO Box 60 Penrith NSW 2751</td>
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<tr>
<td>Sydney South West</td>
<td>KU Children’s Services</td>
<td>3/6 Queen Street, Narellan NSW 2567</td>
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<tr>
<td>Illawarra</td>
<td>Illawarra Children’s Services</td>
<td>Level 1, 98 Railway Street, Corrimal NSW 2518</td>
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<td>NSW South East</td>
<td>Illawarra Children’s Services</td>
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<tr>
<td>NSW South West</td>
<td>KU Children’s Services</td>
<td>PO Box 8515 Kooringal NSW 2650</td>
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<tr>
<td>NSW Central West</td>
<td>Lady Gowrie Child Centre</td>
<td>84 Piper Street, Bathurst NSW 2795</td>
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<tr>
<td>NSW West</td>
<td>Lady Gowrie Child Centre</td>
<td>4/173 Darling Street Dubbo NSW 2830 PO Box 1439 Dubbo 2830</td>
</tr>
<tr>
<td>NSW North</td>
<td>NSW North Child Care Inclusion Support Agency</td>
<td>169 Miller Street, Armidale NSW 2350 PO Box 951 Armidale NSW 2350</td>
</tr>
<tr>
<td>Richmond Tweed</td>
<td>Ballina District Community Services Association Inc.</td>
<td>42 Cherry Street, Ballina NSW 2478 PO Box 623 Ballina NSW 2478</td>
</tr>
<tr>
<td>NSW Mid North Coast</td>
<td>St Joseph’s Family Services</td>
<td>Walters Street, Port Macquarie NSW 2444</td>
</tr>
<tr>
<td>Hunter</td>
<td>KU Children’s Services</td>
<td>1/43 Station Street, Waratah NSW 2298 PO Box 41 Waratah NSW 2298</td>
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