

## Risk Management

Providers of aged care services should be aware of issues regarding cultural diversity and risk management. Firstly, service providers must be aware of their legal obligations under anti-discrimination legislation. Secondly, service providers will wish to provide best practice standards of care. This includes issues concerning communication and the provision of culturally inclusive services.

## Legal Obligations

Service providers must understand their obligations under equal opportunity and anti-discrimination laws, and the possibility of both direct and indirect (unintended) discrimination. Many aged care providers could unintentionally breach these obligations.

It is a common misconception that aged care providers can choose to refuse services to potential clients who require culturally inclusive services. However, it may be unlawful to refuse to provide services to people who speak a language other than English, or who require particular services to be delivered in accordance with religious or cultural requirements.

Just one complaint at the Equal Opportunity Commission could cost an organisation over \$25,000 in direct and indirect costs before it is even referred to Court. Rather than wait for a breach or for legal action to occur, service providers should instil a pro-active compliance culture to educate staff and implement culturally inclusive policies and procedures.

Liability for discrimination primarily rests with the person who discriminates. However, service providers will also be liable for the actions of their employees or agents (e.g. contractors) who discriminate.

It is unlawful to treat people unfairly or unfavourably on the basis of the following characteristics:

- Age
- Impairment or disability
- Sexuality
- Gender, pregnancy, marital status
- Political belief or activity; industrial belief or activity
- Race, nationality, religious belief or activity
- Physical features

Anti-discrimination legislation contains a number of exceptions to these requirements. For example: a person can discriminate in determining who should be offered employment in relation to the provision of domestic or personal services in the employer's home; an employer can set and enforce reasonable standard of dress, behaviour and appearance in the workplace; and an organisation can discriminate on the basis of disability or impairment if the costs or circumstances for providing any special requirements or special measures to deal with the disability or impairment are unreasonable or impose an unreasonable burden.

# Practice guide

Unfair treatment is prohibited in the following areas applicable to the providers of aged care services:

- Employment related areas
- Provision of goods and services
- Accommodation
- 'Non-private' clubs and associations

Aged care legislation also includes specific provisions to prevent discriminatory practices in relation to regulated aged care services and aged care facilities.

## Minimising Risk

Service providers face risks of a legal, financial and business nature. By addressing cultural diversity at all levels of service design and delivery, service providers reduce these risks and ensure the health and well-being of their clients.

In order to ensure that risks are minimised, service providers should move towards a governance culture, which involves:

- An organisational culture that is open to discussion and criticism.
- Staff with knowledge of the values and policies of the organisation.
- System design that recognises and addresses risks and implements the values of the organisation.
- Resources allocated to support these governance measures.
- Management that professes and demonstrates these values.

A risk management approach requires organisations to:

- Review levels of delegation and responsibility to ensure that appropriate people in the organisation have a clear understanding of their roles, objectives and duties.
- Implement a system of accountability and reporting to ensure that urgent issues are raised through appropriate channels so that regular reporting occurs through appropriate lines of management.
- Ensure appropriate policies and procedures are in place, demonstrating both a commitment and implementation of good practice in relation to discrimination and equal opportunity.
- Provide appropriate education and training of all staff in issues of cultural diversity. It is not sufficient to merely have appropriate policies; staff must be properly trained and educated in these issues.
- Implement a system of notice requirements, compliance check list and 'sign-off' – a system by which management at various levels of the organisation sign-off in relation to compliance within their area of Equal Opportunity and discrimination issues, and notification of any complaint, breach or incident.
- Implement an appropriate complaint handling system to deal with incidences and complaints.

## Specific Issues for Cultural Diversity

### Service Delivery

- Consider the cultural, linguistic and religious requirements of your client base.
- Ensure that there is no overt discrimination on the basis of nationality, religion or race.
- Beware of 'indirect discrimination' where the method or mode of delivery of services does not discriminate overtly on the basis of nationality or race, but which some people may have greater difficulty complying with, or cannot receive the benefit of, because of their cultural background. For example, be aware of specific religious holidays and observances, and of particular religious food requirements.
- Consider all levels of service provision, including health care and food services.
- Consider appropriate modes and methods of communication.
- Make interpreting services available as required.
- Where contracts are to be signed (resident agreements, etc.) ensure that – prior to signing – clients have access to interpreters and appropriate professional advice in their preferred language.
- Avoid privacy breaches and breaches of confidentiality when using family, friends or bilingual staff to communicate on behalf of clients.
- Implement appropriate policies and procedures that address equal opportunity and discrimination issues, and train and educate staff accordingly.

### Employment

- Check that your workforce reflects the diversity of the workforce in the community generally. If it does not, this may be a sign that your organisation is not adequately addressing cultural diversity.
- Check that your workforce reflects the diversity of your clients. Understand that a culturally diverse workforce means that you will have access to staff who are more aware of cultural diversity and the particular requirements of your clients.
- Ensure that all staff have cultural inclusion training, and are fully trained and educated in your Equal Opportunity and discrimination policies and procedures.

## A Compliance Culture

Risk management is not just about being able to deal with problems when they arise; it is about being preventative and proactive.

Organisations should consider undertaking a cultural diversity audit, ensuring they have appropriate systems in place to measure compliance of their organisation against Equal Opportunity and anti-discrimination requirements.

A compliance checklist, with sign-off requirements from key managers, may assist the organisation to better understand their obligations and recognise risks. An appropriate complaints handling system may provide an early warning system of possible breaches of standards and legal obligations.

## Useful Resources

### Legislation

- [Aged Care Act 1997](#)
- [Equal Opportunity Act 2010 \(Victoria\)](#)
- [Racial and Religious Tolerance Act 2001 \(Victoria\)](#)
- [Racial Discrimination Act 1975](#)
- [Sex Discrimination Act 1984](#)
- [Disability Discrimination Act 1992](#)
- [Privacy Act 1988](#)

### Anti-Discrimination & Equal Opportunity Bodies

- [Anti-Discrimination Board of NSW](#)
- [Anti-Discrimination Commission Queensland](#)
- [Equal Opportunity Commission South Australia](#)
- [Equal Opportunity Commission Victoria](#)
- [Equal Opportunity Commission Western Australia](#)
- [Office of the Anti-Discrimination Commissioner Tasmania](#)

### Acknowledgement

Based on information prepared by Michael Gorton AM – partner at Russell Kennedy Solicitors – for the Centre for Cultural Diversity in Ageing.

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