

## Disability Discrimination Act 1992 (Cwlth)

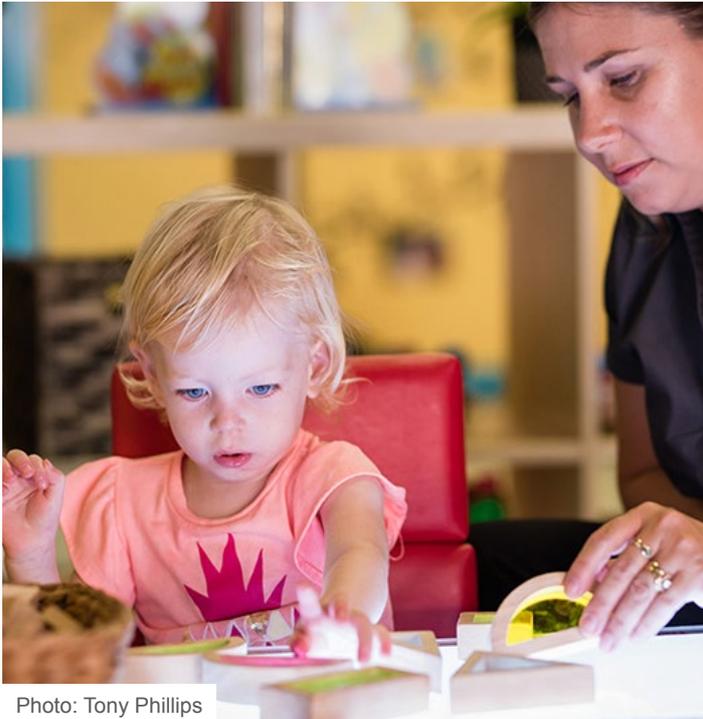


Photo: Tony Phillips

Approved providers, service supervisors and management, and educators of early childhood education and care (ECEC) services have a responsibility to ensure that they meet their legal obligations. This includes meeting the requirements of the [Disability Discrimination Act 1992 \(Cwlth\)](#).

### What is the Disability Discrimination Act?

The Disability Discrimination Act 1992 (DDA) was introduced in 1993 by the Australian Government to provide protection against discrimination based on disability. The DDA makes it unlawful to discriminate against people (including children) with disability.

The DDA is based on the principle that people with disability have the same rights as the rest of the community before the law. The DDA requires governments, businesses and community organisations to enable people with disability to participate in their services in the same way as other members of the community.

### What does the DDA mean for ECEC services?

Understanding and meeting your obligations under the DDA is an important step in enabling children with disability and their families to participate in education and community services in the same way as other children do.

Under the DDA, ECEC services have an obligation to support children with disability to fully access and participate in their programs. This means that services are required to make adjustments, or offer different or additional support, in their programs or environments to enable children with disability to participate fully in meaningful ways.

The Act provides some exemptions, for example, where the design or adjustment of services to enable full access and participation may not be practical or may cause 'unjustifiable hardship' to the service owner. However, exemptions can only be claimed if the unjustifiable hardship is *demonstrable*. This means that the service has considered not only the financial costs, but also the benefits (including to the child), all available sources of funding and support (including from other organisations), and the views and advice of the child's family. An ECEC service cannot rely on an exemption of unjustifiable hardship until it has actively explored ways to overcome barriers to a child's inclusion.

### The meaning of 'disability' and 'discrimination'

The DDA's definition of 'disability' is expansive. It covers people who may have physical, intellectual, psychiatric, sensory, neurological or learning disability. It also includes physical disfigurement and illnesses such as epilepsy and diabetes that can impact on access and participation.

Discrimination may be direct or indirect. Direct discrimination means that an individual (or a group) treats a person with disability less favourably than they would treat a person without disability. Indirect discrimination may occur when a service causes disadvantage to a person with disability, through imposing conditions or standards

that the person cannot meet (AHRC, 2014, p. 1).

The DDA considers that 'discrimination' may occur in a wide range of circumstances, including:

- through the physical design of buildings or public amenities
- restrictions on a person's carer, aid or attendant, including trained animal assistance, such as a guide dog
- admission or enrolment procedures
- program and policy design
- information and communication processes
- attitudes of service providers and their staff.

Disability discrimination extends to circumstances where a person (including a child):

- may have current disability
- may have had disability in the past
- may develop disability into the future
- is believed by others to have disability.



Photo: Lime

## The Australian Human Rights Commission

The Australian Human Rights Commission (AHRC) is the government agency responsible for promoting compliance with the DDA. It provides information and resources to enable organisations to meet their obligations under the Act.

The AHRC also has the power to investigate complaints of discrimination on the grounds of disability. If a child or their carer believes that they have been discriminated against on the grounds of their disability, they can make a complaint to the AHRC.

In investigating disability discrimination complaints, the AHRC may convene a compulsory conciliation between the two parties. At a conciliation hearing, the approved provider will be asked to demonstrate the steps it has taken to plan and deliver an inclusive service and make reasonable 'practical' adjustments to enable access and participation.

To resolve the complaint, the AHRC may ask the approved provider to develop new policies to improve access and participation of people with disability. If a party is not satisfied with the results of the conciliation process, they may decide to take further legal action through the courts (AHRC, 2015).

## Practical steps to compliance

To comply with the DDA, approved providers, service supervisors and management, and educators must ensure that the activities and operations of an ECEC service are not discriminating—directly or indirectly—against children with disability.

Compliance with the Act involves looking at many different elements of your service, from different perspectives. This may include:

- the physical design of your service
- programs, policies and procedures.

To support a child with disability to participate in a meaningful way, you may need to make adjustments to elements of your service, in consultation with the child's family and other support agencies or health professionals.

## Disability Action Plans

Increasingly, governments, businesses and organisations are developing Disability Action Plans to enable them to take a proactive approach to eliminate, as far as possible, direct or indirect disability discrimination in their operations.

While it is not a requirement of the DDA, developing

a Disability Action Plan enables an ECEC service to consult effectively with families of children with disability, disability service providers and other stakeholders to identify and address barriers that may generate direct or indirect discrimination. A Disability Action Plan may also help an ECEC service to identify priorities for change, and seek and allocate resources to increase inclusion in the short, medium and longer terms. For further information on how to create a Disability Action Plan, see Information Sheets 8—Making inclusion a strategic priority for your service and 10—Developing a Disability Action Plan in this series.

## Where to find more information

You can access a range of resources on disability discrimination from the AHRC at: [www.humanrights.gov.au/our-work/disability-rights](http://www.humanrights.gov.au/our-work/disability-rights).



Photo: Welcome to the Fold

## How to unpack relevant legislation

Approved providers, service supervisors and management, and educators of early childhood education and care (ECEC) services are required to comply with a range of state and federal laws and regulations. To help you 'unpack' the relevant legislation, try asking these key questions:

- What are the goals of the legislation—what is it trying to achieve for individuals and the wider community?
- What are the responsibilities of the ECEC service's management team?
- What are the responsibilities of individual members of the governing body?
- What responsibilities can be delegated to the ECEC service's officers, such as the Nominated Supervisor and the management team?
- What measures, such as plans, policies and procedures, need to be in place to enable the ECEC service as a whole to meet its legal obligations under the relevant Act or regulation?

It is also important to keep abreast of changes to legislation that may occur from time to time. You can download a copy of the current legislation from: [www.comlaw.gov.au/Details/C2015C00252](http://www.comlaw.gov.au/Details/C2015C00252).

The government department or statutory authority that is responsible for oversight of the legislation also provides resources, such as plain English guides and fact sheets, to help you better understand the requirements of the legislation. You can find some here:

[A brief guide to the Disability Discrimination Act](#) (Australian Human Rights Commission).

## References

Australian Human Rights Commission (AHRC). (2015). *The complaint process: for complaints about sex, race, disability and age discrimination*. Sydney: AHRC.

Australian Human Rights Commission (AHRC). (2014). *Disability discrimination*. Sydney: AHRC.

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