



HUMAN RIGHTS & DISCRIMINATION

2 March, 2015

At MDNSW we must ensure that each person receives a service that promotes and respects their legal and human rights and enables them to exercise choice like everyone else

Like everyone else, people with a disability have the right to respect for their human worth and dignity and to full participation in Australian society equal to all other Australians. They have the right to exercise choices that are the same, or close to the conditions of everyday life enjoyed by other people in the community.

Under the *Disability Services Act 1993*⁶ (DSA), each person has the right to receive services which respect and promote their legal and human rights and which place them at the centre of decision making on all aspects of the way they live their life.

Service providers should be aware of the United Nations Convention on the Rights of Persons with Disabilities (CRPD)⁷ and apply the guiding principles of fairness and human rights in all aspects of service delivery.

It is expected that service providers will maximise opportunities to assist people with a disability to participate fully in the community according to their individual and cultural needs and preferences. Fundamental to this approach is for each person to understand they have rights and be supported to exercise these rights. In this way each person can take full advantage of their choices, opportunities for inclusion and independence.

Services are to be provided in an environment that ensures people are free from discrimination, abuse⁸, neglect and exploitation and have processes in place to manage these issues if they arise.

Service providers are also expected to support a person to make an allegation of discrimination, abuse or neglect should they wish to do so, in accordance with organisational policy.

Each person is aware of their rights and can expect to have them respected

- Each person will have access to information and support to understand and exercise their legal and human rights
- Each person will receive a service that maximises their choices for social participation and cultural inclusion
- Each person will receive a service in an environment free from discrimination, abuse, neglect and exploitation
- Each person will receive a service that reflects their right to privacy and have their personal records and details about their lives dealt with in an ethical and confidential manner in line with relevant legislation
- Each person can expect service providers to support and encourage self protective strategies and behaviours that take into account their individual and cultural needs
- Each person can expect service providers to uphold their right to make decisions, including medical treatments and interventions, and when this is not possible, assisted or substituted (alternative) decision making is in line with the person's expressed wishes, if known and if not, with their best interests
- Each child with a disability has the same rights and freedoms as all other children and service providers will take each child's best interests into account when providing services.

Service providers are to uphold and promote the legal and human rights of each person

- Services are provided in an environment free from discrimination, financial, sexual, physical and emotional abuse, neglect and exploitation
- Service providers encourage and support access to advocacy⁹ services by people with a disability to promote their rights, interests and wellbeing
- Service providers gain consent from each person with a disability or their person responsible or legal representative for medical treatments and interventions
- Service providers provide opportunities for people with a disability to participate in the development and review of organisational policy and processes that promote strategies for equality and upholding human rights
- Service providers take into account individual choice and the rights of each person and act in their best interests in relation to nutritional and behaviour management practices in line with relevant legislation, convention, policies and practices
- Service providers have knowledge and skills to implement reporting processes on incidents of alleged or known discrimination, abuse, neglect or exploitation and know how to notify the relevant external authorities
- Service providers offer appropriate support to the person and their family or carer when they raise or pursue allegations of discrimination, abuse, neglect or exploitation.

Further Information

Legislative obligations

Age Discrimination Act 2004 (Commonwealth)

Anti-Discrimination Act 1977 (NSW)

Australian Human Rights Commission Act 1986 (Commonwealth)

Carers (Recognition) Act 2010 (NSW)

Community Services (Complaints, Reviews and Monitoring) Act 1993 (NSW)

Crimes Act 1900 (NSW)

Disability Discrimination Act 1992 (Commonwealth)

Equal Opportunity for Women in the Workplace Act 1999 (Commonwealth)

Guardianship Act 1987 (NSW)

Health Records and Information Privacy Act 2002 (NSW)

Privacy Act 1988 (Commonwealth)

Privacy and Personal Information Protection Act 1998 (NSW)

Public Health Act 1991 (NSW)

Racial Discrimination Act 1975 (Commonwealth)

Sex Discrimination Act 1984 (Commonwealth)

For links to legislation refer to:

www.comlaw.gov.au or www.Austlii.edu.au (Commonwealth legislation)

www.legislation.nsw.gov.au (NSW legislation)

Resources

Australian Human Rights Commission

www.humanrights.gov.au

Intellectual Disability Rights Service

www.idrs.org.au

Legal Aid

www.legalaid.nsw.gov.au

Anti Discrimination Board

www.lawlink.gov.au/ADB

Guardianship Tribunal

www.gt.nsw.gov.au

NSW Public Guardian

www.lawlink.nsw.gov.au/opg

NSW Trustee and Guardian

www.lawlink.nsw.gov.au/opc

Information on the **Convention on the Rights of Persons with Disabilities**

www.un.org/disabilities/convention/conventionfull.shtml

Information on **nutritional and behaviour management practices**

Behaviour Support Policy 2009

Nutrition and Swallowing Policy and Procedures 2010

www.adhc.nsw.gov.au

Information on **advocacy** refer to

www.adhc.nsw.gov.au

Information on **privacy** refer to Privacy NSW

www.lawlink.nsw.gov.au

Information and Privacy Commissioner

www.ipc.nsw.gov.au