

POLICY & PROCEDURES

---

# PARTICIPANTS' PROTECTION





# Table of Contents

- 1. INTRODUCTION ..... 1
  - 1.1 Policy Statement..... 1
  - 1.2 Scope ..... 1
  - 1.3 Authority ..... 1
  - 1.4 Definitions..... 1
- 2. EXTERNAL POLICIES ..... 4
- 3. POLICY REVIEW..... 4
- 4. OBLIGATIONS ..... 4
  - 4.1 Responsibility ..... 4
  - 4.2 Legal..... 4
  - 4.3 Ethical..... 4
- 5. SELECTION & SCREENING ..... 6
  - 5.1 Employees, Agency Staff and Contractors..... 6
  - 5.2 Leaders..... 7
  - 5.3 Volunteer Helpers ..... 7
- 6. TRAINING..... 7
- 7. A SAFE ENVIRONMENT ..... 8
- 8. DISCIPLINING CHILDREN..... 9
- 9. REPORTING PROCEDURES ..... 9
- 10. ALCOHOL & DRUGS ..... 10
  
- APPENDIX – LEGAL OBLIGATIONS ..... 11
  - A. LEGAL OBLIGATIONS IN RELATION TO WORKING WITH CHILDREN ..... 11
    - 1. VICTORIA..... 11
      - Working with Children Check ..... 11
      - Mandatory reporting..... 14
      - Reports should be made to ..... 14
      - Sources ..... 15
    - 2. NEW SOUTH WALES ..... 15
      - Working with Children Check..... 15
      - Mandatory reporting..... 18
      - Reports should be made to ..... 18
      - Sources ..... 18

- B. ANTI-DISCRIMINATION LEGAL OBLIGATIONS..... 19
  - 1. FEDERAL LAW ..... 19
    - A) Disability Discrimination Act 1992 (CTH) ..... 19
    - B) Racial Discrimination Act 1975 (CTH) ..... 19
    - C) Sex Discrimination Act 1984 (CTH) ..... 20
  - 2. STATE LAW ..... 21
    - A) New South Wales Anti-Discrimination Act 1977 (NSW)... 21
    - B) Victoria Equal Opportunity Act 1995 (VIC)..... 21

# 1. INTRODUCTION

## 1.1 Policy Statement

The Temple Society Australia (TSA) is committed to providing a safe and secure environment for all Participants in its activities – particularly to Children, Elderly and Vulnerable People; and to its Members, Leaders, Volunteer Helpers and Employees.

The TSA Participants' Policy & Procedures aims to reduce the risk of Abuse occurring, and to ensure that a caring and appropriate response is taken should Abuse occur.

## 1.2 Scope

The Policy & Procedures applies to:

- All Employees, Members, Leaders and Volunteer Helpers within the TSA, Contractors and Agency Staff engaged to the TSA and Visitors, and all are expected to be aware of it;
- All service organisations or subsidiary bodies authorised by or under the control of TSA whether those services are undertaken on TSA premises or away from those premises.

## 1.3 Authority

This Policy & Procedures of the TSA has been adopted for use by **Regional Council** and is subject to regular review and update.

TSA is committed to implementing the Policy & Procedures and to ensuring its Employees, Members, Leaders, Volunteer Helpers, Contractors and Agency Staff are aware of its content and that they apply it in practice.

## 1.4 Definitions

**Abuse**, can consist of one or more of, but is not restricted to, the following:

**Elderly Abuse**, a single or repeated act, occurring in any relationship where there is an expectation of trust, which causes harm or distress to an older person.

**Physical Abuse**, any non-accidental physical injury resulting from practices such as: hitting, punching, kicking, strapping with a belt, bending fingers, squeezing, shaking, burning (irons, cigarettes), biting, pulling out hair, alcohol and/or other drug administration.

**Sexual Abuse**, any assault or abuse of a sexual nature, whether verbal or physical, sexual molestation, indecent exposure, sexual harassment, exploitation or intimidation.

**Emotional Abuse**, the chronic attitude or behaviour of one person which is directed at another person, or the creation of an emotional environment which erodes a person's development, self-esteem and social confidence over time.

Behaviours may include:

insulting, bullying, devaluing, intimidating, exploiting, ignoring, rejecting, corrupting, isolating, terrorising, any form of discrimination or other extreme acts.

**Financial Abuse** may include:

- Activities by an attorney in violation of their powers, duties and responsibilities under an Enduring Power of Attorney (EPA) or a Financial Power of Attorney (FPA);
- Misappropriation of money, valuables or assets;
- Forging signatures on cheques;
- Denial of access to personal assets;
- Accessing a person's funds electronically; and/or
- Forced or unauthorised changes to legal documents.

Financial Abuse may also occur where a person takes advantage of a person who has already lost (or is losing) capacity, by coercing or arranging for the person to sign an EPA or FPA in circumstances where the person is unable to understand the nature and effect of the document.

**Elderly**, any older person who is a Participant.

**Employee**, any person in full or part-time employment with the TSA.

**Neglect**, characterised by the failure to provide for basic needs. Any serious omission which jeopardises or impairs a person's health or development.

**Child**, any person under the age of 18.

**TSA** refers to the Temple Society Australia, and includes both its unincorporated and incorporated entities. Registered office address –152 Tucker Road, Bentleigh VIC 3204.

**Regional Council** – governing body of the Temple Society Australia, unincorporated.

**Regional Head** – chief executive officer (Australia) of the Temple Society Australia, unincorporated.

**Leader**, any person (paid or unpaid) **over the age of 18** who is responsible for the control and safety of Participants placed in their care whilst holding a formal position recognised in the structure of the TSA. A Leader could include but is not limited to:

- Elders;
- Focus Group leaders;
- Music, drama or other leaders;
- Counsellors;
- Youth and camp leaders;
- Sunday school instructors;
- Teachers; and/or
- Sports coaches and organisers.

**Volunteer Helper**, any unpaid person who is invited by a Leader to assist them in their activity. All Volunteer Helpers must be over the age of 16.

**Participant**, any person, including a child, who attends or participates in a TSA activity.

**Member**, a member of the TSA as defined by the constitution of the TSA unincorporated entity.

**Vulnerable Person**, any person who is or may be in need of community care services by reason of mental or other disability, age or illness.

**Visitor** – any person who is not a Member but comes to spend time at a TSA organised event or facility.

**Contractor** – any person or entity that enters into a contract with the TSA for the provision of goods or services.

**Agency Staff** – any person hired to work for the TSA.

## **2. EXTERNAL POLICIES**

The TSA acknowledges that some activities in the TSA might have external affiliation with other subsidiary or partner organisations. These organisations will possibly have policies governing the issues of safety and abuse. The TSA's Policy & Procedures is not intended to replace or conflict with other policies, but instead to operate in conjunction with them.

## **3. POLICY REVIEW**

This Policy & Procedures will be reviewed at least annually by Regional Council. Interested parties will be allowed the opportunity to provide input into the review.

## **4. OBLIGATIONS**

### **4.1 Responsibility**

The core expectations of any responsible organisation require the TSA to treat all people with fairness and dignity, and to care for those who are less powerful and in need of nurture and protection, including Children, Elderly and Vulnerable Persons.

### **4.2 Legal**

All relevant organisations within Australia are bound by Federal and State legislation and principles established through common law. TSA is committed to adhering to all relevant legislation, including that referred to in the Appendix.

### **4.3 Ethical**

Some actions may not be regarded as Abuse and may not be legally actionable, but are unacceptable behaviour for the TSA.

These include:

- Inappropriate conversation of a sexual nature;
- Coarse language, especially that of a sexual nature;
- Language that reflects racial or religious vilification;
- Joking which is sexual, racial or religious in nature;
- Suggestive gestures or remarks;
- Inappropriate or intrusive touching;
- Recording or filming without prior consent;
- Acts of violence committed by anyone in the course of an activity;
- Using or referencing inappropriate literature (e.g. PG, M, MA, R or X rated material) in hard copy or electronically;
- Inappropriate undressing/dressing in front of a person;
- Ridiculing, rejecting or isolating behaviour; and/or
- Aggressive, physically distressing or sexually provocative activities.

The age of individuals is recognised as one of the determinants in deciding what is acceptable and unacceptable behaviour. Regional Council insists that high standards of conduct are maintained at all times.

Each Participant and Visitor has the right:

- To full and effective use of his or her personal, civil, legal and consumer rights,
- To be treated with worth, dignity and respect and to receive services without exploitation, Abuse or Neglect,
- To be treated fairly, with consideration and honesty,
- To receive services without discrimination or victimisation, and without being obliged to feel grateful to those providing the services,
- To personal privacy,
- To be treated and accepted as an individual, and to have his or her individual preferences taken into account and treated with respect,
- To continue his or her cultural or religious practices and to retain the language of his or her choice, without discrimination,

- To select and maintain social and personal relationships with any other person without fear, criticism or restriction,
- To freedom of speech,
- To maintain his or her personal independence, which includes a recognition of personal responsibility for his or her own actions and choices, even though some actions may involve an element of risk which the Participant has the right to accept, and that should then not be used to prevent or restrict those actions,
- To complain and to take action to resolve disputes,
- To have access to advocates and to other avenues of redress, and
- To be free from reprisals, or a well-founded fear of reprisal, in any form for taking action to enforce his or her rights.

## **5. SELECTION & SCREENING**

### **5.1 Employees, Agency Staff and Contractors**

involved in activities or programs with Children, Elderly and/or Vulnerable Persons must be carefully selected and screened. Prior to commencing employment or providing services, the following precautions will be taken:

- All Employees will complete an application form which requests details of relevant past experience, positions held, details of two referees and permission to contact them.
- Referees will be checked and spoken to, using an agreed set of questions which have been drafted by the TSA. The questions will seek to establish the applicant's suitability for the role or position and the conversation will be documented and retained on file.
- Short-listed candidates will be interviewed by an experienced and responsible Employee or Member of the TSA prior to being accepted for employment.
- A Police and/or Community Services and/or Working with Children check which complies with the State legislative requirements will be requested and received prior to any Employee, Agency Staff or Contractor commencing their proposed role.

## 5.2 Leaders

involved in activities or programs with Children, Elderly and/or Vulnerable Persons must be carefully selected. Prior to commencing volunteer services, the following precautions will be taken:

- Leaders will be Members of the TSA and have regularly attended TSA gatherings for at least 12 months, or will be personally known by a referring Member for at least 12 months and referred to the Regional Head for approval.
- A Police and/or Community Services and/or Working with Children check which complies with the State legislative requirements will be requested and received prior to any Leader commencing their proposed role.

## 5.3 Volunteer Helpers

involved in specific activity programs for Children, Elderly and/or Vulnerable Persons must be personally known by the activity Leader for at least 12 months, or will be personally known by a referring Member for at least 12 months and referred to the Regional Head for approval.

Volunteer Helpers are expected to have an awareness of the content of the TSA Participants' Protection Policy & Procedures and be prepared to adhere to it.

Any Volunteer Helper who provides assistance in a Children's activity must be supervised by a Leader at all times and will be accountable to that Leader.

Leaders who accept the assistance of a Volunteer Helper must be satisfied of the Volunteer Helper's maturity and their suitability for work with Children, Elderly or Vulnerable Persons.

**Where the TSA has identified that an applicant has previously committed a violent or sexually related offence, they cannot under any circumstances be considered for employment or engagement as a Leader or as a Volunteer Helper.**

## 6. TRAINING

All Employees and Leaders will be issued with a copy of this Policy & Procedures and again regularly after review by Regional Council. On each occasion a covering explanation will alert them to its content and

application.

Copies of the Policy & Procedures will be freely available at each of the TSA facilities and on the TSA website.

## **7. A SAFE ENVIRONMENT**

Incidents of Abuse are unlikely to take place in front of another person and the presence of a witness can assist in clarifying questionable allegations. For these reasons, working in pairs is the preferred method. Where this is not possible one Leader will suffice, but only when there are 3 or more Participants who must be present together.

Leaders will not visit Children in their homes unless a parent/guardian is present or another Leader accompanies them.

When transporting people under their care, Employees, Leaders and Volunteer Helpers will take them directly to and from arranged venues and will not spontaneously detour or make additional arrangements.

All personal counselling is to be carried out within sight of another Leader or Volunteer Helper.

Leaders, Employees and Volunteer Helpers will respect a Participant's and Visitor's feelings and privacy when engaging in contact of any kind.

Adults and Children are expected to respect each other's privacy during activities that require undressing, dressing or changing clothes. Leaders and Volunteer Helpers will set an example by protecting their own privacy in similar situations. No Leader or Volunteer Helper will be alone in a room with a Child or an Elderly or Vulnerable Person while they are changing.

Initiations and secret ceremonies are prohibited. All aspects of every program related to Children, Elderly and Vulnerable Persons shall be open to observation by family, friends or guardians.

Leaders have the right to ask people who do not have a valid reason to be present at activities to leave. Police may be contacted if such persons refuse to comply with any reasonable request to leave.

## 8. DISCIPLINING CHILDREN

It is not the responsibility of the TSA or its Employees, Leaders or Volunteer Helpers to discipline a Child. If a Child does not abide by the rules set down, or becomes an obstruction to the care of other Participants and may cause harm, the Child will be removed and referred back to their parent or guardian.

At no time will a Leader or Volunteer Helper administer any form of physical, emotional or mental discipline.

## 9. REPORTING PROCEDURES

Helen Barnacle (psychologist), as an independent person, has been appointed by the TSA with the specific duty of assisting with any allegations that arise. Helen can be contacted by telephone on (03) 9510 4844 or 0413 623 850.

(Any change to this appointment will be advised to all Leaders)  
Any allegations should immediately be reported to the Regional Head or to Helen. The Regional Head will immediately involve Helen (or another independent person if Helen is not available). All allegations and actions are to be documented as they occur.

If there are reasonable grounds to suspect a Participant or a Visitor has been or is suffering Abuse, the Police and the TSA's insurer will be contacted ***immediately***.

The phone number for the Police is:

(03) 9247 6666 (VIC)

1311 444 (NSW)

The phone number for the TSA's insurer (ANSVAR) is:

1800 729 513

Reasonable grounds can be assumed when:

A person discloses that he or she has been Abused, and/or someone close to a Participant (e.g. sibling, relative, close friend) discloses on behalf of that person.

The Police will also be notified if a person discloses an incident of Abuse that has occurred somewhere other than at TSA's premises, (e.g. home or school).

If a disclosure of Abuse is made, the person who receives the disclosure will provide appropriate pastoral care to the one making the disclosure. This will include:

- Treating each allegation seriously and not attempting to deny the allegation or minimise its impact on the alleged victim. The matter should not be swept under the carpet,
- Not pushing the person to disclose details of the allegation or attempting to investigate the allegation,
- Assuring the person that they are understood; that their disclosure is being taken seriously; that what has happened is not their fault; and that they are correct in disclosing the incident,
- Reporting the Abuse to the Police and the TSA's insurer,
- Not making contact with the alleged perpetrator. If the Employee or Volunteer is already providing counsel to the alleged perpetrator, it may be advisable for another person to assume this responsibility for the duration of any investigation,
- If the allegation has taken place recently, be mindful that clothing worn by the Participant should be retained and handed to the Police for forensic examination, and
- Maintaining confidentiality.

Any disclosures, reports of suspected Abuse and all details of the subsequent investigation will be documented promptly and the documents will be held in a secure location where a breach of privacy cannot occur.

Where an allegation is made, the accused will be removed from all related activities and programs pending the outcome of all investigations.

TSA reserves the right to carry out disciplinary procedures in accordance with its constitution.

## **10. ALCOHOL & DRUGS**

The consumption of alcohol or illegal drugs in proximity to or during a specific Children's activity is not to be allowed or condoned by any Leader.

Any Child found to be under the influence of alcohol or illegal drugs is to be counselled and the parent/guardian contacted so the Child can be returned home immediately.

Any Child required to take prescription medication will provide a letter to that effect to the TSA from their parent/guardian.

## **APPENDIX – LEGAL OBLIGATIONS**

### **A. LEGAL OBLIGATIONS IN RELATION TO WORKING WITH CHILDREN**

In this précis of legislative requirements, every attempt has been made to ensure the information is current and accurate. However where reliance on this information is necessary it should be checked back to the source.

#### **1. VICTORIA**

##### **Working with Children Check**

Under the Working with Children (WWC) Act 2005 (the Act) only people who engage in paid or voluntary child-related work need a WWC Check.

##### **What is child-related work?**

Child-related work is paid or unpaid work involving regular direct contact when working with or caring for children in any of the occupational categories listed in the Act.

##### **You do not require a WWC Check if you:**

- are involved in a private or domestic arrangement that exists between family and friends and where no payment is involved;
- participate in an activity with a child on the same basis as the child for example in the same team;
- supervise a student in practical training organised by their educational institution.

##### **You need to apply for and pass the WWC Check if you meet all 1-4 criteria:**

1. You are engaged in child-related work as:
  - an employee or
  - a self-employed person or an independent contractor or
  - a volunteer or
  - a supervisor of child employees or
  - part of practical training through an educational or vocational course or
  - unpaid community work under a court order or

- a minister of religion or performing duties of a religious vocation or
  - an officer of a body corporate or
  - a member of a committee of management of an unincorporated body or
  - a member of a partnership.
2. Your contact with a child is with any of the occupational categories listed in the Act. Occupational categories are not titles of people's jobs but broad descriptions of services or places where people work with or care for children.
  3. Your work involves regular direct contact with a child, who is **under 18 years of age**.
    - a) Regular contact is contact that is not incidental to but normally part of providing a service or activity for children.
    - b) Direct contact with a child involves physical contact, talking face to face or within eyeshot when providing a service or activity for children.
  4. Your work is not directly supervised. Direct supervision is:
    - immediate and personal supervision;
    - undertaken by a person whose role is to supervise your work;
    - does not require constant physical presence, for example a supervisor may leave the room for a short while to take a phone call.

### **Who is exempt from the WWC Check?**

There are several situations listed in the Act where people engaged in child-related work are exempt and do not need a WWC Check.

The exemptions in the Act are described below.

#### **Children**

If you are under 18 years of age, you are exempt from the WWC Check. This exemption does not apply under the Child Employment Act 2003 to people who are under 18 years of age supervising children in employment.

### **Some student volunteers**

If you are a student who is 18 or 19 years of age, you are exempt from the WWC Check for volunteer work organised by or held at the educational institution you attend.

### **Parents volunteering in an activity with their child**

If you are a parent volunteering in an activity in which your child participates or normally participates, you are exempt from needing a WWC Check.

### **Family members and people who are closely related to the child**

If you are closely related to each child in your child-related work you are exempt from the WWC Check. 'Closely related' to a child means you are the:

- parent
- spouse or domestic partner
- step-parent
- mother-in-law or father-in-law
- grandparent
- uncle or aunt
- brother or sister, including half siblings, step siblings, brother-in-law or sister-in-law

### **Teachers**

If you are a teacher who is currently registered with the Victorian Institute of Teaching (VIT), you are exempt from the WWC Check. However, if your VIT registration is suspended or cancelled, you are no longer exempt. You must apply for the Check and within 7 days of your registration being suspended or cancelled notify in writing every organisation that engages you in child-related work that you are no longer exempt.

### **Police officers**

If you are a sworn Victoria Police officer or a sworn Australian Federal Police officer, you are exempt from the WWC Check. However, if you are suspended or dismissed, you are no longer exempt. You must apply for the Check and within 7 days of being suspended or dismissed notify every organisation that engages you in child-related work that you are no longer exempt.

### **Visiting workers**

If you usually live and work in another state or territory and are visiting Victoria to engage in child-related work, you are exempt from the WWC Check.

### **Some accredited drivers**

If you engage in child-related work that requires a current driver accreditation under the Transport (Compliance and Miscellaneous) Act 1983, you are exempt from the WWC Check for that child-related work, with some exceptions.

### **How long is the Check valid?**

The WWC Check is valid for five years and is transferable between different employers or volunteer organisations (except if moving from a volunteer to an employee position).

### **Cost of the Check**

The Check is free for volunteers and \$100.20 if you are applying for an Employee card. This fee is not refundable.

### **Mandatory reporting**

The following people are legally required to report reasonable suspicions of Abuse:

- Registered Medical Practitioners,
- Registered Nurses,
- Persons registered as teachers under the Education Training and Reform Act 2006 or teachers granted permission to teach under that Act,
- Principals of government or non-government schools, and
- Members of the Police Force

### **Reports should be made to**

Department of Human Services  
Children Youth and Families  
Child Protection & Family Services  
9/50 Lonsdale Street, Melbourne VIC 3000  
Phone: 1300 360 391  
131 278 – after hours emergency service  
URL: [www.cyf.vic.gov.au](http://www.cyf.vic.gov.au)

## **Sources**

Department of Justice

<http://www.justice.vic.gov.au/>

[www.careforkids.com.au](http://www.careforkids.com.au)

National Child Protection Clearinghouse

<http://www.aifs.gov.au/nch/index.html>

Children & Young Persons Act 1989 s64

Children Services Act 1996

Children Services Regulations 1998 s27

Working with Children Act 2005

Working with Children Regulations 2006

## **2. NEW SOUTH WALES**

### **Working with Children Check**

A new Working with Children (WWC) Check started in NSW early in 2013. Under the new Check:

- Workers and volunteers will apply for their own Check once every five years.
- Employers will verify a child-related worker's or volunteer's clearance number.
- The same WWC Check will apply to everyone – paid workers, self-employed people and volunteers.
- Everyone with a clearance will be continuously monitored for serious sex or violence offences.

There can only be two results for a new WWC Check – a clearance or a bar. People with a bar may not work or volunteer in child-related roles.

Find out more:

<http://kids.nsw.gov.au/kids/working/newcheck#ixzz2Ba4bml7N>

NSW Commission for Children and Young People

### **Prohibited employment declaration**

The Children and Young Persons (Care and Protection) Act 1998 mandates the Department of Community Services with the responsibility for the care and protection of children and young people in NSW where there are concerns about their safety, welfare and wellbeing.

## **Who is a prohibited person?**

All people working in, or seeking to work in, child-related employment must declare whether they are a prohibited person. This includes volunteers and students on placement. It is an offence for prohibited persons to apply for, undertake or remain in child-related employment.

A prohibited person is a person convicted of committing a serious sex offence, or a 'registrable person'. A 'registrable person' is someone who has been found guilty of any of the following:

- murder of a child
- child-related personal violence offences
- serious sexual offences
- indecency offences (punishable by imprisonment of 12 months or more)
- kidnapping
- child prostitution
- child pornography (possession, distribution or publication)
- attempt, conspiracy or incitement to commit the above offences

## **What is child-related employment?**

Child-related employment is any work (paid or unpaid) that involves direct and unsupervised contact with children in the following areas:

- pre-schools, kindergartens, child care centres (including residential child care centres)
- refuges used by children
- clubs, associations etc. (including those of a cultural, recreational or sporting nature) which have a significant child membership
- religious organisations
- entertainment venues where the clientele is primarily children
- taxi services for the transport of children
- private tuition of children
- child health services
- counselling or other support services for children
- overnight camps for children
- babysitter or child minder arranged by a commercial agency

- in schools or other educational institutions (not being universities)
- on school buses
- fostering or other child care
- child protection services

All people in, or commencing, child-related employment must be asked by their employer if they are a prohibited person. Employers should clearly state in all information for child-related positions that prohibited persons are not eligible to apply.

As an employer, the WWC Check requires that you:

- don't employ prohibited persons in child-related employment;
- do working with children background checks;
- report relevant employment proceedings; and
- keep records and protect confidentiality.

### **Background checks**

Background checks are conducted by the NSW Commission for Children and Young People and other approved screening agencies.

Background checks are only mandatory for:

- preferred applicants for paid child-related employment
- a minister, priest, rabbi, mufti, or other like religious leader or spiritual official of a religion
- anyone seeking to provide foster care ('authorised care' to children)

Three specific checks are made for:

- relevant criminal records;
- relevant Apprehended Violence Orders; and
- relevant employment proceedings.

Any relevant records arising out of the background check will be assessed in terms of risk of employing the person in a child-related position.

An assessment report is then forwarded on to the employer. The decision whether to employ a person always remains the employer's.

Employers may conduct other criminal record checks as part of their employment screening process at their own discretion.

### **Cost of the Check**

The new Check will be free for volunteers and cost \$80 for paid workers and self-employed people, it is valid for 5 years. A volunteer check cannot be used for paid work with children.

### **Mandatory reporting**

A 'mandatory reporter' is any person who delivers health care, welfare, education, children's services, residential services or law enforcement wholly or partly to children (**aged under 16**) as part of their paid work and includes any person who directly manages or supervises such work.

If you are a mandatory reporter with current concerns that a child aged under 16 is at risk of harm, you are required to make a report to the Department of Community Services.

This is a legal obligation, which carries a penalty if you fail to comply.

### **Reports should be made to**

Department of Community Services  
4 – 6 Cavill Avenue  
Ashfield, NSW 2131  
Phone Number 9716 2222  
24 hours: 132 111  
URL: [www.community.nsw.gov.au](http://www.community.nsw.gov.au)

### **Sources**

NSW Commission for Children & Young People  
<http://www.kids.nsw.gov.au/check/>  
Child Protection (Prohibited Employment) Act 1998  
Commission for Children and Young People Act 1998  
Children (Care & Protection) Act 1987  
Children (Care & Protection) Regulations 1996  
Children & Young Persons (Care & Protection) Act 1998 s27  
Ombudsman Act 1974  
<http://www.kids.nsw.gov.au/kids/check/employerguidelines.cfm>

## **B. ANTI-DISCRIMINATION LEGAL OBLIGATIONS**

The Commonwealth Government and the state and territory governments have introduced anti-discrimination law to help protect people from discrimination and harassment.

### **1. FEDERAL LAW**

Federal legislation includes:

- Disability Discrimination Act 1992
- Racial Discrimination Act 1975
- Sex Discrimination Act 1984

#### **A) Disability Discrimination Act 1992 (CTH)**

##### **Grounds of unlawful discrimination**

Physical, intellectual, psychiatric, sensory, neurological or learning disabilities; physical disfigurement; disorders, illness or diseases that affect thought processes, perceptions of reality, emotions or judgment, or results in disturbed behaviours; presence in body of organisms causing disease or illness (e.g. HIV virus).

##### **Areas covered**

Employment; education; access to premises; accommodation; buying or selling land; activities of clubs; sport; administration of Commonwealth laws and programs; provision of goods, services and facilities.

##### **Process for decision making**

Complaints must be in writing. It is then assessed and if within jurisdiction is investigated. The complaint is then reviewed to see if it should be terminated or if it is suitable for conciliation. If the complaint cannot be conciliated, it will be terminated by the President of the Commission. A complainant may then take the matter to the Federal Court of Australia or the Federal Magistrates Court.

#### **B) Racial Discrimination Act 1975 (CTH)**

##### **Grounds of unlawful discrimination**

Race, colour, descent or national or ethnic origin.

##### **Other unlawful conduct**

Racial hatred

**Areas covered**

Employment; provision of goods and services; right to join trade unions; access to places and facilities; land, housing and other accommodation.

**Process for decision making**

Complaints must be in writing. It is then assessed and if within jurisdiction is investigated. The complaint is then reviewed to see if it should be terminated or if it is suitable for conciliation. If the complaint cannot be conciliated, it will be terminated by the President of the Commission.

A complainant may then take the matter to the Federal Court of Australia or the Federal Magistrates Court.

**C) Sex Discrimination Act 1984 (CTH)****Grounds of unlawful discrimination**

Sex, marital status, pregnancy, family responsibility (dismissal only).

**Other unlawful conduct**

Sexual harassment

**Areas covered**

Employment; partnerships; qualifying bodies; registered organisations; employment agencies, education; goods, services and facilities; accommodation; land; clubs; awards; superannuation and enterprise agreements.

**Process for decision making**

Complaints must be in writing. It is then assessed and if within jurisdiction is investigated. The complaint is then reviewed to see if it should be terminated or if it is suitable for conciliation. If the complaint cannot be conciliated, it will be terminated by the President of the Commission. A complainant may then take the matter to the Federal Court of Australia or the Federal Magistrates Court.

**Note, neither the Australian Human Rights Commission Act 1986 nor the Age Discrimination Act 2004 (Cth) applies to the TSA.**

## 2. STATE LAW

Relevant State legislation includes

- New South Wales Anti-Discrimination Act 1977 (NSW)
- Victorian Equal Opportunity Act 1995 (VIC)

### A) New South Wales Anti-Discrimination Act 1977 (NSW)

#### **Grounds of unlawful discrimination**

Race, (including colour, nationality and national or ethnic origin), sex (including pregnancy), marital status, disability, homosexuality, age (compulsory retirement only), transgender, carer's responsibility.

#### **Other unlawful conduct**

Sexual harassment; vilification on the basis of race, homosexuality, transgender and HIV/AIDS status.

#### **Areas covered**

Employment; partnerships; trade unions; qualifying bodies; employment agencies; education; access to places and vehicles; provision of goods and services; accommodation; registered clubs.

#### **Process for decision making**

Complaint must be in writing to the NSW Anti-Discrimination Board. It is then assessed and if within jurisdiction is investigated and conciliation may be attempted. If unsuccessful, it may be referred to Equal Opportunity Tribunal for hearing and legally enforceable determination.

### B) Victoria Equal Opportunity Act 1995 (VIC)

#### **Grounds of unlawful discrimination**

Sex, sexual orientation, gender identity, pregnancy, breastfeeding, marital status, status as a carer, age, race (including colour, nationality, ethnic or national origin), parental status, physical features, childless or a de facto spouse, lawful religious or political belief or activity, impairment (including physical impairment, mental illness, mental retardation), industrial activity, lawful sexual activity, or personal association with persons having any of the above attributes.

#### **Other unlawful conduct**

Sexual harassment

**Areas covered**

Employment; partnerships; firms; professional and other organisations; qualifying bodies; employment agencies; education; provision of goods and services; accommodation (including alteration of accommodation); clubs or community service organisations; municipal or shire councils.

**Process for decision making**

Complaint must be in writing to Commissioner for Equal Opportunity. It is then assessed and if within jurisdiction is investigated and conciliation attempted. If unsuccessful, the matter is referred to the Victorian Civil and Administrative Tribunal for hearing and legally enforceable determination.





152 TUCKER ROAD BENTLEIGH VICTORIA 3204  
Telephone (03) 9557 6713 Facsimile (03) 9557 7943  
ABN 35 439 044 725 ACN 004 279 001