

# THE DISABILITY DISCRIMINATION ACT:

## WHAT DO CHILDREN'S EDUCATION AND CARE SERVICES NEED TO KNOW?

**Every child has the right to access, participate and be included in all aspects of community life, including children's education and care.**

***Disability Discrimination Act 1992 (DDA) supports children with disabilities, their families and carers to access and fully participate in children's education and care services in the same way as other children.***



Scan the QR code for more information about the DDA or visit [acecqa.gov.au](http://acecqa.gov.au).



### WHAT IS THE DISABILITY DISCRIMINATION ACT?

The [Disability Discrimination Act 1992](#) (DDA) is a law that protects Australians from discrimination based on disability. The DDA makes it unlawful to discriminate on the ground of the person's disability. This includes discrimination that occurs in the context of accessing and participating in children's education and care services. All children's education and care services (including family day care) must comply with the DDA.

### WHAT IS A DISABILITY?

Disability is defined broadly in the DDA and does not rely on a formal diagnosis of disability. Disability can be visible or non-visible. Some people are born with disability, others may acquire a disability during their lives.

Disability in relation to the DDA includes:

- *Physical*
- *Intellectual*
- *Psychiatric*
- *Sensory*
- *Neurological, and*
- *Learning disabilities, as well as*
- *Physical disfigurement.*

For more information visit <https://www.humanrights.gov.au/dda-guide-who-does-dda-protect>.

'The Act covers disabilities that people have now, had in the past, may have in the future or which they are believed to have'. For more information visit <https://humanrights.gov.au/our-work/disability-rights/know-your-rights-disability-discrimination>.

### WHAT IS DISABILITY DISCRIMINATION IN CHILDREN'S EDUCATION AND CARE?

Disability discrimination can involve a person with disability (such as a child, parent, carer or staff member) being treated less favourably than a person without disability in similar circumstances.

It is unlawful under the DDA for any staff member at a service to harass, victimise or discriminate against an enrolled child, or a child seeking to enrol, in relation to their disability.

**Discrimination** does not have to be intentional to be unlawful and includes the failure of a service to make reasonable adjustments.

**Direct Discrimination** happens when someone with disability is treated less favourably because of their disability. It can also occur when a person fails to make reasonable adjustments to allow a person with disability to be treated as favourably as a person without disability. Some examples include:

- a child's enrolment not being accepted because of their disability
- a child not being invited to participate in an excursion because of their disability
- a child's participation in the educational program and/or experiences being limited due to their disability (for example setting up experiences such as water activities or cooking in ways that a child with disability support equipment cannot access)
- a provider prevents a child from attending the service or participating in an activity because of the child's disability.

**Indirect Discrimination** can occur when a rule or policy that is the same for everyone has an unfavourable impact on a person with disability. In particular, it could occur when a child in ECEC services could not [meet a requirement necessary to] participate in an activity because of their disability, or would be able to [meet that requirement] if reasonable adjustments were made. Some examples include:

- a requirement for children to meet identified development milestones before enrolment is accepted
- a requirement for all children to be independent in their toileting before they can enrol in a service or in a specific room, for example, the preschool room.

If a child with disability was unable to meet the requirements described in the examples above because of their disability, these policies may be indirectly discriminatory.

## DISABILITY DISCRIMINATION ACT AND THE NATIONAL QUALITY FRAMEWORK (NQF)

The National Quality Framework (NQF) aims to raise quality and drive continuous improvement and consistency in children's education and care services. Equity, inclusion and diversity underpin the NQF and are embedded throughout the National Quality Standard (NQS) and the approved learning frameworks.

### The NQF:

- uses the terms **each child**, **every child** and **all children** to promote inclusion
- recognises all children as confident and capable learners with the capacity and right to succeed regardless of diverse circumstances, including strengths, cultural background and abilities.

The right of every child to be included, to participate and have equitable access is demonstrated through all seven NQS Quality Areas.

### Examples that embed the principles of the DDA include:

- **Quality Area 1:** Each child's current knowledge, strengths, ideas, culture, abilities and interests are the foundation of the program (Element 1.1.2);
- **Quality Area 3:** Outdoor and indoor spaces are organised and adapted to support every child's participation and to engage every child in quality experiences in both built and natural environments (Element 3.2.1);
- **Quality Area 5:** The dignity and rights of every child are maintained (Element 5.1.2);
- **Quality Area 6:** Effective partnerships support children's access, inclusion and participation in the program (Element 6.2.2).



Fairness

Equity

Inclusion

## WHAT ARE REASONABLE ADJUSTMENTS?

Reasonable adjustments are changes to a policy, practice, procedure, program or environment that enables a person with disability to access and participate in the service on the same basis as others. An adjustment will be ‘reasonable’ unless the provider can show that making the adjustment would impose an unjustifiable hardship on them. A failure to make reasonable adjustments can result in discrimination occurring against a person with disability under the DDA. Consultation with families, carers and children will support identification of an appropriate reasonable adjustment.

Examples of reasonable adjustments could include:

- **adjusting the layout of equipment and learning areas** so that there is enough space for a child to easily move around with a walking frame
- **using visual supports** so that children can make choices and understand and follow the daily routine
- **educator(s) and children learning Auslan**, so that they can communicate with children or families who use Auslan (for example children with a hearing impairment)
- **developing strategies to support the sensory needs** of children with Autism Spectrum Disorder, including when going on excursions or managing daily transitions
- **accessing additional support or resources** so that the needs of all children can be met
- **making adjustments to the daily routine** such as allowing extra time for transitions or minimising extended group time experiences
- **tailoring each child’s assessment of learning** to meet their individual needs.

## MAKING REASONABLE ADJUSTMENTS

In determining a reasonable adjustment relevant considerations for services include:

- the views of the child and/or the child’s family and/or their carer
- how the child’s disability impacts their access and participation in the service program
- whether the adjustment will enhance the child’s access and participation and support participation on the same basis as a child without disability
- the timeframe in which the adjustment can be made.

Reasonable adjustments often benefit both the child with disability and the wider service, including other children and staff. Any costs associated with making a reasonable adjustment are an investment and benefit the service as they may be in a better position to accommodate children with a disability in the future.

Adjustments will depend on the child’s needs and identified barriers to access and participation. Working closely with

the child’s family and/or carer, and other support agencies or health professionals will support decision-making.

The DDA provides that an adjustment will not be reasonable if it would cause ‘unjustifiable hardship’ on the service provider. The service provider is required to demonstrate that providing the adjustment would cause ‘unjustifiable hardship’. This needs to be considered in light of all the circumstances, including the availability of financial assistance to make the adjustment.

Children’s education and care services receiving Child Care Subsidy from the Australian Government may access support through the [Inclusion Support Program](#) (ISP). The ISP aims to build the capability and capacity of eligible mainstream Early Childhood Education and Care services to address participation barriers for all children through implementing quality inclusive practices. Check with your relevant state department for any specific state support for preschools and other services.

## Understanding and meeting your obligations under the DDA supports children with disability and their families to access and fully participate in children’s education and care services in the same way as other children.

## WHAT ARE YOUR OBLIGATIONS UNDER THE DISABILITY DISCRIMINATION ACT?

All services must comply with the DDA. This means that approved providers, educators and all staff need to:

- understand the DDA, including what discrimination, harassment and victimisation look like within the context of a children’s education and care service
- ensure they do not harass, victimise or discriminate against children or others with disabilities
- ensure that service operations, policies and practices do not discriminate against children or others with disabilities either directly or indirectly
- identify barriers to access and participation and make reasonable adjustments so that all children can access and fully participate in the service.

Service providers should ensure all staff understand the DDA and support them to make reasonable adjustments to support participation and access. Service providers may need to participate in a conciliation conference if a complaint is made to the Australian Human Rights Commission (AHRC).

Fairness

Equity

Inclusion

## WHAT HAPPENS IF THE DISABILITY DISCRIMINATION ACT IS NOT COMPLIED WITH?

If a child or their family/advocate believe they have been discriminated against by an individual or organisation, they can make a complaint to the Australian Human Rights Commission (AHRC). The AHRC is an independent statutory organisation that promotes compliance with the DDA (and other discrimination laws) and investigates complaints about discrimination and other breaches of human rights.

When the AHRC receives a complaint, they may attempt to resolve it through a conciliation conference between the two parties and any other person who could help conciliate the complaint. During this process, the service provider could be asked to demonstrate what the service has done to enable full access and participation for the child, parent or other person connected to the service. If the complaint has been terminated, the complainant can make an application to the Federal Court in relation to the alleged discrimination.

## OFFENCES UNDER THE DISABILITY DISCRIMINATION ACT

Generally, discriminatory activities under the DDA are unlawful and offences are punishable by fines or imprisonment.

It is an offence to victimise a person who has or may wish to make a complaint, or proposes to participate or participates in some way in investigations or other compliance proceedings undertaken by the AHRC, to any kind of detriment, or threat of detriment.

It is also an offence to incite or promote any acts prohibited under the DDA. Publishing an advertisement indicating an intention to do any act prohibited by the DDA is also punishable by a fine under the Act.

## Further reading and resources

**Australian Children's Education and Care Quality Authority**

- [Guide to the NOF](#)

**Australian Government Department of Education, Skills and Employment**

- [Fact Sheet 1: Disability Discrimination Act 1992](#)

**Australian Government Federal Register of Legislation**

- [Disability Discrimination Act 1992 \(legislation.gov.au\)](#)

**Australian Human Rights Commission**

- [A brief guide to the Disability Discrimination Act](#)
- [D.D.A. guide: Who does the D.D.A. protect? | Australian Human Rights Commission](#)
- [Know your rights: disability discrimination](#)



Scan the QR code for more information about the DDA or visit <https://www.acecqa.gov.au/resources/disability-discrimination-act-1992-dda-resources>.



Fairness

Equity

Inclusion