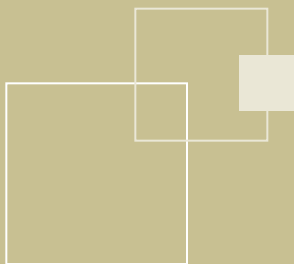


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6 May 2010

DISCLAIMER

The information contained in this presentation is intended as general commentary and should not be regarded as legal advice. Should you require specific advice on the topics or areas discussed please contact the presenter directly.

CULTURAL DIVERSITY IN AGED CARE HUMAN RIGHTS & LEGAL OBLIGATIONS

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GOVERNANCE & RISK MANAGEMENT

- Liability:
 - Entity
 - Individuals
 - Vicarious Liability
- Accountability
 - Delegation
 - Reporting
- Risk Management
 - Legal Risk
 - Financial Risk
 - Business Risk
- Compliance

TOWARDS A GOVERNANCE CULTURE

- Organisational Culture (open)
- Staff knowledge, beliefs and values
- System design
- Resources
- Management model

ANTI DISCRIMINATION LAWS IN VICTORIA

- Equal Opportunity Act 1995
- Racial Discrimination Act 1975 (Cth)
- Sex Discrimination Act 1984 (Cth)
- Disability Discrimination Act 1992 (Cth)
- Age Discrimination Act 2004 (Cth)
- Victorian Charter of Human Rights

AREAS

- Employment
- Education
- Goods and services
- Accommodation
- Clubs and associations
- Sport

THE ATTRIBUTES COVERED BY THE EO ACT 1995 ARE

- Age
- Industrial activity
- Physical features
- Carer status
- Sexuality
- Personal association
- Sex / Gender
- Sexual harassment
- Race
- Impairment / Disability
- Political belief or activity
- Religious belief or activity
- Marital status
- Parental status
- Pregnancy

WHAT IS DISCRIMINATION?

- **TREATING A PERSON LESS FAVOURABLY** because of one or more of the grounds covered by EO legislation
- **IMPOSING AN UNREASONABLE CONDITION** which some people or group are less able to meet than others

LIABILITY FOR THE ACTION OF OTHERS

- **VICARIOUS LIABILITY**
 - Employer
 - Agent – (inc Directors / Committees / Supervisors)
 - Partnership
- **EXCEPTION**
 - Took reasonable steps to prevent discrimination

LIABILITY FOR THE ACTION OF OTHERS

- AGENCY
 - Actual Authority
 - Ostensible Authority
 - Ability to control and direct
 - Badging
 - Documents, brochures
 - Language – “the organisation’s ... Services”

LIABILITY FOR THE ACTION OF OTHERS

- REQUEST, INSTRUCT, ENCOURAGE, AUTHORISE OR ASSIST
 - A separate offence and a claim may be lodged

EO ISSUES

- Offering services/placements
 - Non-discriminatory
 - Direct and Indirect Discrimination
- Contracts/Residents Agreements
 - Language/comprehension

EO ISSUES

- Employment
 - Reflecting the diversity of the workforce
 - Reflecting the diversity of residents and clients
 - Cultural awareness training
 - Culture
 - Religion
 - Inadvertent discrimination

EO ISSUES

- Informed Consent
 - Language (Use official translators)
 - Cultural issues
- Privacy

SERVICE DELIVERY

- Be aware of the cultural and religious requirements of your client base
- Ensure that there is no overt discrimination on the basis of nationality, religion or race
- Be aware of the requirements of those of a non-English speaking background

SERVICE DELIVERY

- Be aware of “indirect discrimination” – where the method or mode of delivery of certain services does not actually discriminate on the basis of nationality or race, but which those of a particular race or religion may have greater difficulty complying with, or cannot receive the benefit of, the services because of their racial or religious background (eg. be aware of specific religious holidays and observances, be aware of particular religious food requirements)

SERVICE DELIVERY

- Consider appropriate modes and methods of communication
- Consider all levels of service provision, including language, food, cultural activities
- Have appropriate policies and procedures in place which address equal opportunity and discrimination issues and train and educate staff accordingly

SERVICE DELIVERY

- Where necessary, have translation or interpreting services available
- Where contracts are to be signed (resident agreements, etc) ensure that, prior to signing, clients have access to appropriate professional advice and interpreters
- Avoid privacy breaches and breaches of confidentiality when using family, friends or bilingual staff to interpret for a client

KEY GOVERNANCE ISSUES

- Levels of delegation
- Systems of Accountability and Reporting Regimes
- Policies
 - Quality of care and service
 - Safety (including emergency)
 - Legal risks
- Education and Training
- Notice Requirements/Compliance Checklist/Sign-off
- Incident Monitoring/Complaint Handling

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