



ANTI-DISCRIMINATION, BULLYING & DISPUTE RESOLUTION GUIDE

Sources: These are noted below.

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A. Australian Human Rights Commission

The Australian Human Rights Commission has statutory responsibilities under the *Age Discrimination Act 2004*, *Australian Human Rights Commission Act 1986*, *Disability Discrimination Act 1992*, *Racial Discrimination Act 1975*, and the *Sex Discrimination Act 1984*.

In addition to the federal legislation, each state and territory in Australia has equal opportunity and anti-discrimination agencies, with statutory responsibilities.

B. Federal Legislation

The Federal Acts:

1. *Age Discrimination Act 2004* protects people from age discrimination in employment, the provision of goods and services, education and the administration of Commonwealth laws and programs. See previous Memorandum on issue of Age Discrimination.

2. *Disability Discrimination Act 1992* makes it unlawful to discriminate against someone with disability in the following areas relevant to U3As:

- a) Education.
- b) Provision of goods, services and facilities; and
- c) Activities of clubs and associations.

See <https://www.humanrights.gov.au/our-work/disability-rights/dda-guide-what-areas-life-does-dda-cover>.

<https://www.humanrights.gov.au/sites/default/files/document/publication/DDA%20Easy%20Read%20Guide%202018.pdf>

3. *Racial Discrimination Act 1975* makes it unlawful to discriminate against people on the basis of race, colour, descent or national or ethnic origin.

See guide at <https://www.humanrights.gov.au/our-work/race-discrimination/publications/know-your-rights-racial-discrimination-and-vilification>

4. *Sex Discrimination Act 1984* protects people from unfair treatment on the basis of their sex, sexual orientation, gender identity, intersex status, marital or relationship status, pregnancy and breastfeeding. It also protects workers with family responsibilities and makes sexual harassment against the law.

See guide at <https://www.humanrights.gov.au/our-work/sex-discrimination/publications/know-your-rights-sex-discrimination-and-sexual-harassment>.

C. NSW Legislation

Note: Under section 109 of the Australian Constitution, if a state parliament and the federal Parliament pass conflicting laws on the same subject, then the federal law overrides the state law. Section 122 of the Constitution allows the federal Parliament to override a territory law at any time.

The *Anti-Discrimination Act 1977 (NSW)* is concerned with:

- a) Discrimination on the basis of race, including colour, nationality, descent and ethnic, ethno-religious or national origin, sex, including pregnancy and breastfeeding, marital or domestic status, disability, homosexuality, age, transgender status, and carer responsibilities; and
- b) Sexual harassment and vilification on the basis of race, homosexuality, transgender status or HIV/AIDS status are also prohibited under this Act.

NFPs

The NSW Anti-Discrimination Board provides the following information on its website as regards the applicability of this Act to NFPs'

https://www.antidiscrimination.justice.nsw.gov.au/Pages/adb1_antidiscriminationlaw/volunteers.aspx#Dovoluntarybodieshavetocomplywithanti-discriminationlaw?

“What is a voluntary body?”

A voluntary body is a body that is not established by an Act of Parliament, and its activities are not for profit. Examples of voluntary bodies are charities, Rotary clubs, societies, etc.

Do voluntary bodies have to comply with anti-discrimination law?

Voluntary bodies must comply with anti-discrimination law in relation to both employment practices and service delivery.

What about membership rules?

Section 57 of the Anti-Discrimination Act says that non-profit bodies (other than registered clubs, building or friendly societies, credit unions and some cooperative housing societies) can discriminate in relation to their admission to membership and the provision of benefits, facilities or services to members.

What about service delivery?

In general, if a voluntary body provide goods, services or accommodation to the community, it must do so in a non-discriminatory manner. This means that it cannot refuse to provide services to a person or group of people because of their age, race, sex, pregnancy, breastfeeding, marital or domestic status, homosexuality, transgender status or disability. In addition, these things must not influence the type of service it provides or the manner in which the service is provided.

However, if the voluntary body (or a part of it) was established specifically to provide a service for a particular age group, race or religion, anti-discrimination law says that it can refuse services to people who aren't in that group”.

D. Bullying

Bullying is repeated and unreasonable behaviour directed towards a U3A member or group of U3A members that creates a risk to health and safety.

The Australian Human Rights Commission investigates and resolves complaints (under federal laws) of bullying based on a person's sex, disability, race or age.

E. Reputation of U3A

The preservation of the good reputation of U3A should be seen as a matter of the utmost importance especially in light of the damage that can be caused by a social media storm. Once a complaint reaches the general public via social media it ceases to be an issue of whether the alleged conduct constitutes discrimination by an NFP or not. That assessment will be lost amongst the bile that this type of allegation will generate on social media.

Your association should therefore have a policy on how to not only deal with any such issue with sensitivity and respect. Melbourne City U3A has a good Code of Conduct. If you wish to adopt it simply contact by email the U3A Melbourne City Secretary and confirm that you may do so.

F. Procedures

Whatever process you follow you must provide procedural fairness to all parties. It means that the processes used by a decision maker must be fair and proper (for example, following appropriate timeframes, giving appropriate notice, allowing allegations to be responded to and avoiding bias in the process). If you are uncertain about processes to follow you may need to seek specific legal advice.

When emotions run high, it is essential that an impartial party is given control over the initial response to the complaint. That person should be someone the parties trust to be impartial. It may of necessity need to be someone other than a member of your U3A. It may be someone on the Network's management committee, or someone in your community from, say, Rotary or Lions. NFPLaw has a fact sheet of a Model initial complaint handling process: https://www.nfplaw.org.au/sites/default/files/media/Complaint_Handling_By_Charitys_and_Not-for-profits_0.pdf

If the initial informal process fails to achieve a resolution, then the dispute may need to go to a more formal grievance process involving the following steps:

- a) The complainant should be requested to provide to the committee a written, detailed complaint (may already be available as a result of the initial investigation). It should be addressed to a nominated officer of the U3A (president, vice-president, Treasurer or Secretary).
- b) The committee should appoint a Grievance Officer. That may be a committee member or may have to be an independent U3A member or third party especially where the complaint is about the committee itself or one or more of its members, or all of the committee members are on friendly terms with either the complainant or the person complained about.
- c) The Grievance Officer's first step should be to organise a meeting between the Grievance Officer and the person(s) alleging the grievance to obtain full particulars of the complaint (if not already available) and an idea of what it would take to resolve it.
- d) Once Step 1 has been finalised, the Grievance Officer should organise a meeting between the Grievance Officer and the parties named in the grievance. It is important that the party, the subject of the complaint is provided with the particulars of the complaint prior to the meeting.

- e) The meeting with the parties should seek to find common ground and a resolution.
- f) The Grievance Officer must report to the parties and the members of the committee as to his/her opinion as to the validity of the grievance and the agreed (if agreement reached) resolution.

If no resolution is reached, the committee needs to consider whether to persuade the parties in dispute to take advantage of the mediation process provided, free of charge, by NSW Community Justice Centres:

https://www.cjc.justice.nsw.gov.au/Pages/cjc_what_is_mediation/cjc_common_disputes/com_justice_communities.aspx

Details of the mediation process can be found at https://www.nfplaw.org.au/sites/default/files/media/Using_mediation_to_resolve_conflicts_and_disputes_Cth_0.pdf

At that point in time it is essential to have a process, like mediation, that involves a trained, accredited mediator to facilitate the process.

The Law Society of NSW also provides a mediation service but charges a fee to each party:

<https://www.lawsociety.com.au/sites/default/files/201803/The%20Law%20Society%20Mediation%20Program.pdf>

If mediation fails to resolve the dispute, the parties can consider arbitration: <https://www.disputescentre.com.au/arbitration/>

Arbitration is a process in which the parties to a dispute present arguments and evidence to a dispute resolution practitioner (the arbitrator) who makes a determination. The process is private and, subject to the parties' agreement, can be confidential. Arbitration offers a flexible and efficient means of resolving disputes both domestically and internationally. The decision of the arbitral tribunal is final and binding. The award is enforceable. It is costly procedure.
