



## Equal Access to Public Aquatic Facilities:

Guidance for Local Councils, Facility Managers and the Aquatic Sector

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## EXECUTIVE SUMMARY

Public aquatic facilities are important community resources providing opportunities for learning, exercise and recreation with health, safety and other social benefits.

While there are numerous positive benefits, there is evidence that pools can be a place where discrimination is experienced by certain groups in society. There is an unfortunate history of discrimination at public pools experienced by women, Indigenous people, people with disabilities, LGBTIQ+ people, migrants and others.

There are also many positive examples of efforts to address this discriminatory past and to make these facilities inclusive spaces for everyone in the community. The work of ensuring equal access to these facilities is not complete until discrimination at such facilities, whether direct or indirect, has been removed. Aquatic facilities fall under Australian laws dealing with discrimination and human rights. As such, this report recommends that these facilities ensure they are complying with the law in addressing discrimination, preventing it from occurring and in promoting equality at these facilities.

This report sets out the legal and human rights framework governing aquatic facilities in Australia. It applies this framework to various examples where aquatic centres have put in place valuable programs and changes to the physical space and management of their facilities to address inequality.

It focuses on four main attributes or grounds of discrimination in line with Federal discrimination laws: **age, disability, race and gender**. It also considers socio-economic disadvantage and how this might generate discrimination against facility users or potential users.

Lastly, the report proposes a set of principles to guide local councils and aquatic facility managers in improving access to aquatic facilities and services in line with human rights and anti-discrimination laws.

The report also makes certain recommendations for policy reform of the aquatic sector to ensure that non-discrimination is built into policy approaches and practices across all aquatic facilities, so that these treasured public resources are equally accessible to everyone.

### Approaches to advance the recommended principles:



Data-gathering and community consultation



Expert advice



Equality plans - phased



Accessing support



Local and regional initiatives



Motoring and evaluation of changes

## INTRODUCTION

### Background

Public aquatic facilities are cherished community resources in Australia.<sup>1</sup> They bring significant social and economic benefits to our country due to their important role in water safety and healthy lifestyles.<sup>2</sup> They also provide valuable opportunities for recreation and community-building.<sup>3</sup> These facilities are becoming increasingly important with climate change as urban areas face hotter temperatures.<sup>4</sup> As public resources, aquatic facilities are understood to be equally available to all Australians no matter who they are and where they live.

However, these facilities have been contested spaces.<sup>5</sup> The ABC series, 'The Pool', documented the history of the pool as a 'battleground' where various discriminated groups have struggled for inclusion, including women, First Nations, migrants, and lesbian and gay people. While some of these battles are behind us, there are still barriers to full inclusion and equal access to public swimming facilities for certain groups in our society.

While obvious segregation or exclusion of some groups from pools may not be common, certain attitudes and practices continue to make access difficult for people with disabilities, women from migrant communities, Aboriginal young people, and others. Human rights and discrimination laws recognise that formally equal approaches (such as the removal of race or gender bars to entry) are not enough to achieve substantive equality.<sup>6</sup>

Further and ongoing effort is required to ensure that disadvantaged groups feel welcome and are able to access and use aquatic facilities on an equal basis with others in the community. For example, people with different disabilities may need a range of supports to enjoy an aquatic centre in the same way as other users. Similarly, women from some cultural or religious groups who do not feel comfortable to share intimate spaces with men may need certain accommodations at the facility. Members of the trans community who may experience difficulties using open change rooms, may need to be provided with inclusive alternatives. Where social and economic disadvantages, often overlapping with race, cultural and language differences, create barriers to enter expensive public pools, the cost structure may need to be re-examined.

Like every other part of our society, aquatic facilities need to keep evolving and improving to ensure that they meet the needs of our richly diverse communities and align with everyone's right to equality.

Rights to equality and non-discrimination are issues of principle but it is also rational and beneficial to promote diversity and inclusion at aquatic facilities. The aquatic industry contributes to social cohesion and connection alongside other benefits including health, safety, and the creation of employment opportunities.<sup>7</sup>

By bringing together people from diverse backgrounds and experiences, aquatic facilities enable the building of community. This is demonstrated through signage, infrastructure and the appropriateness of the physical space to the needs of different community groups.

Employees and other staff members, who ideally should be representative of a range of groups within the community, also play a key role in shaping inclusive facilities, whether as lifeguards, receptionists, café staff and swim instructors.<sup>8</sup>

**As we emerge from Covid and fully reopen pools, missed by so many, we have an opportunity to reimagine these places and ensure they are even better suited to serve our communities – as safe, inclusive, welcoming and truly equal spaces.**

### Aim of the report

This report aims to provide guidance to local councils, aquatic facility managers and the aquatic sector on how to ensure aquatic facilities are equal and inclusive spaces that respect diversity and contribute to building fairer communities in line with human rights and anti-discrimination law.

### The study's objectives are:

1. To set out the human rights and discrimination law framework that requires councils and managers to meet their obligations to prevent discrimination and promote equality at these facilities.
2. To reference helpful examples of good practice in promoting equality at aquatic facilities to assist councils and managers, and to note examples where improvement might address community concerns.
3. To develop principles to guide councils and managers in working with communities to improve access to and use of these facilities by disadvantaged groups; and to develop recommendations for policy reform by the aquatic sector towards equal access to aquatic facilities.

## Methods and approach

### The research involved:

1. A survey and discussion of international and domestic human rights and discrimination laws as they relate to equal access to public aquatic facilities to construct a legal framework for the study.
2. A desk-based study of positive examples of measures taken by councils, aquatic facilities or community groups to increase access and inclusion of disadvantaged groups. The research also captured complaints and concerns where certain facilities were not taking adequate steps to address discrimination and inequality. Examples relate to different forms of discrimination (age, gender, religion, disability, etc.) and included intersectional examples such as where there was both race and gender discrimination leading to further types of discrimination. They also cover a geographic spread across Australia, in metropolitan, regional and remote locations. The study drew on a variety of sources including media reports, published academic research, aquatic sector research and other grey literature, council and aquatic facility websites, relevant demographic data, and other relevant online and published sources. These examples were used to illustrate the application of the human rights and anti-discrimination law framework.
3. The report developed principles and recommendations emerging from the application of the legal framework to the examples explored in the study.

**Note:** The positive examples used in this report are illustrative and should not be seen as recommendations for use in every facility since they may not be feasible or appropriate in all cases. This is because there are significant differences between facilities in terms of resources and user populations. As will be explained below, responding to discrimination includes taking account of what is reasonable, possible and appropriate in the particular circumstances.

## Scope of the study

Note that the study is limited to consideration of the human rights and discrimination law dimensions of equal access and did not examine a range of related laws such as building standards and health and safety regulations and the Royal Life Saving Society Guidelines for Safe Pool Operations. The latter laws and policies, where they relate to equal access and use of facilities, should be carefully considered by councils and facility managers in light of the principles emerging from this report. Aquatic centre employees are an important part of any approach to equal access to aquatic facilities, however their conditions of work, covered by relevant employment laws, are also outside the scope of this study. Lastly, while the report provides a broad overview of international, federal, state and territory anti-discrimination and human rights laws, it does not claim to be comprehensive, and professional legal advice should be sought regarding any specific queries facing a facility or local council.

## Outline of the report

The report begins by setting out the international **human rights framework** adopted by Australia that applies to equal access to public aquatic facilities. It goes on to explain how human rights have been built into Australian law through human rights legislation in some states and territories and through anti-discrimination legislation at federal, state and territory levels. It unpacks some of the key concepts in equality law that are required to understand how to avoid discrimination and work towards achieving full equality.

The report then **applies this framework** to aquatic facilities through real and hypothetical **examples** to highlight potential forms of discrimination and possible solutions. This section shows that facility managers and staff may not always be aware of the diverse needs of the people who wish to attend but how, through consultation and creative problem-solving, along with a willingness to overcome inequalities, solutions can be found that may not be as difficult or expensive as feared.

In the last section, the report sets out the **principles** that can be adopted to guide aquatic facilities in ensuring **equal access**. These should help to inform the ongoing management of these facilities and inform improvements in the way they operate. Finally, the report recommends broader **reforms to the aquatic sector** that could support equal access by all, and assist individual councils and managers to improve their facilities in line with human rights and non-discrimination laws.

The resulting report is a resource for councils, facility managers and for the aquatic sector as a whole to comply with their human rights and legal obligations and improve the use and value of these facilities for all of the community.





## > SECTION 1: Human Rights and Legal Framework

This section first sets out Australia's agreed international human rights obligations as they relate to issues of equality and non-discrimination in public facilities such as aquatic centres. It then explains the way that these obligations have been incorporated into Australian law through human rights and anti-discrimination legislation. It explains, in broad terms, what these laws mean for equal access and inclusion in aquatic facilities. The section then explains some of the key concepts in equality and discrimination law to assist in understanding how human rights and laws can shape improvements to community access and use of aquatic facilities.



### > 1.1 International Human Rights Law

**The United Nations' Universal Declaration of Human Rights (1948)** is a foundational document in setting out the core ideas of human rights that all people are *'free and equal in dignity and rights'* (Article 1) and equally entitled to all rights and freedoms *'without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'* (Article 2).

The Declaration includes rights related to rest and leisure (Article 24), health and well-being (Article 25), social services (Article 25), participation in the cultural life of the community (Article 27) and education (Article 26). All of these rights have implications for the provision and enjoyment of public aquatic facilities which serve the purpose of ensuring health (exercise, safety, rehabilitation after injury, etc.), education (including swim lessons which are a life skill), and recreation enabling social and cultural interactions within the community.

Australia is party to a number of international human rights treaties that give effect to the ideas in the Declaration including the two Covenants known together as the *'international bill of rights'* - the **International Covenant on Civil and Political Rights (ICCPR)** and the **International Covenant on Economic, Social and Cultural Rights (ICESCR)**. The right to equality is central to the two Covenants which also both emphasise equality between men and women. The ICCPR includes a specific provision requiring laws to protect people against discrimination (Article 26).

The ICESCR makes it clear that states have obligations to provide for the material needs of their people since everyone must have rights to *'an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions'* (Article 11(1)). These living conditions arguably include necessary public services and facilities, appropriate to each country, including aquatic facilities. As noted, these facilities contribute to the health, safety, well-being and social/cultural development of communities.<sup>9</sup>



## > 1.2 Australian Legal Framework

### Australia is also party to United Nations treaties that address the human rights of specific groups including:

- > The Convention of the Elimination of All Forms of Racial Discrimination
- > The Convention The Convention of the Elimination of All Forms of Discrimination against Women
- > The Convention on the Rights of the Child
- > The Convention on the Rights of Persons with Disabilities

These treaties offer detailed direction about the areas where states need to work to overcome discrimination. Many of these are directly relevant to aquatic facilities and services.

For example, the Convention on the Rights of Persons with Disabilities requires states to take measures to ensure 'persons with disabilities have access to sporting, recreational and tourism venues' and 'services' (Article 30(5)). It also notes the specific rights of children with disabilities to 'have equal access with other children to participation in play, recreation and leisure and sporting activities, including those activities in the school system' (Article 30(5)(d)). The Convention also stresses the full inclusion and participation in all aspects of life of people with disabilities and that services are appropriate, accessible and affordable.

The Convention on the Elimination of All Forms of Discrimination against Women requires states to ensure that girls and women have the same opportunities as boys and men 'to participate actively in sports and physical education' (Article 10(g)) and to eliminate discrimination in economic and social life to ensure the equal right to 'participate in recreational activities, sports and all aspects of cultural life' (Article 13(c)) and for women in rural areas to be able to participate in all community activities (Article 14(2)(f)). These rights to social and community services on an equal basis with men place obligations on states to ensure equal access to facilities and services such as aquatic centres.

The International Convention on the Elimination of All Forms of Racial Discrimination also guarantees non-discrimination based on race, colour, or national or ethnic origin for rights to health, education, social services and specifically the rights to 'equal participation in cultural activities' and 'the right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafes, theatres and parks' (Article 5). These rights clearly extend to public aquatic facilities and services such as swim lessons.

### The right of children to swimming lessons has been recognised by the Committee on the Rights of the Child, the UN body responsible for monitoring states' compliance with the Convention on the Rights of the Child.

It recommended that Vietnam (2012) 'pursue its intent to introduce swimming classes in school curricula with a view to preventing drowning among children' in pursuit of the right to life, survival and development (Article 6).<sup>10</sup> The Convention provides for the rights of children to 'rest and leisure, to engage in play and recreational activities' alongside rights to health, education and social services' (Articles 24-31). All of these rights have implications for the equal provision of aquatic facilities and services to children, including the provision of special services as required for children with disabilities (Article 23), children living in poverty and children from Indigenous and minority communities.<sup>11</sup>

The UN committees responsible for each of the human rights treaties have provided detailed guidance on how they understand equality. They have made it clear that measures to achieve equality must be far-reaching if they are to undo deep and structural forms of inequality. This type of equality, described as substantive, inclusive or transformative equality is further explained in the following sections.

The international human rights framework informs Australia's domestic legal approach to human rights, particularly in relation to rights to equality and non-discrimination.

### At the federal level there is legislation prohibiting discrimination:

- > The Racial Discrimination Act 1975 (Cth) 'the RDA'
- > The Sex Discrimination Act 1984 (Cth) 'the SDA'
- > The Disability Discrimination Act 1992 (Cth) 'the DDA'
- > The Age Discrimination Act 2004 (Cth) 'the ADA'

The Australian Human Rights Commission is the federal body responsible for giving effect to these laws. In addition to these federal laws and procedures, each state and territory has its own anti-discrimination legislation (alongside legislation related to workplace equality) and bodies to give effect to these laws. Local government also has laws and policies that are relevant in this area.<sup>12</sup>

### While there is no constitutional right to equality as there is in many other countries, three of the states and territories have human rights legislation that includes equality rights:

- > Charter of Human Rights and Responsibilities Act 2006 (Vic)
- > Human Rights Act 2004 (ACT)
- > Human Rights Act 2019 (QLD)

The federal, state and territory laws apply to situations discussed in this report relating to equal access to and use of public aquatic facilities, whether these facilities are owned or managed (or both) by local government or external contractors.

The legislation prohibits discrimination in access to premises and in relation to the provision of services. While the amount of legislation in this area and some of the complex concepts within it may seem daunting, the basic ideas behind equality and discrimination law are reasonably straightforward. The report will now briefly explain some of these core ideas before considering how they apply to aquatic facilities.



## > 1.3 Central Concepts in Equality and Discrimination Law



### Substantive equality

As noted, the UN human rights bodies have interpreted the human rights treaties to require substantive equality. This is in contrast to the common idea of equality as simply treating everyone in the same way. But if equality is only approached in this formal way it will leave much existing inequality unaddressed. For example, if there is no rule preventing a blind person from entering an aquatic facility but there is no assistance or braille signage offered to that person to find their way around the facility then they do not have the same access as others. Another example might arise where a gay couple are spoken to rudely by pool staff even if they are allowed into the facility as this type of insulting or offending behaviour may intrude on their equal enjoyment of the facility. In a further example, if an aquatic centre has a rule that only members of squads can use the pool in the mornings this might operate unfairly against older people who are not fit enough to join a squad. Although there is no rule against older people using the pool at that time of day, the effect of the rule is to discriminate against this group.

A substantive equality approach would look at the management of an aquatic facility involving a responsibility to remove any formal bars to access, but also to assess whether there are any other barriers to equal entry or use that might be affecting certain groups in the community due to existing rules or lack of actions taken to accommodate these groups.

These ideas will be returned to and expanded in the rest of the report but before doing so, the report explains in broad terms, some of the key ideas within Australian anti-discrimination law.

**If such barriers do exist, managers should aim to achieve substantive equality in a range of ways:<sup>13</sup>**

1. By ensuring that people wishing to access and use the facilities and services are treated with equal respect;
2. By ensuring that nobody is prevented from enjoying the facilities and services because of their disadvantage;
3. By ensuring that the circumstances and concerns of different user groups within the community are equally represented, considered and accommodated; and,
4. By trying to run aquatic facilities in such a way that they become models of change for the rest of society because they pro-actively tackle inequality in order to undo previous patterns of discrimination and disadvantage.



### Attributes/grounds of discrimination

A person claiming to have been discriminated against must show that this is based on something about them (or presumed to be about them) that is protected by law, for example, their race or sex.

'Race' in the RDA includes 'race, colour, descent, or national or ethnic origin' and in some legislation includes religious belief, activity or appearance and migrant status. 'Sex' covers a wide range of attributes in the SDA and other legislation including sex, gender identity, sexuality, intersex status, pregnancy and potential pregnancy, breastfeeding, marital/relationship status, family/carer responsibility, and parental/carer status. In addition to age and disability, some legislation also covers employment status, occupation, irrelevant criminal record, political belief and physical features. In some legislation social origin and homelessness are regarded as attributes in recognition that being poor or unemployed or a social security beneficiary may lead to stereotyping with discriminatory impacts.

While our law usually looks at a single attribute in considering whether there has been discrimination, it is increasingly recognised elsewhere that discrimination can result from the intersection of two or more attributes, for example, where Indigenous children are treated unfairly even where Indigenous adults or non-Indigenous children are not.

### Direct and indirect discrimination

Direct discrimination occurs when a person is treated less favourably than another because of an attribute such as race or gender, for example, where a spa pool is reserved for over 65s and can't be accessed by a younger adult who needs it for therapeutic purposes, or where the male changeroom has multiple showers and the women's changeroom has only one. Indirect discrimination occurs when there is no explicit different treatment but the impact of a seemingly neutral rule affects a particular group unfairly. In the above example of reserving a pool for squads in the mornings, the rule does not explicitly exclude older people but it has the effect of limiting their equal use of the pool.

### Reasonableness

Not everything that impacts differently on someone with a particular attribute is against the law. It also has to be unreasonable. This involves weighing up a range of issues, looked at in context, such as how severe the imposition is on the person experiencing disadvantage, how feasible it is to address this, and what the purpose is of the requirement or condition. In the context of aquatic facilities safety is obviously an important concern that may account for rules that differentiate on the basis of age, for example, but can be justified for reasons of safety. For example, reserving spas for over 16s and preventing under 10s in deep water without adult accompaniment are based on existing regulations and guidelines designed to ensure safety and would thus be reasonable even if they appear to discriminate on the basis of age.

As will be discussed below, the solution to a claim of discrimination should involve discussion and sometimes formal conciliation, rather than just looking for yes or no answers that a court might provide. There may be solutions that address the reasonable needs of different groups, for example, by allowing lanes to be reserved for particular groups at particular times and for specific uses. This may lead to a more sensible and sustainable approach in a resource-constrained aquatic facility that has to juggle swimming lessons, aqua aerobics and the needs of other swimmers in a fair way. In such a case, demands to keep lanes open for general use at all times may not be reasonable even if there is a discriminatory impact on some users, as long as their needs are met in other ways by the facility.

Note also that certain measures that preference a group requiring special treatment are sometimes allowed in our law even where they might exclude others, for example, a swim class just for women who are uncomfortable participating with men. These are not exceptions to equality but are in fact mechanisms to achieve equality by advantaging disadvantaged groups.

### Reasonable adjustments or accommodations

These are measures required to allow everyone to equally access and use facilities regardless of their circumstances. For example, by installing accessible-friendly options to allow wheelchair access to an aquatic centre; or by allowing a carer to get into the pool with an autistic child when swim classes normally prevent parents from getting in the water; or by providing swim nights for women where some members of the community prefer not to swim at the same time as men. Not all adjustments involve costly measures – they require creativity, consultation and openness to find solutions to the diverse needs of the communities of users of the facilities. The next section will apply these concepts to examples in aquatic facilities to explore the many different ways in which equality can be advanced and discrimination avoided.



## > SECTION 2: Applying the Framework to the Aquatic Sector

### > 2.1 Introduction

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This section considers what an equality and non-discrimination approach means in practice at aquatic centres. While some facilities may be small with a single pool and limited operating periods, and others may be major centres with multiple pools, gyms and spas, the basic principles of non-discrimination still apply to treatment of all users. Solutions may need to differ based on resources and might take different forms, but they must still be found where inequalities arise and discrimination results.

The report now considers the four main attributes of discrimination that are covered under Australia's federal anti-discrimination laws: **age, disability, race and gender**.

Note, however, that these attributes sometimes overlap or intersect and include related issues such as religion and culture. There is a brief discussion at the end of the section about the further issue of socio-economic status discrimination that cuts across many of the other attributes. These attributes are defined and illustrated with examples, both real and hypothetical, of good and bad practice.

These examples are not meant to be prescriptive but rather are useful illustrations. The different circumstances of each aquatic facility and its users will inform what is appropriate to ensure non-discrimination. The section also considers some of the ways of addressing the problems that arise where there is unequal access to and use of aquatic facilities.





## > 2.2 Age



Age discrimination involves treating someone less favourably because they are seen as too old or too young. The **Age Discrimination Act 2004 (ADA)** makes it unlawful to treat someone unfairly in relations to facilities and services on the basis of their age, meaning it applies to aquatic centres. This includes indirect discrimination such as preventing the use of a pool unless swimmers can reach a certain speed which might exclude older or younger swimmers. As noted, it is reasonable, and in fact necessary, to apply rules based on laws, policies and industry guidelines designed to ensure safety, even where these distinguish between users based on age. For example, under 5s must be within arms-reach of an adult and under 10s must actively be supervised by an adult. The law does allow 'positive discrimination' such as entry concessions based on age that are aimed at assisting children or pensioners.

Older people are sometimes spoken down to and assumed to be incapable, slow, or lacking in understanding of contemporary practices. Teens are sometimes the target of mistrust and rudeness because they are seen as irresponsible. These stereotypes can lead to unfair responses that cause hurt and harm. Actively challenging discriminatory language and behaviours borne out of bias is important for people working in public facilities and providing public services.

Aquatic facilities are frequently used by older members of the community with some facilities providing special programs for seniors. Young children are also frequent visitors to centres for learn to swim programs. There are many examples of programs and policies introduced by aquatic centres aimed at improving their access, use and enjoyment of the facilities. For example, the Des Renford Leisure Centre in Maroubra, NSW provides a coffee club for mature swimmers including coaching, coffee and biscuits.<sup>14</sup> Teens who are unable to swim due to childhood disadvantage may feel embarrassed to participate in learn to swim classes. Programs designed to remove stigma associated with such classes are important in the way they are marketed and run.

Facility managers have an obligation to provide a safe and comfortable space for all members of the community as well as for their staff. Young people may sometimes be boisterous and loud when they come to a centre for recreation or exercise. If they are expected to behave respectfully they should feel they are not being targeted or punished and are also treated with respect.

This involves efforts by a facility to generate a culture of respect through language, good communication and thoughtful organisation of the space. Discriminatory attitudes towards young people may intersect with racial or socio-economic discrimination leading to targeting Aboriginal or disadvantaged young people.

This type of intersectional discrimination can cause disadvantage and hurt. Signs up at a pool in a regional town in NSW listed certain penalties for time out 'offences' including abusive language (1-2 days) and abusive language to staff (4 weeks), as well as disruptive behaviour (1-4 weeks or more). Less severe offences such as running and diving resulted in time-out for 1-4 hours. While aquatic facilities may set conditions on entry and use of their spaces, these may be viewed by users as harsh, offensive or triggering, particularly where Aboriginal young people already face trauma and mistrust of the police and the courts due to a difficult history of colonial law enforcement.

Similar perceptions may be shared by refugee and migrant young people as well as other disadvantaged youths. Recreational facilities can be an important site of support for young people from such backgrounds if their circumstances are understood and responded to thoughtfully. Community consultation and culturally appropriate communication can turn a challenging issue for aquatic centres into an opportunity for improved relationships with different groups within the community. Bad behaviour should not be tolerated where it impacts on safety or respect for others and pool managers have to meet the needs of a range of user groups as well as their staff. Nevertheless, finding ways of making aquatic facilities inclusive of disadvantaged young people serves an important community role, particularly where other recreational facilities are limited for this age group. Pool managers should be careful to avoid discriminating against younger users of the facilities in the way that access conditions are formulated and enforced.

### > Case study: Buderim Community Pool & Dementia Australia

Old age sometimes overlaps with disability which can be both physical and intellectual. The Buderim Community Pool in Queensland partnered with Dementia Australia to make the pool more user friendly for people with dementia through improved signage, training and other adaptations.<sup>15</sup>

An example was provided of a simple but valuable approach: where a man with dementia needs to be accompanied into the changing room by his female partner, a sign saying 'female carer is currently in the male facility' allows other men to choose whether to go into the room or not.





## > 2.3 Disability

People with disabilities should be treated with equal respect and provided with the means of participating equally with others in public aquatic facilities. The **Disability Discrimination Act 1992 (DDA)** covers people who have temporary and permanent disabilities; physical, intellectual, sensory, neurological, learning and psychosocial disabilities, diseases or illnesses, physical disfigurement, medical conditions, and work-related injuries.<sup>16</sup> It also applies to people with past or potential future disabilities or where a person is assumed to have a disability. People may also be discriminated against because they are accompanied by an assistant, or assistance animal or because they use equipment such as a walking stick, hearing aid or wheelchair.

Since the types of disability are so varied an aquatic facility may believe they have addressed the needs of their community by providing a ramp into the facility or a pool hoist to assist people into the water. However, a range of other supports and accommodations may be needed.

### Examples

1. **Northcote Aquatic Centre, Melbourne** has run swimming classes in Auslan since 2014, with families travelling from around the city to attend.<sup>17</sup> While it may not be possible to source swim teachers with Auslan skills, other options could be considered depending on the capacity of each facility and what is reasonably possible. Such options might include providing an interpreter, allowing a carer to play that role, or providing training or advice for swim instructors. This also points to the important coordination role that local councils could play in finding ways of providing services across a number of different facilities in a city or regional area.
2. **Access Keys** service which provides customised accessibility guides for users of facilities with disabilities could be considered by aquatic facilities.<sup>18</sup>

Consultation with the affected community as well as the learn to swim training bodies would be valuable in coming up with solutions. Organisations such as Rainbow Club in NSW, a network of social swimming clubs for children with a disability,<sup>19</sup> could be partners in developing improved services. Other services are offered for parents with disabilities and programs, such as MATE run by Austswim, teach people how to assist others with disabilities in the pool.<sup>20</sup> In smaller regional areas, the options would be more limited but creative 'can-do' approaches involving work with affected individuals and communities can lead to the removal of access barriers, often without major cost. Appropriate hiring and training of empathetic, open-minded and compassionate swim instructors and pool staff, even without specialised disability skills, can make a difference in the type of support offered to children and adults with disabilities.

Consultation with affected communities is critical to ensure that disability supports are appropriate.

### > Case study: Bundaberg Council Aquatic Facility

The Bundaberg Council has applied for state and federal funds to build a new aquatic facility that contains design features that go 'above and beyond the requirements for accessibility stipulated in the National Construction Code'.<sup>21</sup> According to the Mayor, 'Discussions with pool designers, physiotherapists and Spinal Life advocates have helped in Council's understanding of exactly what is needed to ensure everyone in the community can enjoy and access the Bundaberg Regional Aquatic Centre'.

A deeper understanding of the lived experience of disability may help facilities to appreciate the many challenges that different disabilities present where supports are not adequate. It might also help staff at facilities to understand that disability is not static – on one day a person may walk into a facility without any mobility aids but the next day might need to use a wheelchair or crutches. People should not be judged for these seeming inconsistencies as they are not trying to take advantage – rather, they are just managing the changing nature of their conditions.

Not all people in need of physical supports would self-identify as people with disabilities but should nevertheless be assisted appropriately. For example, the Brewarrina Shire Council Swimming facility in far North-West New South Wales recently installed a pool hoist 'to assist many of the Indigenous elderly and less mobile members of the community enjoy the water once again'. In the case of this community, with a long tradition of swimming, fishing and gathering in the Barwon river, the hoist has enabled access to the pool for health and recreation that has particular meaning and value to local residents.<sup>22</sup>

Disability is often associated with economic disadvantage because of the lack of adaptation in the labour market to create equal employment opportunities, other barriers to access employment in the society, reliance on social security where available, and the high cost of living with a disability. A woman with a disability took the City of London to court when it introduced mandatory and higher fees at a women's swimming facility on Hampstead Heath on the grounds of unlawful discrimination against people with a disability who rely on the pool for health benefits but struggle to afford the fees.<sup>23</sup> Disability advocates have been arguing for the NDIS to pay for the extra cost of specialised swim classes for children with autism.<sup>24</sup> These cost barriers should be considered by local councils in setting entry and swim class fees. The facilities should consider, alongside local councils and other levels of government, ways of ensuring that people with disabilities (children and adults) are not excluded from pools because they cannot afford entry, classes or the supports needed to get to pools and participate fully once they are there.



## > 2.3 Race, religion, ethnicity

Racial discrimination occurs when a person is treated less favourably, or not given the same opportunities as others in a similar situation, because of their race, the country where they were born, their ethnic origin or their skin colour.<sup>25</sup> The **Racial Discrimination Act 1975 (RDA)** makes it unlawful to discriminate against a person because of their race, colour, descent, national or ethnic origin, or immigrant status. This could include refusing someone entry to a facility or allowing entry but on less favourable terms, or treating someone unfairly while at an aquatic facility. The Act also prohibits racial hatred - doing or saying something that is 'reasonably likely to offend, insult, humiliate or intimidate a person or group because of their race, colour, or national or ethnic origin'. Examples might include: telling a person wearing a burqa (clothing worn by certain Muslim women) that they do not belong at an Australian swimming pool, or requiring Aboriginal children to shower before entering the pool when this is not required of other children, or grumbling about having to help someone to register for a pool pass because their English is poor.

While race discrimination may not always be direct, it can occur through indirect means, for example where high fees at a facility in a town with a large Aboriginal community that is disproportionately disadvantaged, lead to their exclusion from the pool. This was the argument made by some Aboriginal elders in the regional NSW town of Moree where the high entry fees to the aquatic facility resulted in effective segregation. This can be an emotional issue for communities who experienced legal segregation in the past.<sup>26</sup>

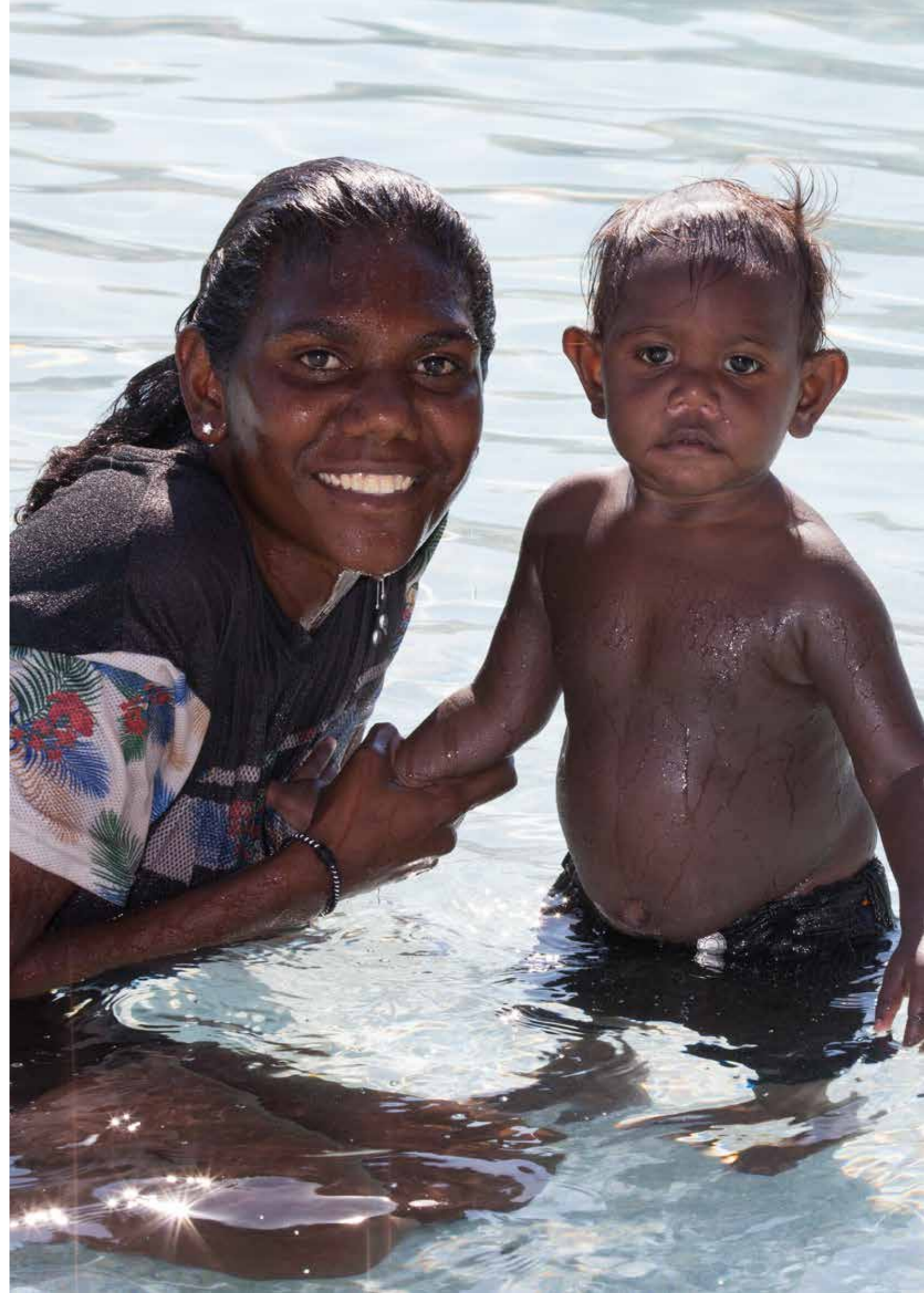
There are many positive examples of swimming programs and efforts by aquatic facilities to improve Indigenous participation and to encourage different cultural groups to attend and feel comfortable. These are critical groups to focus on since we know they are at much higher risk of drowning. Programs running in Western Australia to encourage building of pools and participation of Aboriginal children in remote communities have had positive health impacts.<sup>27</sup> One example is a bronze medallion program training Indigenous high school students.<sup>28</sup> While many regional and remote towns employ the rule of 'No school, no pool' to increase school attendance rates, other incentive programs have focused on encouraging swimming such as 'Swim for Fruit' where completing laps is rewarded with healthy food.<sup>29</sup> Employing Indigenous staff members and developing cultural awareness amongst staff is also key to creating welcoming spaces for Indigenous community members. Encouraging swimming amongst Aboriginal young people is not just an issue for remote areas. A new program has been set up to bus Indigenous kids to the famous Bondi Icebergs in Sydney for two week-long sessions of swim and lifesaving skills training.<sup>30</sup>

Many new migrants to Australia, including refugees, have not grown up with public swimming pools or swimming lessons yet are keen to integrate into Australia's swimming culture.

Author Christos Tsiolkas explained the symbolic significance of the words 'Aqua Profunda' painted on the walls of the Fitzroy pool in Melbourne as a safety message for European migrants indicating the danger of the deep end. Although the sign was misspelled (there is a c in 'acqua' in Italian), it was an exceptional gesture of inclusion at a time when racism was rife against this community.<sup>31</sup> Pools can consider similar measures including signage in the languages commonly used in that area and employing staff from those communities.

Examples include one facility in Perth that has an orientation video on youtube for new users who are unfamiliar with rules, customs and facilities at aquatic centres in Australia,<sup>32</sup> while another has a swimwear guide (including reference to modesty swimwear/burqinis).<sup>33</sup> The Aqua English Project in Queensland links language and swim training for migrants and introduces them to Australian culture.<sup>34</sup> The drowning death of a refugee led to the establishment of a Refugee and Migrant Swim Program (RMSP) in his honour in Canberra.<sup>35</sup> Projects to train refugee and migrant lifeguards and swim teachers, such as the Life Saving Victoria model,<sup>36</sup> serves the dual purpose of providing employment for refugees and creating diversity among pool staff.<sup>37</sup> Where programs or staff that represent the needs of particular communities are not available, training in cultural competence and appropriate hiring of instructors and other pool staff that are empathetic can make a big difference to ensuring facility users feel accepted and supported.

In certain religious communities, it is especially difficult for women to learn to swim due to rules that prevent sharing bathing facilities with men. Water safety programs tailored to the needs of groups such as this are important.<sup>38</sup> It may also be necessary to consider allocating times in the week when the pool is reserved for certain groups. For example, the Ruth Everuss Aquatic Centre in Auburn, NSW, held 'two curtained-off women-only sessions each week in one of five pools in the complex' to include Muslim women.<sup>39</sup> In response to criticism, the Council explained that this aided other female users of the facilities including 'physiotherapy patients, disabled swimmers and the elderly' and that women of all ages and backgrounds attend the women-only swimming lessons. This is an example of a measure to address inequality that can be taken to promote the use of the facilities to all the different user groups, rather than providing a single experience of access that effectively excludes some. It is permissible in terms of anti-discrimination legislation which allows for exemptions to create equal access for groups with special needs. Aquatic Centres should also work with community groups, such as Swim Sisters, that bring together women from Islamic backgrounds to address concerns and develop solutions.<sup>40</sup> The organisation Swim Brothers, in Sydney, has been set up to provide male only classes and swim teachers to meet the needs of its particular community, even if not within a male-only environment.<sup>41</sup>





## > 2.4 Gender

The **Sex Discrimination Act 1984 (SDA)** makes it unlawful to discriminate against a person because of their sex, gender identity, intersex status, sexual orientation, marital or relationship status, family responsibilities, because they are pregnant or might become pregnant or because they are breastfeeding.<sup>42</sup> The Act also prohibits sexual harassment while sex-based harassment is also prohibited in the workplace in related legislation, something which should ideally extend to all arenas of discrimination law.

An aquatic facility should ensure that its staff and visitors avoid sexist language, for example where a swim coach tells boys they are 'behaving like girls' as an insult. Swim programs such as aqua aerobics, that might be taken up mostly by women, should consider ways of encouraging men to join. Lifeguards should step in if girls or women are being harassed such as with cat calls and whistles from boys or men at the facility. As mentioned above, certain facilities provide women only pool sessions, where a pool or the whole centre is shut for a female only swim session, to address privacy concerns.

### Examples:

1. Collingwood Leisure Centre, Victoria - 'Women making waves' program where the facility is closed to men and boys under 5 outside of opening hours on a Saturday evening from 6.30-8.30.<sup>43</sup>
2. City of Swan, Western Australia - attempted to introduce closed sessions for women have been motivated on the basis of the needs of religious communities but also sexual violence survivors, women who have had surgery or other body image concerns, and Aboriginal women.<sup>44</sup>

In addition to considering women-only times and spaces, aquatic facilities should consider providing:

- 'Multicultural Women's and Men's Only Swim and Survive Programs' such as those at various centres in Western Australia.<sup>45</sup>
- A 'Pride Night' to provide a safe and social environment for the LGBTIQ+ community where 'inclusion, diversity and uniqueness will be welcomed, respected and celebrated such as at the Collingwood Leisure Centre, Victoria.

Simple changes to membership forms can lead to more inclusive facilities. For example, by replacing 'mother' and 'father' with 'parent/carer', different types of families such as sole parent, grandparent, gay and lesbian parents, etc, are not made to feel out of the ordinary. Staff should also be encouraged not to make assumptions about people's gender, sexuality or family status when talking to customers. Providing facilities or supports for child care (as well as nappy changing and breastfeeding), and free admission for all types of carers creates an environment that avoids discrimination against people on the basis of family or caring responsibilities. Accommodating transgender adults and children with separate bathrooms and change rooms can be achieved with all-gender facilities alongside male and female facilities.

While building new facilities may not always be possible, creative responses should be investigated using signage and sensitivity. Consultations with community and representative groups can lead to appropriate solutions for different groups of users. Lifeguards and swim instructors, along with other facility staff, should be representative of the wider community where possible and trained on issues of diversity.<sup>47</sup> Training can be arranged with groups working on trans and gender diverse advocacy. There are a number of LGBTIQ+ swimming clubs around the country that encourage these communities to feel comfortable at aquatic facilities and engage in aquatic sports and recreation.<sup>48</sup> Facility managers should work with these clubs to ensure that members feel welcome and included.



## > 2.5 Other grounds – social and economic status

Many of the examples of discrimination discussed above may overlap with discrimination based on socio-economic status or homelessness. Economic disadvantage should not be a barrier to using aquatic facilities just as language, race, culture, age, family responsibility and disability should not be.

Yet it is clear that often poorer members of society have migrant backgrounds, or are sole parents, or they or their children have disabilities, or are Indigenous. People who struggle to afford entry fees, swim classes, swim equipment and food sold on site at aquatic centres should not be made to feel unwelcome or different. While this raises sometimes complex issues of funding services, local councils and aquatic centres have a responsibility to avoid discriminating against such groups, whether directly or indirectly.

For example, where a facility doesn't allow people to bring in their own food, this policy should be reconsidered to support families who cannot afford to buy from the kiosk or café. Unclaimed lost property such as swim caps and goggles should be given, in a sensitive way, to people who arrive without these and may be unable to afford to buy them. Free or reasonably priced community events could be arranged at facilities to support the use of the pool for those who might struggle to attend regularly. Concession rates could be reviewed in terms of who qualifies and their amount and they could also be promoted better. Similarly, subsidised learn to swim programs could be advertised more widely and in ways that reach different groups within the community.





## > SECTION 3: Principles and Recommendations

### > 3.1 Principles to guide improvements for equal access to aquatic facilities

The following principles, in line with anti-discrimination law and human rights, can be used by local councils and aquatic centres to ensure that aquatic facilities and services are equally accessible to all:

1. All people wishing to access and use the facilities and services are treated with equal respect;
2. Nobody is prevented from enjoying the facilities and services because of their disadvantage;
3. The circumstances and concerns of different user groups within the community are equally represented, considered and accommodated; and,
4. Aquatic facilities become models of change for the rest of society because they pro-actively tackle inequality in order to undo previous patterns of discrimination and disadvantage.



## > 3.2 Approaches to advancing these principles

In order to advance these principles the following approaches are recommended:



### Data-gathering and community consultation

Audits, surveys, user-questionnaires and other forms of data collection should be used to:

1. Understand the nature of facility users;
2. Understand the needs, preferences and wishes of different groups of facility users;
3. Understand the needs of the wider community and the reasons they may not be accessing aquatic facilities and services due to barriers such as cost, lack of knowledge, perceptions (whether unfounded or based on evidence), and other obstacles.
4. Understand what might encourage greater interest in and use of the facilities and services in addressing these barriers.

Some local councils are recognising that the approaches they have followed historically regarding public aquatic facilities are no longer appropriate due to demographic changes and new needs and values. For example, the Wollongong Council in NSW undertook a community engagement to develop their 'Strategy for the Future of Our Pools 2014-24'. This engagement found that socio-economic disadvantage in some suburbs meant there was likely to be 'price-sensitivity and demand for free or low cost activities' while the higher proportion of 20-24 year-olds impacted on the need for fitness and year round facilities.<sup>49</sup>

The Victorian Auditor-General's report on 'Local Government Service Delivery: Recreational Facilities', showed that local councils engaged in a range of consultative activities with communities around aquatic facilities leading to changes that addressed equality issues such as:<sup>50</sup>

- Delivery of bus service to a neighbouring aquatic centre for senior citizens' swimming class (Mansfield Shire Council);
- Culturally appropriate women's and men's only swimming times (Moreland City Council);
- Introduction of Koori Learn to Swim program (City of Whittlesea).

The report recognised that social benefits and financial considerations must be balanced and that pools need to be accessible and affordable. In some cases, pools in more remote communities, even where less cost-effective, may need to remain due to their social benefits to the community; while facilities in more advantaged Councils may be able to charge higher fees.<sup>51</sup>

Community consultation should not only be used to gather data but also to ensure that community groups become partners or supporters of changes at aquatic facilities. This approach recognises that community groups may have ideas, knowledge and skills to assist in developing appropriate new approaches, and will support changes if these are seen as responsive and worthwhile. The disability community uses the expression 'Nothing about us without us' to explain that changes to support the needs of people with disabilities must involve such people at every step of the way. The same applies to other groups who have been socially excluded or marginalised. Equality can only be achieved with full and equal participation of those most affected by discrimination and disadvantage.



### Expert advice

Where needed, peak bodies or relevant expert groups that represent community stakeholders should be approached for advice and assistance on how to make necessary changes to facilities. This could involve advice from specialist disability bodies on the adaptations needed, or cultural groups on language used at facilities. Diversity training for staff can be arranged with groups working on trans and gender diverse advocacy, disability, cultural awareness, Indigenous cultural awareness, and others.<sup>52</sup>



### Equality plans - phased

With a deeper understanding of what is needed to improve aquatic facilities, plans should be developed to make necessary changes. These should be sequenced in order of priority in terms of immediate, medium and longer-term projects. It should be noted that where discrimination is occurring human rights requires that it be addressed with immediate effect. This requires a measure of urgency depending on the nature of the discrimination, what is needed to address it, and what is reasonably possible for the particular Council or facility.



### Accessing support

Aquatic facilities and local councils should examine all available funding opportunities at local, state and federal levels within which to support their plans to improve access to aquatic facilities and services. This may involve lateral thinking to look beyond usual funding such as in sport to others areas such as disability or age care services, public health, social services, etc.



### Local and regional initiatives

Working with other aquatic facilities or councils may be beneficial in developing funding requests or in crafting solutions that service a wider area through a combination of services across various aquatic centres. For example, where a particular disability community can be supported by one aquatic centre across a large metropolitan area, councils may be able to work together to offer transport and pay for the particular service. Similarly, in a regional area services might be funded collectively by different councils or within the same council but offered across different facilities. For example, where a swim class for people with dementia is run by a specialist instructor who travels to different pools on different days of the week, as coordinated by a council or councils.



### Monitoring and evaluation of changes

All new programs to address inequalities and promote inclusion at aquatic facilities should be carefully monitored and evaluated to ensure that they are meeting the needs of the target groups they are designed to serve. Again, participation by affected groups is key to ensuring that programs are appropriately designed and run, that participants are satisfied, and that they are reaching their intended audience. Where necessary, modifications should be made to improve these programs or replace them with others if they are not working well.



### > 3.3 Recommendations for policy reform towards equal access to aquatic facilities

Equal access to aquatic facilities and services has implications for health and safety, including the prevention of drowning. It also has wider benefits for community building, social inclusion (including employment and career opportunities), and the fulfillment of Australia's commitments to human rights and non-discrimination.

The aquatic sector should initiate discussion and contribute ideas towards policy reform to ensure equal access to aquatic facilities and services. Royal Life Saving Society can play a key role in consulting with the sector and relevant peak bodies in the community to identify equality concerns. These consultations should inform the development of a non-discrimination guideline for pool operators. Alongside this new guideline, existing guidelines should be audited and updated to ensure that they meet equality objectives. Expert bodies such as the Australian Human Rights Commission and the Workplace Gender Equality Agency and those with relevant expertise on developing actions plans such as the Commission for Gender Equality in the Public Sector (Victoria) could also be consulted.

#### **A non-discrimination guideline should address the following:**

1. Equally accessible facilities including disability accommodations and supports as well as other accommodations and supports needed for groups experiencing discrimination and disadvantage. As discussed in this report, this spans many issues including physical features of pools, bathrooms, cafes, signage, forms, communication, price structure, different use times, etc.
2. Programs and services to address discrimination and promote equality including specially designed swim programs, events, transport, communication, and supports.
3. Equality and diversity goals in staffing and the provision of training to ensure staff are equipped to support different groups of users and to build a culture of inclusion at aquatic centres.

These policies should include built in mechanisms for data gathering, community participation, monitoring and evaluation.

The aquatic sector should work with Local, State and Federal government, as well as industry partners, to fund and support the development of these guidelines and their implementation.

## CONCLUSION

Australia, the country of the ‘fair go’, can do more to ensure that every member of society is equally able to access public aquatic facilities and services with the many benefits that flow from their use. The legal obligations to address discrimination and the commitment to human rights must be built into measures to achieve this.

There are many examples, across the aquatic sector, of positive initiatives to improve access to facilities and to provide services that encourage disadvantaged groups to attend aquatic centres, learn to swim, improve their health, enjoy themselves and build community. Sharing these ideas and deepening the sector’s understanding of non-discrimination law contribute towards more systematic policies and practices across the sector, with the participation of affected groups, that make these treasured public resources equally accessible to everyone.

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