

## Consumer complaint about kindergarten leads to review of registration

### Description

The mother of a boy who had been expelled from a kindergarten child care centre (the Centre), made a number of allegations against it regarding treatment of her son. The mother alleged that her claims were supported by adverse findings made against the Centre by the Victorian Registration and Qualifications Authority (VRQA).

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### Sequence of events

The boy had been attending the Centre since the age of three. He had a number of serious behavioural issues whilst there, including regularly behaving in a violent or anti-social manner towards other children. The Centre took a number of steps to address this behaviour, including meeting with and involving the child and his parents, and engaging a psychologist to assess and recommend actions to be taken in respect of the child. None of these steps, however, turned out to be successful and, ultimately, the child was expelled due to ongoing behavioural issues.

In response, the boy's mother made a number of allegations against the Centre about its treatment of her son, including allegations of persistent bullying by other children at the Centre and a failure by teachers to stop such behaviour. She alleged that this conduct constituted, among other things, discrimination, negligence, and breaches of the Centre's duty of care and relevant legislation. These allegations were denied by the Centre.

The mother subsequently lodged a complaint with the Victorian Registration and Qualifications Authority (VRQA) - the governmental body responsible for registering both government and non-government schools in Victoria, regarding the operation of the Centre generally and its alleged treatment of her son. In response to

the complaint, VRQA undertook a review of the Centre to assess its compliance with the minimum standards and requirements for a child care centre's registration.

VRQA found that the Centre was non-compliant with 17 of its 20 requirements for registration. The Centre was required to demonstrate why its registration should not be suspended. In response to the findings of the investigation, the Centre made a number of significant changes to its practices and procedures.

Due to the improvement shown by the Centre, its registration was not suspended. However, it was still required to satisfy a number of further specific requirements.

Significantly, VRQA did not make any findings in relation to the mother's allegations regarding the Centre's treatment of her son. The mother subsequently obtained copies of VRQA's investigation reports via a Freedom of Information (Fol) request and claimed that the findings supported her allegations against the Centre.

The mother then threatened to bring a variety of legal proceedings against the Centre, and advised that she intended to commence a "publicity plan" against it by, among other things, contacting a number of media outlets (online, print, television and radio), as well as direct mail delivery to local residents in relation to her allegations and to VRQA's findings. The threatened publicity plan was

of particular concern to the Centre as it operated in a small regional community.

## Result

The matter was resolved on a confidential basis.

## Legal Issues

Of the many actions threatened to be brought by the mother, the discrimination claim was of the greatest concern. To be successful, the mother would have to show that her son had an impairment (or was presumed by the Centre to have one), and that the Centre treated him less favourably than it would treat another student without that impairment, by expelling him.

Conflicting evidence existed regarding whether there was a mental impairment, with a psychological assessment showing that the child may have been suffering from a mild form of Asperger's Syndrome. However, the boy's mother asserted that her son had not been found to be suffering from any dysfunctional disorders. The Centre asserted that its decision to expel him was made on the basis of the child's behavioural issues, which included violent and anti-social behaviour towards other students at the centre.

In discrimination cases, it is important to remember that courts will ultimately employ the use of a comparator test to determine whether discrimination has taken place. In this case, the Court would have considered whether the Centre would have taken the same action against a student with all of the same attributes (including the behavioural issues) other than the mental disability. It is not material whether the behavioural issues may have been caused by a disability.

## Risk Management analysis: Lessons Learnt

- Complaints handling can be a challenging aspect of any child care centre manager's role, particularly when dealing with aggrieved families and carers. Organisations must have in place complaints handling policies and procedures that include escalation

processes when the normal process has not met the expectations of the complainant. Managers must be skilled in dealing with families and carers who are advocating on behalf of their family member and where emotions and behaviours may influence the way the complaint is dealt with by the organisation.

- Quality frameworks should be in place to allow continuous improvement, monitoring and systematic review of services to ensure that quality care is delivered to clients. Key elements of all quality frameworks include the review of compliance with existing legislation and standards as well as feedback and complaints handling. It is also unsatisfactory for a service to be found non-compliant with a regulatory authority.
- Complaints to a registration body about a service will often lead to a review of organisational compliance against the standards. A failure to comply with standards or legislation may result in the risk of:
  - » Loss of a "good name and reputation" within a community and a subsequent loss of income;
  - » A non compliance rating leading to suspension, deregistration, or adverse publicity; and
  - » Complaints being lodged or proceedings commenced on the basis of the outcomes of any investigation.
- Complaints and FoI requests are often the first indication of either dissatisfaction with care or services or that an investigative report into the operations of a government or public body is underway by the media. This may allow aggrieved parties to use any adverse findings contained within the reports for their own purposes. If you are aware of any serious complaints or FoI requests to your organisation you should contact the VMIA as soon as practicable.