



Sex Discrimination and Sexual Harassment

Every person in sport, in every role, has the right to participate in an environment that is fun, safe and healthy, and to be treated with respect, dignity and fairness.

Harassment and discrimination in sport deny participants these rights and can result in feelings of humiliation, anger, embarrassment and intimidation. Harassment and discrimination can also affect an individual's athletic performance, level of enjoyment, job security, work, academic achievement and health.

Is sex discrimination and sexual harassment against the law?

Yes. The law recognises and prohibits sexual harassment. According to the *Sex Discrimination Act 1984* (Cwlth),

"... a person sexually harasses another person (the "person harassed") if:

- the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or*
- engages in other unwelcome conduct of a sexual nature in relation to the person harassed;*

... in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the person harassed would be offended, humiliated or intimidated."

The Act explains that "conduct of a sexual nature" includes making a statement of a sexual nature to a person, or in the presence of a person, whether the statement is made orally or in writing."

Each of the states and territories has legislation prohibiting sexual harassment. The state and territory legislation is very similar to the federal legislation; however, the precise definition of sexual harassment can vary from state to state and from the definition in the federal legislation.

What is sex discrimination?

Discrimination in this context means treating someone unfairly because of his or her sex or because a woman is pregnant, potentially pregnant or breastfeeding. When something is done for two or more reasons and one of the reasons is described above, the act is considered unlawful.

Under sexual discrimination legislation a sporting organisation may also be vicariously liable if people representing the organisation (e.g. coaches, board members, managers, officials, etc.) behave unlawfully in the course of their duties. The sporting organisation would need to show that they took all reasonable steps to prevent the unlawful act, (e.g. establishing codes of conduct, policies and procedures and providing education and training) to avoid liability.

There are three types of unlawful sex discrimination:

- Direct discrimination
- Indirect discrimination
- Harassment

Direct sex discrimination – treating someone differently

Direct discrimination is treating someone unfairly or less favourably on the basis of his or her sex, that is because they are a woman or because they are a man. It is also direct discrimination when a woman is treated unfairly or less favourably because she is pregnant or potentially pregnant.

Example:

Jim has been the development officer of the local junior Netball Club for the past two years. He was removed from the position when the club directors decided they wanted to appoint a woman to the position. This may be an example of direct sex discrimination and may be unlawful.

Indirect sex discrimination – treating everyone the same way, but to some people’s disadvantage

Indirect sex discrimination is treatment that can appear on the surface to be fair or neutral, but which has an unequal effect on people of a particular sex. To make everyone satisfy the same requirement when it is not reasonable to do so, with the effect that a higher proportion of people of one ‘sex’ cannot satisfy it is indirect sex discrimination. For indirect discrimination to be unlawful, the condition or expectation placed on the person of a particular sex has to be something that is unreasonable in the circumstances.

Example:

Jane is seven months pregnant and has been dismissed from her position on the board of a national sporting organisation because she did not attend an interstate director’s meeting. She was advised by her doctor not to fly during her last trimester; however, to attend the meeting she was required to fly from Melbourne to Sydney. This may be an example of indirect discrimination unless it can be shown that the requirement was reasonable. The national sporting organisation would need to be more flexible (i.e. take into account her particular circumstances) or risk action being taken against it for indirectly discriminating against Jane.

What is harassment – what is sexual harassment?

Harassment takes many forms: some are unlawful, some are not. However, all harassment is undesirable and will most certainly breach organisational policies and codes of conduct. - consequently it must be prevented and managed.

Harassment is any type of behaviour that:

- is not wanted
- is not asked for, and
- is not returned,

that a reasonable person would recognise as being unwelcome and likely to cause the recipient to feel offended, humiliated or intimidated.

Behaviour such as unwanted sexual comments or abuse, unwanted sexual suggestions, offensive gestures and unwanted sexual contact can be interpreted as sexual harassment.

It is important to remember that not everyone views behaviour in the same way. In assessing whether certain behaviour constitutes harassment, the intention of the alleged harasser is not considered. Instead the focus is on the impact on the person harassed and whether or not the behaviour could reasonably have been expected to harass. It is crucial, therefore, that all members of sporting organisations be sensitive to how their behaviour is being received by others.

Examples of behaviours that could be sexual harassment:

- *A spectator making inappropriate and unwanted sexual comments towards a referee*
- *A coach giving an athlete a massage that involves unwanted sexual contact*
- *A team official staring and leering at an athlete*
- *A team manager asking players intrusive questions about sexual activity*
- *A club official ‘wolf whistling’ or making sexual gestures towards a team member*

- *An athlete making repeated sexual invitations towards another team member when the person invited has refused similar invitations before*
- *A club publishing a sexist joke (or sexually explicit images) on its website*
- *Team members conducting initiation ceremonies that involve unwelcome sexual or sexist behaviour such as 'hazing'.*

Sexual assault and child abuse

It is important to note that some inappropriate sexual behaviours and acts (such as rape, attempted rape, incest or possession of child pornography) can constitute sexual assault or child abuse and be criminal offences. The information in this document refers specifically to issues regarding sexual discrimination and sexual harassment. An instance of sexual assault or child abuse should be referred to the police, emergency services, child protection agencies or sexual assault support services. For more information on child protection in sport and contact details of child protection information agencies, refer to the ASC Ethics website.

What is not sex discrimination – what is a special measure program?

Special measure support programs are provided to assist the adequate advancement of a group or individuals affected by historic disadvantage. The Australian Sports Commission's *Sport Leadership Grants for Women Program* provides women with the opportunity to undertake sport leadership training and is an example of a special measure program. The program complements but does not replace existing mainstream programs and initiatives.

What can I do if one of these things happens to me?

While it may not seem like it, you do have options. There is always something you can do. Doing nothing means that the situation will stay the same or get worse.

What you do will depend on many factors, including the nature of the incident that occurred, the complaint handling procedures that exist, the support available to you and how far you feel you need to take action to rectify the situation.

If you need information or advice regarding making a complaint or simply raising a concern in relation to sex discrimination and sexual harassment in sport, the following list may assist you in working out what to do and who to contact.

You have several options:

- If you feel you can, talk to the individual or the organisation that has discriminated or harassed you. Explain to them that you believe their actions are morally wrong and possibly illegal. Explain to them the incident from your point of view and how their actions made you feel. They may not have considered that their actions were harassing, discriminatory or hurtful and may immediately regret their behaviour.
- Discuss the matter with a supportive person, such as a friend, family member or club/team member or official.
- Discuss the matter with a Member Protection Information Officer (MPIO). They may be able to assist you by listening, providing information and clarifying the options available to you. If you require a MPIO, you can contact your national sporting organisation or state or territory department of sport and recreation, or you can use the member protection information officer database.
- Find out if the sport has a Member Protection Policy. If it does, follow the process outlined within the policy to lodge a complaint. If they do not have a policy or you feel the process outlined in the policy will not assist you or is not adequate you can still lodge a complaint with the sport. Start at the level (club, state or national) that the incident occurred.

- Contact your State Department of Sport and Recreation or the Sport Ethics Unit at the Australian Sports Commission. They may be able to assist by providing information and clarifying the options available to you.
- Contact the Equal Opportunity Commission in your state or territory, or the Human Rights and Equal Opportunity Commission. They will listen to your complaint, answer your questions and advise whether your query is covered by equal opportunity laws. They will also be able to discuss the complaint process with you. If the Commission cannot address your concern, the staff there will suggest another organisation that may be able to offer support or advice.

Contacts

Equal Opportunity and Human Rights Commissions

- Human Rights and Equal Opportunity Commission: tel: 02 9284 9600
- New South Wales Anti-Discrimination Board: tel: 02 9268 5555
- Equal Opportunity Commission, Western Australia: tel: 08 9216 3900
- Equal Opportunity Commission Victoria: tel: 03 9281 7111
- Equal Opportunity Commission of South Australia: tel: 08 8207 1977
- Anti-Discrimination Commission Queensland: tel: 1300 130 670
- ACT Human Rights Office: tel: 02 6207 0576
- Northern Territory of Australia Anti-Discrimination Commission: tel: 08 8999 1444
- Anti-Discrimination Commission Tasmania: tel: 03 6224 4905

Government sport and recreation agencies

- Australian Sports Commission: tel: 02 6214 1994
- ACT Bureau of Sport and Recreation: tel: 02 6207 2072
- NSW Department of Tourism, Sport and Recreation: tel: 02 9006 3833
- Northern Territory Office of Sport and Recreation: tel: 08 8982 2301
- Sport & Recreation Queensland: tel: 07 3235 4069
- South Australian Office for Recreation & Sport: tel: 08 8416 6633
- Sport and Recreation Tasmania: tel: 03 6233 5616
- Sport and Recreation Victoria: tel: 03 9666 4266
- Department of Sport and Recreation Western Australia: tel: 08 9387 9703

Other

- Member protection information officer database: Allows people in need of the services of a MPIO, to find one in their sport and/or their state
www.ausport.gov.au/ethics/memprotodb.asp
- Play by the Rules: Provides information and online training on harassment, discrimination and abuse issues in sport www.playbytherules.net.au
- National sporting organisations: List of Australian national sporting organisations that have ASC status www.ausport.gov.au/sportdirectory/ascstatus.asp

*This publication is intended as a general guide and is not to be taken as professional advice.
The Australian Sports Commission recommends you seek professional advice
if a specific situation arises involving harassment or discrimination.*