

Disability Discrimination

Board of Directors NSW Basketball Association



REVISED: March '06

Source: Australian Sports Commission

Is disability discrimination against the law?

Yes. There is federal, state and territory legislation in place that makes discrimination and harassment in relation to a disability unlawful.

Under the [Disability Discrimination Act 1992 \(Cwlth\)](#) (DDA) disability can be broadly defined to include total or partial loss of the person's bodily or mental functions. The Act covers disability that presently exists, previously existed but no longer exists, may exist in the future, or is imputed to a person even if the person does not have a disability. Given that 19% of Australians fit into this category, sporting organisations need to be aware that they will already have a number of members with a disability within their organisation.

It is unlawful to exclude a person from a sporting activity on the basis of a person's disability. This includes participation as a coach, official or administrator, as well as selection and participation as a player. There are exceptions to this, however, if:

- a person is not reasonably capable of performing actions reasonably required in relation to the sporting activity; or
- people who participate in the sporting activity are selected by a method which is reasonable on the basis of relevant skills and abilities; or
- a sporting activity is conducted only for persons who have a particular disability and the person does not have that disability.

It is also unlawful to exclude a person from a sporting activity on the basis of their association with a person with a disability or to harass a relative or associate of a person with a disability.

Where something is done for two or more reasons and one of the reasons is because of a person's disability, it is considered unlawful. Any person who causes, instructs, induces, aids or permits another person to do an unlawful act is also legally responsible for that act.

Under disability 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.

Can people with infectious diseases be excluded from sport on health grounds?

The definition of disability under the DDA includes the presence in the body of organisms capable of causing disease or illness. Given that the transmission of disease through participation in sport is possible, certain sections of the DDA are subject to an exception for actions reasonably necessary to protect public health in relation to infectious diseases. What is reasonably necessary will depend on the circumstances including the nature of the sport and how readily transmissible a person's infection is in those circumstances. Sports bodies should note, however, that guidelines from the [Australian National Council](#) on AIDS, Hepatitis C and related diseases discourage exclusionary approaches in sport and instead encourage appropriate universal precautions. The resource [Blood Rules OK](#) from [Sports Medicine Australia](#) also provides information and guidelines on preventing the transmission of diseases through participation in sport.

What is disability discrimination?

Discrimination in this context means treating someone unfairly because they happen to belong to a particular group of people because of a disability

There are three types of unlawful disability discrimination:

- Direct discrimination
- Indirect discrimination
- Harassment

Direct disability discrimination – treating someone differently

Direct discrimination is to treat someone with a disability unfairly or less favourably than someone in similar circumstances who does not have a disability.

Example

Andrew is a soccer player trying out for his state team. He is cut from the squad and told he couldn't make the team because he has Attention Deficit Hyperactivity Disorder (ADHD) and his medication needs may create problems for team management. Andrew may have been discriminated against because he has ADHD. It would be inappropriate for him to be treated unfairly and cut from the team not because of his sporting merit but because of his disability.

Indirect disability discrimination – treating everyone the same way, but to some people's disadvantage

Indirect disability discrimination is treatment that can appear on the surface to be fair or neutral, but which has an unequal effect on people with a disability. Indirect discrimination occurs when a condition or requirement stops a person with a disability

from doing something. A condition includes physical barriers, policies, practices, admission or selection criteria, rules or requirements. For indirect discrimination to be unlawful, the condition or expectation placed on the person with a disability has to be something that is unreasonable in the circumstances.

Example

Shirley suffers from arthritis and can only play golf with the use of a golf buggy to transport her. Shirley has purchased her own buggy and wishes to compete in the ladies competition played on weekends. However, the club's rule is that no buggies are to be used in weekend competitions. Shirley is told that she cannot use her buggy and thus the club may be discriminating against her on the basis of her disability unless it can show that the requirement is reasonable.

What is not disability 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 [*Sports Ability Program*](#) is a special measures program that aims to increase sports participation for people with disabilities. The program will provide equipment, resource material and training for disability sport activities to be delivered in schools and communities across Australia. The program complements but does not replace existing mainstream programs and initiatives.

What is HIV/AIDS vilification?

Under some state laws HIV/AIDS vilification is unlawful. HIV/AIDS vilification is any act or form of behaviour that happens publicly, as opposed to privately, which could incite others to hate, threaten, ridicule, insult or show contempt towards another person on the basis of that person's HIV/AIDS status. The person doing the vilifying will be responsible for it, but anyone who supports the behaviour may also be responsible.

Examples of things that could be vilification:

- A netball association seems unconcerned by and refuses to pay to have graffiti vilifying people living with HIV/AIDS removed from its changeroom walls
- A football coach publicly makes statements at a team meeting in an effort to encourage hatred and contempt for a person because of HIV/AIDS status

What is harassment – what is harassment based on disability?

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. The federal legislation does not define harassment in relation to people with a disability; however, it is generally understood to consist of offensive, abusive, threatening or exclusive behaviour.

Harassment is any form of unwelcomed behaviour that is likely to create a hostile or uncomfortable environment. Behaviours such as humiliating someone, seriously

embarrassing, offending and/or intimidating others because of their disability is 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 harassment:

- A coach making fun of a member of the opposing team because of his/her disability
- A referee imitating an athlete's speech impediment
- A sports administrator telling a joke about a person with a disability
- An athlete calling a player an offensive name or using unsuitable language because of his/her disability.

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 disability discrimination 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 member protection officer, 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
- [Blood Rules OK](#): A Sports Medicine Australia resource that provides information on blood-borne viruses and other infectious diseases, how they are transmitted and what actions can be taken to prevent their spread through participation in sport. www.sma.org.au/information/blood_rules.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.