

Racial Discrimination

Board of Directors NSW Basketball Association



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What is racial discrimination?

Discrimination in this context means treating someone unfairly because they happen to belong to a particular group of people because of their race, colour, national and ethnic origin, descent and ethnic or ethno-religious background.

When something is done for two or more reasons and one of the reasons is described above, the act is considered unlawful.

Under racial 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 racial discrimination:

- Direct discrimination
- Indirect discrimination
- Harassment

Direct racial discrimination – treating someone differently

Direct discrimination is to treat someone unfairly or less favourably on the basis of his or her race, colour, national and ethnic origin, descent, ethnic or ethno-religious background, compared to the way that someone of a different race would be treated in a similar situation.

Example:

Xiao Peng is a Chinese boy. He has been refused coaching by a tennis instructor. The instructor has argued that other athletes might leave his squad if he was to coach a Chinese person. This is an example of direct racial discrimination and is most likely unlawful. By refusing to coach Xiao Peng, the coach has left himself open to a complaint being made about his behaviour.

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

Indirect racial 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 race. 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 ‘race’ cannot satisfy it, is indirect racial discrimination. For indirect discrimination to be unlawful, the condition or expectation placed on the person of a particular ‘race’ has to be something that is unreasonable in the circumstances.

Example:

A basketball club makes a rule that all athletes have to train on Fridays to be eligible for selection in the representative team. The rigidity of this rule inadvertently excludes a number of players (such as Muslim and Orthodox Jewish players) who cannot attend on Fridays because of religious commitments. The players believe by imposing this rule, the club has indirectly discriminated against them. The club would need to make a more flexible rule or demonstrate why the requirement to train on Fridays is reasonable. Otherwise the club risks action being taken against them for indirectly discriminating against some of their members.

What is harassment – what is offensive behaviour?

Harassment take many forms: some are unlawful, some are not. However, all harassment and offensive behaviours are undesirable and will most likely breach organisational policies and codes of conduct – consequently they must be prevented and managed.

Racial Discrimination legislation defines certain harassing behaviours as ‘offensive behaviours’ and as being unlawful. Under the legislation offensive behaviour is doing an act in public because of the race, colour or national or ethnic origin of a person or group of people, that is reasonably likely to offend insult, humiliate another person or a group of people.

It is important to remember that not everyone views behaviour in the same way. In assessing whether certain behaviour constitutes harassment or offensive behaviour, the intention of the alleged harasser is not considered. Instead the focus is on the impact on the person or persons offended and whether or not the behaviour could reasonably have been expected to offend. 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 offensive:

- An athlete making fun of a team mate because of his race
- A coach imitating an athlete’s accent
- A sports administrator telling a racist joke

- A referee calling a player an offensive name or using unsuitable language because of his/her race.

What is racial vilification?

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 race, religion, colour, descent or national or ethnic origin. The person doing the vilifying will be responsible for it, but anyone who supports the behaviour may also be responsible. The difference between offensive behaviour and vilification is that vilification does not have to be specifically directed at another person.

Examples of things that could be vilification:

- *A tennis club seems unconcerned and refuses to have racist graffiti removed from the change room walls*
- *A hockey coach makes racist statements at a team meeting in an effort to encourage hatred and contempt for an opposing team member because of his/her race*
- *An athletics association publishes a racist cartoon in its newsletter*

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 may 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 racial 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 sport industry 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

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.