



Disability discrimination

What is disability discrimination?

Disability discrimination occurs when a person is treated less favourably, or not given the same opportunities, as others in the same or a similar situation, because they have a disability.

There are both federal laws and state/territory laws that make disability discrimination unlawful.

The definition of 'disability' used in the *Disability Discrimination Act 1992* (Cth) (**DDA**) is broad. It includes physical, intellectual, psychiatric, sensory, neurological and learning disabilities. It also includes physical disfigurement and the presence in the body of disease-causing organisms, such as the HIV virus.

The DDA covers disabilities that people have now, have had in the past, may have in the future or which they are believed to have.

The DDA also protects people from discrimination on the basis of a disability if the person:

- uses a therapeutic device or aid;
- has a carer or assistant helping them; or
- has an assistance animal.

The DDA includes provisions specifically dealing with disability discrimination in sport. The DDA makes it unlawful for a person to discriminate against another person because of the other person's disability by excluding that other person from a sporting activity (including an administrative or coaching activity in relation to any sport).

The DDA also protects people from being treated unfairly because of their association with a person who has disability.

Direct and indirect disability discrimination

Disability discrimination can be direct or indirect.

Direct discrimination occurs when a person with a disability is treated less favourably than another person without the disability, in the same or a similar situation.

Indirect discrimination is focused on the impact of rules, practices or policies that are applied equally but which have a disproportionate impact on some people because they have a disability. If the requirement is not reasonable in the particular circumstances, it could be indirect discrimination.

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The information on *Play by the Rules* is not intended as a substitute for legal or other professional advice.

Play by the Rules recommends you seek professional advice if a specific situation arises involving harassment or discrimination.

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For example, Andrew is a football player who is trying out for his state team. He is cut from the squad and told he can't make the team because he has Attention Deficit Hyperactivity Disorder (ADHD) and his medication needs may create problems for team management. This is an example of **direct discrimination**.

For 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. Shirley is told she cannot use her buggy because the club's rule is that no buggies are to be used during weekend competitions. This rule is not directly discriminatory, but it has a discriminatory effect on Shirley because she has a disability and cannot play golf without the use of a buggy. This may be **indirect discrimination**, depending on whether the rule is reasonable.

Reasonable adjustments

Disability discrimination includes failing to make 'reasonable adjustments' for a person with a disability, where the failure to make the reasonable adjustments has, or would have, the effect that the person is treated less favourably than a person without the disability, in the same or a similar situation.

An adjustment is reasonable if it does not impose an 'unjustifiable hardship' on the service provider.

For example, it may not be unlawful to only provide an entrance to a basketball stadium by a set of stairs if the owner of the stadium can show that it would cause unjustifiable hardship to modify the building to provide wheelchair access.

What is disability harassment?

Disability harassment is any unwelcome conduct, verbal or physical, that intimidates, vilifies, offends or humiliates another person and which happens because of the person's disability.

In determining whether a person has engaged in harassment towards another person it is irrelevant whether or not the first person is aware of the harassment, and whether or not the behaviour is intentional.

Behaviour need not be repeated or continuous to constitute harassment, a single incident or comment can amount to harassment.

Examples of behaviours that could amount to harassment include:

- a coach teasing 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; and
- an athlete calling a player an offensive name or using unsuitable language because of his/her disability.

When is disability discrimination not unlawful?

Anti-discrimination laws set out certain limited circumstances in which it is not unlawful to discriminate against a person on the basis of their disability.

Exceptions in relation to sporting activity participation

Under the DDA, it is not unlawful to discriminate against a person by excluding the person from a sporting activity if:

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

Special measures

Another exception to disability discrimination involves 'special measures'. Special measures have the goal of fostering greater equality by assisting groups of people who face, or have faced, entrenched discrimination so they can have similar access to opportunities as others in the community.

For example, 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 provides 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.

Infectious diseases

Under the DDA, it is not unlawful to discriminate against another person because of the other person's disability if:

- the person's disability is an infectious disease; and
- the discrimination is reasonably necessary to protect public health.

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.

What can I do if I experience disability discrimination or harassment?

If you consider that you have experienced disability discrimination or harassment there are several options available to you.

Your options include:

- seeking to deal with the situation yourself by raising your concerns directly with the person or people involved;
- discussing your concerns with a friend, family member or club/team member or official;
- contacting your Member Protection Information Officer (MPIO). If your club/association does not have an MPIO you may try contacting your state/territory sports association;
- contacting your state/territory department of sport and recreation to obtain further information and/or clarify the options available to you;
- lodging a complaint under an applicable member protection policy;
- contacting the equal opportunity/anti-discrimination commission in your state or territory to obtain further information and/or make a complaint; or

- contacting the Australian Human Rights Commission to obtain further information and/or make a complaint.

A person who makes a complaint, or intends to make a complaint about discrimination or harassment is protected from being victimised. Victimisation is unlawful under both state and federal laws.

Useful links and further information

Australian Human Rights Commission

www.humanrights.gov.au/employers

Victorian Equal Opportunity and Human Rights Commission

www.humanrightscommission.vic.gov.au

Anti-Discrimination Board of New South Wales

www.antidiscrimination.justice.nsw.gov.au

Anti-Discrimination Commission of Queensland

www.adcq.qld.gov.au

South Australia Equal Opportunity Commission

www.eoc.sa.gov.au

Equal Opportunity Commission Western Australia

www.eoc.wa.gov.au

Northern Territory Anti-Discrimination Commission

www.adc.nt.gov.au

ACT Human Rights Commission

<http://hrc.act.gov.au>

Office of the Anti-Discrimination Commission (Tasmania)

<http://equalopportunity.tas.gov.au>