



Sex discrimination and sexual harassment

What is sex discrimination?

Sex discrimination occurs when a person is treated less favourably, or not given the same opportunities, as a person of the opposite sex, in the same or a similar situation.

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

The *Sex Discrimination Act 1984* (Cth) (**SDA**) makes it unlawful to discriminate against a person because of their sex.

The SDA also makes it unlawful to discriminate against a person because:

- of a person's marital or relationship status;
- of a person's family responsibilities;
- the person is pregnant or might become pregnant; or
- because the person is breastfeeding.

The SDA also contains provisions dealing specifically with sex discrimination in clubs (which includes some sporting clubs).

Direct and indirect sex discrimination

Sex discrimination can be direct or indirect.

Direct sex discrimination occurs when a person is treated less favourably than another person of the opposite sex, in the same or a similar situation.

Indirect sex 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 of their sex. If the requirement is not reasonable in the particular circumstances, it could be indirect discrimination.

For example, it would be **direct sex discrimination** if a male coach of a junior netball club is removed from the position because the parents of the children who are being coached insist that they want a female coach.

It may be **indirect sex discrimination** if a sporting organisation requires all sport's administrators to work full time. This rule is not directly discriminatory, but it may disadvantage women because they are more likely to have caring responsibilities.

Play by the Rules is supported by the Australian, state and territory governments.

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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Harassment

Harassment is any unwelcome conduct, verbal or physical, that intimidates, vilifies, offends or humiliates another person and which happens because a person has a protected attribute (including a person's sex).

Not all harassment is 'sexual harassment'. For example, an individual may be harassed because of their sex (i.e because she/he is a woman/man) in circumstances where the conduct is not of a sexual nature.

What is sexual harassment?

The SDA makes sexual harassment unlawful.

Sexual harassment is unwelcome conduct of a sexual nature in circumstances in which a reasonable person, having regard to all the circumstances would have anticipated the possibility that the other person would be offended, humiliated or intimidated.

Sexual harassment covers a wide range of behaviours and can be verbal, written, visual or physical.

Sexual harassment is not limited to members of the opposite sex.

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

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 SDA.

Examples of sexual harassment may include:

- a spectator making inappropriate and unwanted sexual comments towards a referee;
- 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; and
- a club publishing a sexist joke (or sexually explicit images) on its website.

A friendship or consensual relationship of a sexual nature does not constitute sexual harassment, providing the interaction is consensual, welcome and reciprocated. However, some consensual personal relationships can be problematic because of the potential for a conflict of interest. Issues may arise when power and/or authority is used inappropriately.

When is sex 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 sex.

Exceptions in relation to sporting activity participation

Under the SDA, it is not unlawful to discriminate against a person on the ground of sex by excluding persons from participation in any competitive sporting activity in which the strength, stamina or physique of competitors is relevant.

This exception does **not** apply in relation to the exclusion of persons from participation in:

- the coaching of persons engaged in any sporting activity;

- the umpiring or refereeing of any sporting activity;
- the administration of any sporting activity;
- any prescribed sporting activity; or
- sporting activities by children who have not yet attained the age of 12 years.

Special measures

Another exception to discrimination on the ground of sex 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 *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 I experience sex discrimination, harassment or sexual harassment?

If you consider that you have experienced sex discrimination, harassment or sexual 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 a sport industry Member Protection Information Officer (MPIO). MPIO's can be contacted through your national sporting organisation or state or territory department of sport and recreation or through the member protection information officer database;
- 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, harassment or sexual 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>