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## Types of Discrimination

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The grounds described by the law are personal characteristics that we all have. Anti-discrimination and equal opportunity laws make it unlawful for anyone to be treated unfairly on certain grounds, such as age, sex, pregnancy or sexuality. There are differences in the grounds covered by state and territory legislation.

Here are some examples of unfair and possibly unlawful discrimination:

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**Sex discrimination** Prizes of different value are given for male and female competition in the same club.

**Age discrimination** A club refuses to clear players to other teams because they are under 21.

**Marital status discrimination** A player is deliberately excluded from team activities and social functions after she divorces her husband who is a club official.

**Pregnancy discrimination** A woman is dropped from her softball team when she reveals she is pregnant.

**Racial discrimination** An Aboriginal player is overlooked for team selection, due to his race.

**Sexuality discrimination** A footballer is ridiculed by his team mates after his homosexuality is disclosed.

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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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**Disability  
discrimination**

A junior player is overlooked because of her mild epilepsy.

**Religious  
discrimination**

A woman is not allowed to participate because she is wearing a hijab.

**Sexual harassment**

A male tennis coach keeps putting his hand on a woman's bottom during coaching sessions, making her feel very uncomfortable.

**Victimisation**

A player is ostracised by her coach for complaining about his racist behaviour to another club official.

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# Disability and discrimination

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## 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 1994* (Cth) (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 percent 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 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 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 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 - 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 Australian Human Rights 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.

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# Sex discrimination and sexual harassment

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## Is sex discrimination and sexual harassment against the law?

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

“... 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;
- is not returned; and
- 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.

## 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 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/territory department of sport and recreation - 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 Australian Human Rights 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.

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# Race discrimination and harassment

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## Is Indigenous race discrimination or racial harassment against the law?

Yes. The *Racial Discrimination Act 1975* (Cth) (RDA) makes racial discrimination unlawful in Australia. The RDA aims to ensure freedom and equality of all human rights regardless of race, colour, national and ethnic origin, descent, ethnic or ethno-religious background. It is also racial discrimination if you are treated unfairly because of the race of your relatives, friends or work colleagues.

The *Racial Hatred Act 1995* (Cth) extends the coverage of the RDA to allow people to complain about racially offensive or abusive behaviour. The act aims to strike a balance between two valued rights: the right to communicate freely and the right to live free from vilification.

There is also legislation in place in every state and territory making discrimination and harassment in relation to a person's race, colour, national and ethnic origin, descent, ethnic or ethno-religious background unlawful.

## 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 takes 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 not racial 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 *Indigenous Sport Program* offers a development pathway for Indigenous people. It includes a scholarship and grants program as well as development workshops. The program complements but does not replace existing mainstream programs and initiatives.

## 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/territory department of sport and recreation - 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 Australian Human Rights 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.

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# Sexuality discrimination

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## Is discrimination based on sexuality against the law?

Yes. It is unlawful to discriminate on the basis of actual or assumed sexual orientation, and to discriminate on the basis of characteristics associated with a particular sexual orientation. The *Australian Human Rights Commission Act 1986* (Cth) provides protection in cases of discrimination on the basis of sexuality within the area of employment and occupation. The state and territory governments also have legislation in place making it illegal to discriminate on the basis on sexuality.

In most states and territories it is also unlawful to publicly encourage hatred, serious contempt or severe ridicule of gay or lesbian people. This behaviour is called vilification. Information on what is specifically covered under state, territory and Commonwealth legislation in relation to sexuality can be found at the Australasian Legal Information Institute website.

## What is discrimination on the grounds of sexuality?

Discrimination in this context means treating someone unfairly based on their sexual orientation, or what someone thinks is their sexual orientation. A person's sexual orientation may be:

- Heterosexual: sexual attraction to or feelings for a person of the opposite sex;
- Homosexual: sexual attraction to or feelings for a person of the same sex (gay /lesbian);
- Bisexual: sexual attraction to or feelings for people of both sexes.

There are three types of unlawful sexuality discrimination:

- Direct discrimination;
- Indirect discrimination;
- Harassment.

### Direct sexuality discrimination – treating someone differently

Direct discrimination is to treat someone unfairly or less favourably than someone in similar circumstances because of their sexuality.

#### **Example**

A sports coach, who is also a lesbian, is invited to apply for a promotion. She is interviewed for the position but another applicant with fewer qualifications is chosen. She subsequently discovers that the selection committee discussed her sexuality and that is why she did not get the job. The sports coach may have been discriminated against because she is a lesbian. It would be inappropriate for her to be treated unfairly and considered unsuitable for the position because of her sexuality rather than her coaching ability or the inherent requirements of the position.

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

Indirect sexuality 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 sexual orientation. Indirect discrimination occurs when a requirement or expectation stops a person from doing something. A requirement may include policies, practices, admission or selection criteria or rules. For indirect discrimination to be unlawful, the requirement or expectation placed on the person has to be something that is unreasonable in the circumstances.

### ***Example***

A community swim centre allows its members’ partners access to its gymnasium for free as affiliated members but does not allow same-sex partners these benefits. After some lobbying the club reconsiders its policies, stops this discriminatory practice and allows same-sex partners affiliated member status. However, shortly after, the club introduces a special ‘gold’ membership category granting any affiliated member of more than five years additional benefits. Although the gold membership policy makes no distinction on the grounds of sexuality, it indirectly disadvantages gay and lesbian partners, who were excluded from affiliated membership because of a discriminatory practice that prevented them meeting the gold membership requirements. The swim centre may be discriminating against gay and lesbian partners on the basis of sexuality unless it can show that the practice is reasonable.

## **What is harassment – what is harassment based on sexuality?**

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;
- is not returned; and
- 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, offensive gestures, seemingly harmless jokes and put-downs can be interpreted as 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 may be received by others.

Examples of behaviours that could be harassment and/or homophobic:

- A coach making fun of a member of the opposing team because of his/her sexuality;
- A team manager telling an athlete who is a lesbian to keep her sexual orientation a secret and not show any public signs of her sexual orientation;



- A sports administrator telling a joke about a sports person she/he thinks is gay;
- An athlete calling a player an offensive name or using unsuitable language because of his/her actual or assumed sexuality.

## 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 sexual orientation. 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 homophobic graffiti removed from the change room walls;
- A hockey coach makes homophobic statements at a team meeting in an effort to encourage hatred and contempt for an opposing team member because of his/her sexual orientation;
- An athletics association publishes a homophobic cartoon in its newsletter.

Vilification based on a person's sexuality is unlawful in several states and territories. Regardless of whether specific legislation exists this behaviour is harmful, destructive and undesirable, and therefore should not be accepted or tolerated.

## 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 discrimination on the basis of sexuality 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/territory department of sport and recreation - 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 Australian Human Rights 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.