

Factsheet 4: Understanding Discrimination

What is discrimination?

We discriminate all the time when we make choices. We discriminate when we choose our friends or decide which team to support. These and many other choices are made on the basis of our personal assessment of a service or another person as we experience them in our private life.

Equal opportunity law is not about regulating our private life. Equal opportunity law is concerned about the choices we make in relation to another person in their public life, for example, in relation to another person's employment, education, accommodation, membership of a club, participation in a sporting activity or access to goods and services.

Equal opportunity law does not say that we cannot make decisions or choices about a person in regard to their public life, but it does say that we must make those choices based on merit and relevant information. To make choices based on prejudice, stereotypes and assumptions is not only unfair and unwise (for example, a coach who shows favouritism to their own child), it may also be unlawful (for example, to reject a person's membership of a club because of their race or religion).

In sport, all discrimination is inappropriate and undesirable if it leads to unfair treatment of players, officials, members, administrators or spectators.

In Australia there are laws that make it unlawful to treat anyone unfairly on the basis of various attributes or personal characteristics in key areas of their public life.

If someone complains that they have been treated unfairly, and it fits the definitions of equal opportunity law, a complaint of discrimination can be lodged with an anti-discrimination agency.

To abide by the law, a discrimination complaint needs to have a detriment or less favorable treatment because of a reason or ground protected by law in an area of public life.

The complaint also needs to have substance and to have occurred within certain time limits. These time limits vary around Australia.

Unlawful discrimination may be direct or indirect

Direct discrimination occurs when we treat (or propose to treat) a person less favorably because they have a characteristic protected by law.

Direct discrimination is unlawful:

- whether it is intentional or not
- whether the person being discriminated against is aware of the discrimination or considers their treatment less favourable
- whether or not the characteristic is the only or dominant reason for the treatment, as long as it is the substantial reason.

An example of direct discrimination:

A basketball coach failed to select a woman for a basketball team on the basis that she was the mother of a young child. The coach assumed the prospective player would be unreliable when it came to practice sessions. This is direct discrimination on the basis of parental status.

Indirect discrimination occurs when an unreasonable requirement, condition or practice which may appear to be neutral in fact has a disproportionately negative impact on people with particular protected characteristics.

Treating everyone the same can sometimes be unfair. Sometimes because of a person's characteristics (for example, they have an ill child), they may require some individual adjustment or flexibility in the way requirements etc are implemented. In many circumstances, not to be flexible is unreasonable and therefore discriminatory.

An example of indirect discrimination:

A local football club insisted that all team members donate blood together twice during the season. Those who failed to donate were dropped to the reserves team for one week. This could be seen as indirect discrimination because this practice impacted negatively on some team members (for example, those of a particular religious faith or carrying a blood-borne virus) who were unable to donate blood.

Grounds for discrimination

The grounds for discrimination described by law are personal characteristics or attributes that we can all have, for example, sex, age, race or a disability. Federal, state/territory equal opportunity laws are not identical. Different states and territories protect different personal characteristics. Sometimes the definitions of the characteristics also differ.

Exceptions

There are a number of *exceptions* that apply under federal and state/territory legislation that allow discrimination in specific circumstances for practical and common sense reasons such as to ensure competitive standards or to take account of sex or age-based differences in strength, stamina or physique.

Areas of public life

For unlawful discrimination to occur, it must happen in an area of public life covered by the law.

The areas of public life particularly relevant to sporting organisations are:

Provision of goods and services

It is unlawful to discriminate in the provision of goods and services, and it does not matter if the goods and services are provided for payment or not.

Example:

A rowing club has both male and female members, but the male crews are always provided with the best boats and equipment.

Clubs and Club Membership

Discrimination by a club or association is unlawful and includes discrimination by a member of a committee of management or other governing body.

Example:

A club's Memorandum and Articles of Association restricted full ordinary membership to males and only offered associate membership, with fewer benefits, to females.

Employment

It is unlawful to discriminate in employment. At the NSO and SSO levels, it is likely that employment is a particularly relevant area.

Example:

Julie was a sport development officer employed by an SSO but she was not invited to the planning day because she was pregnant and would be going on maternity leave in six months.

Sport

Victoria is the only state where participating in sporting activities is specifically included in the legislation.

Example:

An eleven year is told she can't play football because she is a girl.