Member Protection and the Law

Handling Complaints in Community Sport

There are laws and regulations that protect people's human rights, foster equitable opportunities and promote safety. Sometimes these are determined by organisations external to sport (like the government) but apply to sport settings.

Everyone in sport must comply with these laws as they apply. Not only is it something you must do, it helps create genuine fairness, respect and safety so that everyone can enjoy the incredible benefits sport offers.

Human rights and discrimination laws

Everyone has the right to participate in sport. Sport can also be a powerful medium to promote and support people's human rights. Human rights are about being treated fairly, treating others fairly and being able to choose how we live our lives. Fair play, respect, inclusion, belonging, equity, culture, health, and safety are all human rights values that can be positively experienced through sport.

Whilst human rights and discrimination laws set minimum standards, sport organisations can, and often should, go beyond these standards through their policies and codes that enable people's right to access safe and positive sport.

It is against the law for someone to be treated unfairly or discriminated against because of their 'Protected Characteristics'. These are characteristics like their:

- Age
- Disability
- Race or ethnicity
- Religion
- Sex, sexual orientation or gender identity

In Australia, there are different anti-discrimination and Human Rights Acts, and they apply to sport. Commonwealth Acts include:

- Age Discrimination Act 2004 (Cth)
- Disability Discrimination Act 1992 (Cth)
- Racial Discrimination Act 1975 (Cth)
- Sex Discrimination Act 1984 (Cth)

All states and territories have their own Acts with laws and responsibilities under them. This means that you or your club may have different obligations or activities, depending on where you are located or engaged in sport (e.g. the obligations around mandatory reporting of child abuse, or suspected child abuse, might be different in each state and territory, depending on your role in sport or the community).

A quick guide to Australian discrimination laws outlines Australia's federal, state and territory anti-discrimination laws.

For more detail about these laws, and who to contact in your state or territory, visit the **Australian Government Attorney-General's Department website**.

When discrimination is allowed

There are some circumstances in sport when discrimination is allowed to promote equality for disadvantaged groups, to protect the safety, fairness, enjoyment of someone, or allowing engagement in the offered benefits of a sport club or organisation.

For example:

- Aboriginal and Torres Strait Islander people might be preferred applicants for employment at a sport organisation. This might be a 'special measure' or 'affirmative measure' allowed under state or territory law, and helps to close the gap between the inequality of employment between Indigenous and non-Indigenous Australians.
- In some circumstance, leagues and competitions can offer participation to separate genders to support safe, equitable and sustainable opportunities. It is important to note that anti-discrimination laws still apply in these circumstances, and people cannot be automatically excluded because of their gender.

Whether discrimination is 'allowed' is narrowly defined in law and is context specific. Sport clubs and organisations should rely on their sport's policies and seek advice rather than making exclusionary decisions independently.

Children's Rights

Children have special human rights and are protected by the United Nations Convention on the Rights of the Child (the Convention) to which Australia is a signatory. In addition, the Commonwealth, state and territory governments and indigenous groups have established a National Framework for Protecting Australia's Children 2021-2031 which is upheld through the **Australian Human Rights Commission Act 1986 (Cth)**.

The Convention includes children's rights to:

- be treated fairly
- have a say about decisions that affect them
- be safe no matter where they are
- be safe from violence and abuse
- learn and play
- privacy
- healthcare
- know who they are and where they come from
- help and protection when they need it.

In Australia, there is no one single Act that embeds all children's rights, instead these are spread across multiple **Australian child protection laws** and systems. Regardless, children's human rights apply in sport.



Respect@Work and the positive duty

Under the Respect@Work reforms within the Sex Discrimination Act 1984 (Cth), all sport clubs and governing bodies have a legal obligation to act proactively and take meaningful action (that is, a positive duty) to prevent and respond to sexual harassment, sexual discrimination, sexist behaviour, and related acts of victimisation occurring.

Sport clubs and organisations must take reasonable and proportionate measures to satisfy their positive duty, and do not need a complaint to apply their duty.

Positive duty measures can include the conduct of players, officials, coaches, volunteers, paid staff, parents, spectators and contractors.

Sport clubs and organisations can be subject of review and regulatory scrutiny of their positive duty. So it is important they can demonstrate genuine and appropriate actions of positive duty.

Whilst the Commonwealth positive duty applies across all states and territories in Australia, Northern Territory, ACT and Victoria have expressed positive duty in their own discrimination laws which may require compliance of different standards and with respect to different protected characteristics.

The Australian Human Rights Commission suggest 7 standards that sport clubs and organisations can use to comply with the Respect at Work Act and provides **Guidelines for Complying with the Positive Duty under the Sex Discrimination Act 1984 (Cth).**



Learn more about **the positive duty in the Sex Discrimination Act** in Australia, and the specific state and territory law that applies in:

Australian Capital Territory

- **ACT Discrimination Act Positive Duty**

Northern Territory

- **NT Anti-Discrimination Commission Positive Duty**
- **Work Safe NT Positive Duty**

Victoria

- **Victorian Equal Opportunity and Human Rights Commission Positive Duty**

Work Health and Safety laws

Work Health and Safety (WHS) laws are generally designed to protect workers and other people from harm whilst in workplace settings. This can include their physical, psychosocial, and gender-based safety.

Under WHS laws, clubs can be considered employers, and volunteers as workers or employees, so it is important to understand your duties and obligations under these laws, and as they apply within your state and territory.

The Australian Federal Government has developed model laws, regulations and codes of practice for implementation by states and territories.

Each state and territory (jurisdiction) implements, regulates and enforces its own WHS laws. Clubs and associations must comply with the WHS laws that apply to their primary jurisdiction, or the jurisdiction they are competing in.

For more information about federal, state and territory WHS laws, and the regulators in each jurisdiction visit Safe Work Australia's page on **WHS regulators and workers' compensation authorities contact information.**

If you are a volunteer organisation, **a Guide to Work Health and Safety for Volunteer Organisations** might help you understand if the WHS laws apply to you.

Fair Work Act

The Fair Work Act 2009 (Cth) also applies to sport clubs through the **Registered and Licensed Clubs Award 2020** and governs employment relationships in Australia, aiming to create a fair, flexible and productive work environment for everyone.

Vicarious Liability

In some circumstances, a sport club or organisation can be held vicariously liable (responsible) for the wrongful acts committed by its members (including board members, paid staff, volunteers, coaches and participants) while carrying out their official duties. This is why following policies and seeking advice on matters are important.



So, what's your role in member protection and the law?

Australian law affects clubs and associations across many aspects including human rights, membership rights, and conditions as employers and providers of goods and services.

Paid employees, volunteers, players, officials, parents / carers, spectators, contractors, and other people connected to sport clubs can be subject to these laws (whether they are 'paid up' members or not). Everyone is bound to ensure sport is safe, and free from all forms of discrimination and inequity.

There are actions you can take to help you understand and apply the law to some areas of sport club or organisation:

- Adhere to your sport's and club's policies, procedures and codes of conduct around member protection, child safeguarding and safety.
- Act in ways that do not discriminate, victimise or harass others, or put their physical, psychosocial, of gender-based safety at risk.
- Act within the parameters of the law, whether they are indicated in your sports policies or not.

If you are in an appointed an official role at a sport club or organisation, like an elected officer bearer or committee member, or are considered an employer or employee, you will have different responsibilities applicable to your role. You should:

- Understand which Acts or laws apply to the club and your nominated role.
- Understand your obligations under the laws within your appointed role and act with reasonable care and diligence.
- Proactively prevent discrimination, victimisation, harassment, and safety issues, and address matters if they occur - delivering training and education programs, having effective reporting pathways, and conducting risk audits and reviews can all act as positive prevention steps.
- Avoid or appropriately manage conflicts of interest
- Respond quickly and appropriately to instances of unlawful or disrespectful behaviour, as outlined in your sport's policies.
- Demonstrate leadership with consistent, respectful, and safe actions and behaviours.
- Seek advice or help to better understand and apply laws in your sport setting.

Advice and Help

If you need advice or help understanding your rights and obligations under Australian law, and how it applies to you and your role in your club, you can contact:

- Your sport's governing body. Someone like a National Integrity Manager, Policy Manager or General Manager may be able to assist.
- A legal firm for legal advice.
- **Sport Integrity Australia**, the Australian Government agency dedicated to keeping sport safe, fair and inclusive.
- The **Australian Human Rights Commission** or your state or territory human rights authority.
- **Safe Work Australia** or your state or territory workplace health and safety authority.

Disclaimer: The information in this resource is general in nature and should not be read as legal advice.