



Department of
Local Government, Sport
and Cultural Industries

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The law and sport

– junior sport policy



This booklet is part of a series covering the nine guidelines outlined in the Junior Sport Framework (JSF) as developed by the Australian Sports Commission (ASC).

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The guidelines cover topics to address the needs of young people in sport and include:

1. Long-term involvement
2. Physical growth and maturation
3. Sport pathways
4. Forming links
5. People making it happen
6. Quality coaching
7. Making sport safe
8. The law and sport.

These booklets outline the main points of the guidelines to assist in the delivery of best practice in junior sport and to encourage young people to make a life-long commitment to sport.

A complete copy of the JSF is available on the ASC website: www.ausport.gov.au

The law and sport

Sport and the law is a complex area for clubs and associations.

This guideline focuses on the legislation that exists to ensure the safety, health and welfare of young people who participate in junior sport.

It does not cover the legislation applying to the administration of junior sport (e.g. tax law, corporations law, stamp duty).

It must not be relied on as legal advice.

There are free online courses for people involved in club sport through the Play by the Rules website www.playbytherules.net.au

Definition of a person involved in a sporting activity

A person involved in a sporting activity can be:

- Involved in an organised sporting competition
- Coaching or being coached for an organised sporting activity
- Acting as a sport administrator
- Officiating at a sporting competition or carrying out duties relating to the sporting competition
- Officially involved in a function relating to a sport or sporting competition.

Importantly – the law related to the welfare of juniors emphasises the serious obligations for anybody taking responsibility for providing them with activities and/or care.

To meet your duty of care to young people in sport you need to:

- Be aware of the underlying legal issues relevant to the provision of sport

- Put safeguards in place to ensure the safety and wellbeing of the child.

This protects your club, its volunteers and its participants.

Vicarious liability

When anyone in a sports organisation breaches duty of care, there may be repercussions for the principals of the organisation.

Club officials can be vicariously liable for offences committed by anyone in the organisation including volunteers. To reduce the risk of negligence by sport providers, managers should regularly monitor their staff and programs.

What can reasonably be done to reduce the risks?

‘Reasonably’ refers to the fact that there are practical limits to the time, human and financial resources to be spent on reducing risks.

Australian Standard AS/ISO 19600 sets out the essential elements of an effective compliance program.

Discrimination

In Australia, federal, state and territory discrimination laws apply to sport, although the extent of coverage varies nationally. Harassment (for example sexual or racial harassment) is also unlawful. These laws aim to ensure that we can all participate in the public life of the community, free from certain forms of discrimination and harassment.

What is discrimination?

Discrimination means making choices about how we treat other people. Those choices can be made using real and relevant information, or they can be based on prejudice, stereotypes and bias. Discrimination occurs when someone is treated less favourably than another person based on one of the grounds for discrimination.

Team selection provides a good example of fair, unfair and unlawful practices in sport.

- Decisions based on criteria such as ability, attitude, effort and attendance at practise are fair and legitimate criteria to apply to team selections
- Decisions influenced by favouritism and bias (for example, the coach who shows favouritism towards their own child) generally are not unlawful but are unfair and can impact negatively on the team
- Decisions based on personal characteristics are potentially unlawful. Age, disability, gender, religion, sexual orientation are all considered grounds for discrimination and a person should not be treated less favourably based on one of these grounds.

To find out more about discrimination and the law based on disability, sex, race and sexuality read the following facts sheets found at the Play by the Rules website www.playbytherules.net.au.

Direct discrimination occurs where people are:

- Treated less favourably in, for instance, access to training or selection in teams because of their gender, ethnicity, disability or sexual orientation
- Refused membership or provided membership on less favourable terms and conditions than other members.

Indirect discrimination is where a practice impacts on one individual more than another because of a personal characteristic.

Discrimination is prohibited in regard to work, education, provision of services and registered clubs.

Exemptions in sport

Exemptions exist for discrimination in sport. These allow for the:

- Exclusion of young people because of gender, but only after the age of 12
- Restriction on participation to young people who can effectively compete or have a particular disability
- Restriction to young people in a specified age group.

The exemptions apply only to the junior participants. None of the discrimination exemptions apply to people who wish to be coaches, officials or sport administrators.

Exemptions for people with a disability

Discrimination against a young person with a disability in a sporting activity is not unlawful if:

- The young person has a limited capability to perform the actions needed
- A reasonable selection process was used based on the skills and abilities relevant to the sporting activity
- It is conducted only for young people with a particular type of disability.

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
- 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.

How to comply – discrimination and sexual harassment

It is best to develop written policy on discrimination and sexual harassment. Member Protection Information Officers (MPIO) at SSAs can provide guidance to clubs.

Strategies for discrimination and sexual harassment

The club should establish a small working party that consults with the SSA through the MPIO and utilises the Play by the Rules website when working through their responsibilities.

Work will involve:

- Providing and promoting a policy containing:
 - a definition of discrimination and sexual harassment
 - a statement that discrimination and sexual harassment will not be tolerated under any circumstances
 - a statement that discrimination and sexual harassment is against the law
 - a description of the circumstances in which discrimination and sexual harassment can occur and examples of discrimination and sexual harassment
 - the action that will be taken against any person who breaches the policy including any individual consequences
 - the responsibilities of persons in the club in relation to preventing discrimination and sexual harassment
 - information on where individuals can get help, advice or make a complaint about discrimination and sexual harassment.
- Conduct training for people involved in the club on discrimination and sexual harassment
- Appoint a Member Protection Information Officer
- Distribute information via club communication channels and display brochures and posters on discrimination and sexual harassment
- Keep records of training delivered (including date and contents)
- Keep records of any complaints lodged
- Inform juniors and their parents of the contact officer for reporting problems, usually a Complaint Handling Officer at club level.

Child protection

Legal Acts dealing with child protection contain obligations on people dealing with children. Child protection requires:

- Teachers and coaches to notify particular government departments if they suspect child abuse or maltreatment
- Applicants for child-related employment to be screened in some jurisdictions, and not only paid employees.

The Western Australian legislations requiring this reporting is the *Children and Community Services Act 2004* and *Working with Children (Criminal Record Checking) Act 2004*. The Working with Children Check is a compulsory screening strategy for people in Western Australia and the Christmas and Cocos (Keeling) Islands who engage in certain paid or unpaid work with children, described as “child-related work” under the *Working with Children (Criminal Record Checking) Act 2004*

Child abuse can be when someone does something harmful, or does not provide for or protect, a child or young person. Child abuse can cause long-lasting emotional, physical and behavioural damage.

Sport is a particularly vulnerable area for potential child abuse because it:

- Involves a large number of people under the age of 18
- Can involve overnight and away trips (e.g. training camps or competitions)
- Usually involves close relationships between adults and children, where the adults are in positions of trust and able to assert authority and power over children.

Children and young people with a disability are particularly vulnerable to abuse. This may be due to difficulties in communicating, behavioural issues or physical limitations. They often require different staff-to-participant ratios and greater levels of assistance.

Let's clarify a few things:

Specifically:

- A sports club is included in the following category of the *Working with Children (Criminal Record Checking) Act 2004*
“a club, association or movement (including of a cultural, recreational or sporting nature and whether incorporated or not) with a significant membership or involvement of children, but not including an informal arrangement entered into for private or domestic purposes”.
- “Work” is child-related if the usual duties of the work involve, or are likely to involve contact with a child in connection with the clubs operations.
- “Contact” with children includes:
 - any form of physical contact
 - any form of oral communication, whether face to face, by telephone or otherwise
 - any form of electronic communication.

How to comply — child protection

Simply:

- Ensure all club members who require a Working with Children check have one
- Inform everyone in the organisation, including the young people, of appropriate standards of behaviour, and what is unacceptable
- Let everyone know the avenues for them (young people in particular) to discuss any concerns they have about somebody's behaviour
- Ensure there is access to education and training for all involved with the club on the signs of abuse or sexual harassment and what to do if they suspect abuse
- Deal with any complaint confidentially and investigate and resolve it quickly
- Produce official policies about appropriate handling practices relevant for your sport including:
 - relationships between coaches and young people
 - meetings between coaches and young people
 - travelling practices with young people.
- Appoint a Member Protection Information Officer and provide a contact for young people, coaches, parents and administrators
- Develop a formal complaint system to make sure all cases are investigated appropriately.

Drugs in sport

The issue of drugs is governed primarily by the *Australian Sports Anti-Doping Authority Act 2006*. The legislation governs the use of drugs in sport. This combined with the Australian Sports Commission Anti-Doping Policy provide sports with clear directions for competitors under 18 years of age.

Although not necessarily performance enhancing, the use of supplements by those participating in sport has grown considerably in recent years. These supplements have proven at times to contain prohibited substances.

Evidence suggests that if an athlete is following a well-balanced and nutritious diet and undertaking a well-planned training and competitive regime, the use of supplements is not necessary

Care must be taken before athletes start using any supplements and if appropriate it should be done under medical supervision.

Strategies for drugs in sport

- Circulate a policy to inform all participants, coaches and administrators about where they can find information on which drugs are prohibited and the consequences of detection. This would include the Australian Sports Anti-Doping Authority (ASADA) website www.asada.gov.au
- Make information and confidential assistance available to anybody needing help with an issue related to prohibited drugs
- Advise everyone on what to do if they suspect drug abuse
- Provide information, education and training on the use of supplements in a sports context
- Provide training and education for all involved with junior sport.

Health and safety

Every state and territory has legislation governing occupational or workplace health and safety (OHS). It applies to workers, volunteers, students or club members.

Generally speaking, legislation stipulates:

- Whether you need to appoint an OHS officer or representative
- Ways to comply with OHS obligations.

Where nothing is specified, you must choose an appropriate way to ensure the OHS of people under your responsibility.

Under common law, a duty of care is also imposed on organisations to see that all reasonable precautions are taken to prevent injury.

Complying with health and safety law

You must implement a risk management procedure so you are aware of, and can attend to, any problems related to the hazards and risk involved in the club's operations.

Please see booklet 13 of this series – Risky business for a closer look at risk management and its application.

What hazard areas are involved?

OHS legislation for clubs involves mainly:

- The grounds and facilities
- Protective equipment, its provision and maintenance
- The provision of first aid and emergency procedures
- UV protection procedures.

Contact your local OHS agency for information on these issues.

Privacy

The *Commonwealth Privacy Act 1988* governs the collection and use of personal information where a person's identity is:

- Apparent
- Is obvious from the information.

The legislation provides strict guidelines (known as the National Privacy Principles) about the collection, use and disclosure of such information.

There is a heavy fine for non-compliance.

Strategies for privacy

- See that you are meeting the requirements for privacy protection. Obtain a copy of Guide to Best Privacy Practices for Sporting Organisations, Australian Sports Commission: www.ausport.gov.au
- Do not use visual or audio material of young people in any public medium without the written consent of the parents/guardians.

Key message

To provide a fun, safe and rewarding sports experience for young people, sporting organisations need to:

- Provide safeguards to comply with legal requirements dealing with the physical and psychological welfare of young people
- Make sure sports providers meet their duty of care to participants
- See that young people are treated fairly in all aspects of sport provision.

Further information can be found, amongst others, at the following websites:

- www.asada.gov.au
- workingwithchildren.wa.gov.au
- www.clearinghouseforsport.gov.au/knowledge_base/organised_sport/sport_integrity/child_protection_in_sport
- www.commerce.wa.gov.au/consumer-protection/associations-and-clubs
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Other resources

This resource is part of a series which provides assistance to Western Australian sport and recreation clubs and organisations to become better managed, more sustainable and to provide good quality services to members and participants.

Other resources in the series include:

1. Starting a new club
2. Planning for your club – the future is in your hands
3. Taking the lead! A guide for club presidents
4. The club secretary – the key to efficiency
5. Show me the money – a guide for the club treasurer
6. Effective club meetings – a guide for the chairperson
7. Making meetings effective – a short guide
8. Delegation – help for the overworked committee member
9. Problem solving – a guide for clubs
10. Promoting your club
11. Seeking and servicing a sponsor
12. Establishing your club rules
13. Risky business – a club guide to risk management
14. Clubs' guide to volunteer management
15. Member protection for clubs
16. How to be an inclusive club
17. Passport into schools – linking sports with schools
18. Youth sport – junior sport policy
19. Long-term involvement – junior sport policy
20. Physical growth and maturation – junior sport policy
21. Sport pathways – junior sport policy
22. Forming links – junior sport policy
23. People making it happen – junior sport policy
24. Quality coaching – junior sport policy
25. Making sport safe – junior sport policy
26. The law and sport – junior sport policy
27. Top 20 tips for officials
28. Top 20 tips for successful coaching

You will find the full series of the booklets on Sport and Recreation (WA)'s website:

www.dsr.wa.gov.au/clubs