

9. THE LAW AND SPORT

ENSURING A SAFE AND SECURE
ENVIRONMENT FOR ALL
JUNIOR SPORT PARTICIPANTS

Introduction

This guideline focuses on the legislation¹ 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 (eg tax law, corporations law, stamp duty).

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.

This protects both you and your participants. It is also in line with having a *best practice* organisation.

Vicarious Liability*

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

Senior managers 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 3806 sets out the essential elements of an effective compliance program.

Discrimination

Direct discrimination occurs where young 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 junior more than another because of a personal characteristic.

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

Exemptions/Competitive Sport

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

- exclusion of young people because of gender but only after the age of twelve
- 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.

¹ References to legislation include references to any regulations made pursuant to the legislation

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Exemptions/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

Sexual harassment refers to “the unwelcome conduct of a sexual nature that offends, humiliates or intimidates a person.” It can be verbal or physical.

This offence involving children is likely to involve the more serious criminal offences of indecent dealing and sexual assault.

Definition of a person involved in a sporting activity

A person involved in a sporting activity is

- 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 related duties
- officially involved in a function relating to a sport or sporting competition.

How to Comply – Discrimination and Sexual Harassment

It is best to develop written policy on discrimination and sexual harassment using the ASC Harassment-free Sport resource .

9.1 Strategies for Discrimination and Sexual Harassment (D&SH)

- Obtain and consult the publication *Harassment-free Sport* (see Resources).
- Provide and promote a policy containing
 - that discrimination and sexual harassment (D&SH) will not be tolerated under any circumstances
 - that action will be taken against any person who breaches that policy
 - a definition and examples of D&SH
 - a statement that D&SH is against the law
 - a statement of the circumstances in which D&SH can occur
 - the consequences for the person if the policy is breached
 - the responsibilities of persons in the organisation in relation to preventing D&SH
 - information on where individuals can get help, advice or make a complaint about D&SH.
- Conduct training for people involved in the organisation on D&SH.
- Appoint an harassment/member protection* contact officer.
- Distribute brochures and posters on D&SH.
- Keep records of training delivered (including date and contents).
- Keep records of any complaints lodged.
- Inform juniors and their parents of
 - their legal rights
 - the name of the contact officer for reporting problems
 - mediation and independent counselling that is available for conflicts arising between coach, young person and/or parent.

Criminal Acts /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.

Child abuse includes

- sexual abuse/ misconduct – any sexual act or threat imposed on a child
- physical abuse – non-accidental injury and/or harm to a child
- emotional abuse – behaviours that can psychologically harm a child (eg severe verbal abuse).

How to Comply – Child Protection

To prevent exposure of young people to criminal acts, in delivering sport you must

- screen all paid and volunteer staff working with young people
- 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
- train sport providers on the signs of abuse or sexual harassment, and what to do if they suspect abuse.

The publication *Child Protection in Sport* (see Resources) gives advice on this issue (including indicators of child abuse), and details who to contact in different states/territories when a young person is identified as being at risk.

Serious implications result for both the young person and the organisation if problems are not dealt with promptly.

9.2 Strategies for Child Protection

- Consult *Child Protection in Sport* before preparing your policy on this issue.
- Inform everyone in the organisation including young people of appropriate standards of behaviour, and what is unacceptable.
- Screen applicants for positions working with young people.
- Advise everyone what to do if they suspect abuse.
- Advise everyone about the avenues for them (young people in particular) to discuss any concerns they have about somebody's behaviour.
- 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 Harassment/Child Protection Contact Officer and provide a contact for young people, coaches, parents and administrators.
- Develop a formal complaint system to make sure all cases are investigated extensively.
- Consider risks and legal implications of young people fundraising for sport (eg selling raffle tickets door-to-door).

Drugs in Sport

The issue of drugs is governed primarily by the *Australian Sports Drug Agency Act 1990*.

The legislation governs the use of drugs in sport and there are particular provisions dealing with the testing of competitors under 18 years of age.

9.3 Strategies for Drugs in Sport

- Circulate a policy to inform all participants, coaches etc about which drugs are prohibited and the consequences of detection.
- Make information and confidential assistance available to anybody needing help with an issue related to prohibited drugs.
- Advise everyone what to do if they suspect drug abuse.
- Provide training and education for all involved with junior sport.

9.4 Strategies for OHS Risk Management

The steps in the risk management process include the following

1. Identify hazards.
2. Assess risks that could result because of the hazards.
3. Decide on control measures to prevent or minimise the level of the risks.
4. Implement the control measures.
5. Monitor and review the effectiveness of the control measures.

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, each Act stipulates

- whether you need to appoint an OHS Officer or Representative
- ways to comply with its OHS obligations.

Where no particular way 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. It is also a matter of best practice.

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.

Consideration should also be given to the safety of young people assisting with tasks in the sport environment (eg helping to set up and/or pack up, fund-raising).

Privacy

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

- apparent or
- 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.

9.5 Strategies for Privacy

- Obtain a copy of the *Guide to Best Privacy Practices for Sporting Organisations* (see Resources).
- See that you are meeting the requirements for privacy protection.
- 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.

Key Points - The Law and Sport

- Offering sport to young people leads to a serious obligation by organisations to take all steps to assure their safety.
- Legislation exists in a number of areas to ensure the welfare of young people in sport.
- The principal of an organisation can be liable for the acts of people within the organisation (paid or unpaid)
- Direct or indirect discrimination are unlawful where anybody is dealt with unfairly on the basis of their age, disability, gender, ethnicity etc.
- Sexual harassment by any member of a club makes that member, and sometimes the senior manager, liable for the offence/s.
- Reasonable steps must be taken to prevent discrimination or sexual harassment. This includes a written policy and training and informing everybody (staff, volunteers and young people) of their obligations and rights.
- Under Child Protection legislation teachers/coaches must notify specified government departments if they suspect child abuse.
- To prevent exposure of children to criminal acts, all people working with junior sport participants should be screened.
- Legislation governs the use of drugs in sport and provides for testing competitors under 18 years.
- Organisations should have a policy on drugs in sport informing of banned drugs, and the consequences of detection.
- OHS legislation requires organisations to ensure the health and safety of everybody in a workplace (this includes all sporting environments).
- Risk management procedures are needed to prevent exposure to health and safety risks.
- With attention to all legal areas, young people should be able to feel safe and enjoy their participation in sport.

Further Reading

Briefing Paper

- 9 *Legislation Related to Safe and Appropriate Junior Sport Delivery*

Case Studies

- 1 **Tasmanian Canoe Club Managing Risk** illustrates risk management of water events to prevent injury
- 2 **The SafetyNet Program** describes the education of sport providers in risk management procedures and injury prevention

Resources

Child Protection in Sport Australian Sports Commission
www.ausport.gov.au/active/hfs/child.prot.htm

Club/Association Management Program Australian Sports Commission
www.ausport.gov.au/active/comp/index.htm

Guide to Best Privacy Practices for Sporting Organisations Australian Sports Commission
www.ausport.gov.au/asc/corpdocs/privacy.htm

Harassment-free Sport Australian Sports Commission
www.ausport.gov.au/active/hfs/children.htm

Play by the Rules www.playbytherules.net.au

Websites

Australia Sport Drug Agency www.asda.org.au

Australian Standards www.standards.com.au

1 Tasmanian Canoe Club Managing Risk

The Tasmanian Canoe Club provides canoe slalom events for junior paddlers and novices.

Risk management is an important component of the planning and delivery of the activities. To prevent bad experiences for the junior participants the club implements a number of strategies.

For the paddlers

- wearing buoyancy vest and helmet
- requirement to provide proof of swimming ability
- safety briefing immediately before the event
- practice sessions in a pool to ensure paddlers know how to exit a capsized canoe
- training sessions to learn to eskimo roll a canoe after capsizing

For the canoes

- approved buoyancy
- approved end loops (for rescue)

For the river course

- inspection and maintenance of man-made features
- low water levels by requesting appropriate output from Hydro Electric Commission
- easy courses set up
- rescue personnel and equipment along the course (on and off water).

2. The SafetyNet Program

The SafetyNet Program was developed by Netball Victoria to overcome a lack of risk management and injury prevention practices at club level.

The program aims to

- increase clubs' ability to provide a safe environment for participation
- facilitate awareness of risk management and injury prevention
- provide opportunities for individuals to reduce their personal level of risk.

An ongoing partnership with the University of Ballarat's Sport Safety Team and funding from VicHealth sustains the project.

Workshops on risk management and injury prevention are provided throughout regional Victoria. The workshops assist club administrators and officials with

- recording and understanding injuries on the netball court and related facilities
- identifying hazards in the netball environment and working towards solutions or appropriate management
- ideas for problem solving and event planning in the specific roles of coach, umpire, player and administrator.

Risk management policies and strategies are developed by club administrators and the program is linked to an incentive scheme aimed at decreasing the risk of injury for participants.

The SafetyNet Program has allowed Netball Victoria to educate volunteers, coaches, umpires, players and administrators about best practice in risk management.

Their confidence in developing and implementing new risk management and injury prevention initiatives at the local level has significantly increased.