



DISABILITY DISCRIMINATION ACT

The Disability Discrimination Act exists to ensure equal opportunity in sport and recreation

Disability Discrimination Act 1992

People with disability and their families may experience discrimination and exclusion on a daily basis. This is why the *Disability Discrimination Act 1992* (DDA) was created with the essential purpose of promoting equal opportunity, nothing more and nothing less. The DDA was designed around common sense so that the legislation should not be a burden for organisations that are really looking for continuous improvement.

The DDA makes harassment in relation to disability unlawful. Furthermore, Section 36 of the DDA prohibits harassment of parents and carers of people with disability, particularly when they act as advocates on behalf of people with disability. It is the responsibility of each person to ensure that they are up to date and comply with current legislation. It is irrelevant whether a club, association or organisation means to discriminate – ignorance is not an excuse.

What the Disability Discrimination Act means

The DDA legislation is all about common sense. As the issue of participation is based on skills and abilities, if the skill level of a person with disability is below the skill level of others in the same activity, it is not discriminatory to exclude them from that activity. Similarly, it is not discriminatory to disallow a person in a wheelchair from playing A-grade volleyball if they are not able to match the skills of their peers. One of the most common misconceptions regarding the DDA is that all people with disability must be included in all activities all of the time. This is not what the legislation was designed for and would not assist anyone.

In terms of discrimination, the DDA recognises direct and indirect forms:

- Direct discrimination occurs when a person is treated less favourably because of their disability. For example, Damien's teacher arranges a school sports camp, but tells Damien he will not be allowed to go because he has epilepsy and needs medication at night.
- Indirect discrimination occurs when physical barriers, policy, procedure, practices or a selection/admission criterion prevents a person with disability from having the same opportunities as others. For example, Lesley and Shirley are members of a local tennis club. Lesley's club wants to play competitively and applies to join the local tennis league. The tennis association has a rule that each club member must play 'in the normal way'. Shirley uses a wheelchair to get around and is a proficient wheelchair player. Lesley is told that her club cannot join the league because Shirley cannot play 'in the normal way'.

Vicarious liability

The DDA operates vicariously. This means an association, club or organisation can be held responsible for acts of discrimination by its coaches, members, employees, officials and administrators, unless it can demonstrate that it has taken reasonable precautions to prevent discriminatory action. An example of reasonable precautions is that an organisation has an anti-harassment policy and training in place for all concerned. Note that employees do not have to be paid by an organisation to be considered in an employment relationship with that organisation. Individuals, such as volunteers, only need to be viewed as being in a relationship with a club or association to be considered under vicarious liability.

Exceptions and unjustifiable hardships

The DDA does not apply in every possible circumstance and clubs and associations can be exempt in certain circumstances. Unjustifiable financial hardship is an issue addressed in the Act that allows for exemption (for example, it may be unjustifiable to expect a club with few members and little money to spend \$20 000 on renovations to cater for one person who wants to play a sport socially). To be considered financially unjustifiable, organisations must be able to prove that the requested adjustments cause sufficient hardship to the organisation and/or other members.

Harassment

In the DDA, discrimination is linked to harassment and includes behaviour that:

- offends (for example, interfering with a disability aid, putting things in front of a person with a vision impairment, etc.)
- humiliates (for example, asking a student with a vision impairment to describe a painting)
- intimidates (for example, being insulting to a person about their disability)
- creates a hostile environment (for example, mimicking a person with disability, telling insensitive jokes about disability).

Access and attitudes

DDA also covers the use of goods, services and facilities. Some organisations use the fact that they may have only a few steps and inaccessible toilets as an excuse to not cater for people with disability. This is no excuse and, more than ever before, organisations and facilities can get assistance (including financial support) from either their state department of sport and recreation and/or local council to improve access for people with disability.

One of the most common misconceptions is that access for people with disability is all about ramps and accessible toilets. People working in the area know that this is not the case. An organisation or facility can have the most accessible building, but may employ staff with a terrible attitude towards people with disability – thus creating greater barriers than steps.

Generally, people with disability are creative and are used to inaccessibility and can, if they are made to feel welcome, often overcome the problem of physical access that is less than ideal.