

1. Overview

The Australian Concise Oxford Dictionary defines harassment as:

“Harassment consists of offensive, abusive, belittling or threatening behaviour directed at a person or people because of a particular characteristic of that person or people (including the person or person’s level of empowerment relative to the harasser). The behaviour must be unwelcome and the sort of behaviour a reasonable person would recognise as unwelcome.”

Unfortunately in practice it is not always possible to neatly categorise particular forms of behaviour as harassment. This becomes increasingly difficult when dealing with sport and recreation. Complex issues such as appropriate physical contact and ‘verbal motivation’ are fraught with subtleties that require further investigation. A brief description of some of the forms of harassment that organisations may have to deal with and some examples of what may amount to harassment are identified below.

2. Policy Introduction

2.1 Ultimate Victoria is committed to providing a sport and work environment free of harassment, where individuals are treated with respect and dignity. UV will not tolerate harassing behaviour under any circumstances and will take disciplinary action against anyone who breaches policy.

3. Scope

3.1 This policy applies to all employees, directors, officers, volunteers, coaches, athletes, officials, professional personnel and members of UV.

3.2 This policy applies to behaviour occurring both within and outside the course of UV’s business, activities and events, when the behaviour involves individuals associated with UV and negatively affects relationships within the organisation’s sport and work environment.

4. Definition

4.1 The definition of harassment immediately following has been adopted by UV for the purpose of this policy. It includes and goes beyond what is prohibited by law and does not distinguish between the various types of harassment. Harassment consists of offensive, abusive, belittling or threatening behaviour directed at a person or people because of a particular characteristic of that person or people (including the person or people’s level of

empowerment relative to the harasser). The behaviour must be unwelcome and the sort of behaviour that a reasonable person would recognise as unwelcome.

Behaviour constituting harassment can take many different forms and may be explicit or implicit, physical, verbal or non-verbal. Examples include, but are not limited to:

- Abusive behaviour aimed at intimidating someone in a less powerful position
- Jokes or comments directed at a person's body, looks, age, race, religion, sexual orientation or disability
- Unwelcome remarks including teasing, name calling or insults
- Innuendo, suggestive remarks or taunting
- Homophobic comments and / or behaviours
- Uninvited touching, kissing, embracing, massaging
- Staring, leering, ogling
- Smutty jokes and comments
- Persistent or intrusive questions about people's private lives
- Repeated invitations to go out, especially after prior refusal
- Sexual propositions
- The use of promises or threats to coerce someone into sexual activity
- The creation of a hostile or sexually permeated environment by constant inappropriate references to sexual matters, the display of sexually explicit material (posters, cartoons, graffiti) or by the use of offensive email, faxes, letters or notes
- Sexual insults, taunts, name-calling

4.2 Jokes and behaviour which are genuinely enjoyed and consented to by everyone present are not harassment. Sexual interaction or flirtation that is based on mutual attraction or friendship, and which is consensual or invited, is not sexual harassment.

5. UV's Responsibilities

5.1 UV is responsible for taking all reasonable steps to prevent harassment and ensuring its position is widely known through all levels of the organisation's activities.

5.2 UV will ensure that appropriate procedures are identified to handle harassment complaints.

5.3 All employees, members, professionals and other persons associated with UV are responsible for complying with this policy.

6. Confidentiality

6.1 UV management and officers responsible for implementing this policy will keep confidential the names and details related to harassment complaints, unless disclosure is necessary as part of the disciplinary or corrective process.

7. Sexual Harassment

7.1 Section 28A of the Federal Sex Discrimination Act defines sexual harassment as where “The person makes an unwelcome sexual advance or an unwelcome request for sexual favours, to the person harasses; or engages in other unwelcome conduct of a sexual nature in relation to the person harassed.”

7.2 Specific examples of sexual harassment include, but are not limited to:

- Uninvited touching, kissing, embracing, massaging
- Staring, leering, ogling
- Smutty jokes, crude comments or the display of offensive material
- Persistent or intrusive comments about people’s private lives
- Repeated requests to go out, particularly after prior refusal
- Sexual propositions
- Sexual insults, taunts and name-calling

7.3 Section 42 of the Sex Discrimination Act makes it unlawful to discriminate on the basis of gender in the areas of coaching, umpiring, administration, prescribed sporting activities and for sporting activities for children less than 12 years of age. However it is lawful to exclude persons of one gender from participating in a competitive sporting activity in which the strength, stamina or physique of competitors is relevant.

8. Racial Harassment

8.1 Harassment on the basis of race includes harassment based on colour, descent, nationality, ethnicity and religion. Examples include:

- Jokes in which race is a significant characteristic of the ‘butt’ of the joke
- Hostile comments about food eaten, dress and religious or cultural practices
- Inferences that all members of a racial or cultural group have negative characteristics, such as laziness, drunkenness, greed or sexual promiscuity
- Parodying accents

9. Harassment on Grounds of Disability

9.1 Harassment on grounds of disability includes harassment based on physical, mental or psychological disability or an associate or aide of a person with a disability. Examples include:

- Mocking a person with a disability
- Creating a hostile environment
- Jokes where a particular disability is a significant characteristic of the 'butt' of the joke

10. General Abusive Behaviour

10.1 Harassment can sometimes consist simply of an abuse of power which the harasser holds over the harassed. Examples include:

- Bullying and humiliation of athletes by coaches
- Abuse and insults directed by players or parents of opposing teams
- Abuse of event staff or volunteers by players
- On-field physical intimidation
- Practical jokes which cause embarrassment or endanger others' safety

11. Harassment and the Law

11.1 Put simply, harassment is unlawful. It is covered by State and Commonwealth laws, including:

11.1.1 Commonwealth Sex Discrimination Act 1984 – which prohibits sexual harassment, unfair dismissal and discrimination based on gender.

11.1.2 Vic Equal Opportunity Act 2010 – which prohibits harassment, unfair dismissal and discrimination based on gender, race, age etc.

11.1.3 Commonwealth Racial Discrimination Act 1975 – which prohibits racial vilification and discrimination based on race, colour, descent or natural or ethnic origin.

11.2 Harassment in sport and recreation may elicit responses not only from laws dealing explicitly with harassment, but also laws covering:

- Both civil and criminal assault and battery
- Breaches of occupational health and safety (an employer is expected to maintain a workplace free of hazards while employees are expected to take reasonable care at work)

- Negligence liability for officials and operators of sporting venues (the tort of negligence may be used against those supervising sports events in the event of physical harassment causing injury)

11.3 It should also be noted that verbal harassment can lead to a suit for defamation. It is imperative that employers / organisations understand that they are legally responsible for the actions and behaviours of their employee / members. They are required by State and Commonwealth legislation to take every reasonable step to prevent harassment of any nature stemming from or occurring within their organisation.

12. Complaints Procedures – Internal

12.1 The internal complaints procedure has an informal (12.1.1) and a formal (12.1.2) process. They are described below:

12.1.1 The person being harassed makes an initial approach to their choice of one of the following people, who then provides information about whether the behaviour constitutes harassment and what options exist for resolution. The people who could be approached are:

- A supervisor, coach or manager
- A colleague
- A member of the UV Board

The person approached must clarify whether the complainant wants them to act as a mediator or simply wishes to talk the matter through with them. If the complainant does want them to help resolve the complaint then they will do this at an informal level. In their management role they must do so in an impartial manner with respect to both parties. There is no written complaint at this stage

12.1.2 If the matter is not resolved with the support and advice of the person initially approached the complainant can make a formal complaint in writing about the alleged harassment to the UV Board. Upon receipt of a formal complaint the Board will appoint a Complaints Officer to be responsible for resolving the complaint.

The Complaints Officer should attempt to resolve the complaint between the parties concerned by mediation, unless this has already been attempted without success or is clearly not appropriate in the circumstances (eg: The complainant is too distressed to face the alleged harasser).

12.1.3 If mediation fails, or is not feasible, the Complaints Officer must then ensure that a fair and impartial investigation is made of the allegations, and that appropriate action is taken to resolve the complaint and, where necessary, to deal with the harasser.

The investigation is then conducted by a fairly constituted panel or a suitably skilled and impartial individual from within or outside UV (this is likely to be the Complaints Officer).

12.1.4 Natural justice is to be observed for the alleged harasser. The typical steps for an investigation consistent with the principles of natural justice are:

- The complainant is interviewed and the complainant is documented in writing
- The allegations are conveyed to the alleged harasser in full
- The alleged harasser is given the opportunity to respond
- If there is a dispute over the facts statements from witnesses and other relevant evidence is gathered
- A finding is made as to whether the complaint has substance
- A report documenting the investigation process, the evidence, the finding and the recommended outcome/s is submitted to the decision maker (normally the senior official with responsibility for the anti-harassment policy)

Notes:

- Both parties are entitled to support through this process from their chosen support person / adviser
- If the report is endorsed by the decision maker the organisation then carries out the recommendations of the report. These may include such actions as an apology, counselling, a fine, dismissal or withdrawal of coaching / official accreditation
- Both the complainant and the respondent have the right to appeal against the findings of the investigator / panel or against the resulting recommended action if they have any concerns about procedure, bias or fairness. Appeals are handled by an appeal panel made up of members other than those who conducted the original investigation
- The appeal body can uphold the decision of the investigator / panel, reverse the decision of the investigator / panel, and / or modify any of the investigator / panel's recommendations for disciplinary action or remedial measures.
- If the internal investigation, appeal and disciplinary procedures do not achieve a satisfactory outcome for the complainant, or if the complainant believes it would be impossible to get an impartial investigation within the organisation / sport, he/she may choose to approach their State association to assist with a resolution. These bodies are responsible for dealing with disputes within their organisation / sport.

13. Complaints Procedure – External

13.1 A complainant may be dissatisfied with the outcome of harassment procedures followed by UV, or may not wish to follow UV procedures because of a lack of confidence in them. In this case the complainant can utilise complaint procedures external to UV.

Harassment of various kinds is unlawful under State and Federal anti-discrimination laws in Australia, and complaints under these laws are dealt with by State and Federal anti-discrimination bodies.

A person experiencing harassment can seek initial advice from one of these external bodies without being obliged to make a complaint. If that body advises that the conduct being experienced appears to be a type of harassment that comes within its jurisdiction the harassed person then makes the decision as to whether or not to lodge a formal complaint to that body. Once a complaint is received an investigation will be undertaken. If there appears to be a case that unlawful harassment has occurred there will usually be an attempt to conciliate the complaint confidentially first. If this fails, or is inappropriate, the matter may proceed to a formal public hearing, where a finding will be made as to whether harassment occurred. Various remedies may then be prescribed by the tribunal.

These can include financial compensation for such things as distress, lost earnings or medical and counselling expenses incurred by the complainant.

It should be noted that an anti-discrimination body can decline to investigate a complaint, or dismiss a complaint, at any point in the investigation, conciliation or public hearing stages.

14. Disciplinary Action

14.1 UV recognises that natural justice is the minimum standard of fairness to be applied in the investigation and adjudication of a dispute.

14.2 Disciplinary action will be taken by UV against anyone who is found to be in breach of this policy. Disciplinary action will also be taken against anyone who victimises or retaliates against a person who has complained of harassment.

14.3 Any disciplinary action will depend on the severity of the case and may involve an apology, counselling, suspension or cancellation of membership, or other form of action.

15. Right to Appeal

15.1 Both parties to a complaint have the right to appeal the decision and recommendation of a panel if a matter of procedure, bias or fairness is called into question. An appeals panel, made up of members other than those who formed the original review panel, will handle formal appeals.