

GOLF NSW



Meeting of the Council

Kogarah Golf Club

19 Marsh Street, Arncliffe

Wednesday, 21st March 2012

10:00 am

5. Special Workshop Session

5.(a) Special Workshop on Anti-Discrimination in Golf Clubs

Facilitator

- Greg Mills

Presenters

- Brett Boon & Vivienne Young
ThomsonsLawyers





Anti-Discrimination Workshop

March 2012

Key Legislation

Anti-Discrimination Act 1997 (NSW)

Racial Discrimination Act 1975 (Cth)

Sex Discrimination Act 1984 (Cth)

Disability Discrimination Act 1992 (Cth)

Age Discrimination Act 2004 (Cth)

We have been requested to provide a summary on unlawful sex discrimination.

Summary of Grounds for Unlawful Discrimination

race, colour, nationality, descent, ethnic or ethno-religious background	disability (actual/presumed, past, present or future) physical/mental, partial/temporary
homosexuality	transgender identity
HIV/AIDS status	age
compulsory retirement	a person's responsibility as a carer
sex	breast feeding
pregnancy	marital status

What is unlawful sex discrimination (NSW)?

If, on the ground of the person's sex or the sex of a relative/associate of the person:

Direct Discrimination (NSW):

The Club treats the person less favourably than the Club treats/would treat a person of the opposite sex (or who does not have such a relative/associate of that sex), in circumstances which are the same/not materially different.

What is unlawful sex discrimination (NSW)?

Indirect Discrimination (NSW):

The Club requires the person to comply with a requirement or condition with which:

- a substantially higher proportion of persons of the opposite sex (or who do not have a relative/associate of that sex) comply or are able to comply; **and**
- which is not reasonable having regard to the circumstances and with which the aggrieved person does not or is not able to comply.

What is unlawful sex discrimination (Cth)?

If on the grounds of the person's sex, or a characteristic that generally pertains to, or is imputed to, persons of that sex:

Direct Discrimination (Cth):

The Club treats the aggrieved person less favourably than it treats or would treat a person of the opposite sex, in circumstances that are the same/not materially different.

What is unlawful sex discrimination (Cth)?

Indirect discrimination (Cth)

The Club imposes, or proposes to impose, a condition, requirement or practice that has, or is likely to have, the effect of disadvantaging persons of that sex.

Except, if the condition, requirement or practice is reasonable in the circumstances (taking into account the nature & extent of the disadvantage, the feasibility of overcoming/mitigating the disadvantage, and, whether the disadvantage is proportionate to the intended result).

When is sex discrimination unlawful?

Examples:	
Provision of goods/services/facilities	Employment
Accommodation	Education
Contract Workers	Registered Clubs

Special rules for registered clubs:

Section 34A *Anti-Discrimination Act 1977 (NSW)*:

- Refusing/failing to admit to membership
- Discriminatory terms of admission to membership
- Denying or limiting access to a benefit provided by the Club, or, subjecting to another detriment
- Depriving of membership or varying the terms of membership

See also section 25 of the *Sex Discrimination Act 1984 (Cth)* which is on similar terms.

Exceptions (NSW):

In relation to the use/enjoyment of a benefit offered by the Club, discrimination may be acceptable only if:

- It is not practicable for the benefit to be used/enjoyed simultaneously or to the same extent by both men & women

and

- The same/equivalent benefit is provided separately; or
- Men and women are entitled to a fair and reasonable proportion of use

Sport (NSW):

Section 38 *Anti-Discrimination Act*.

Nothing in the Part of the *Anti-Discrimination Act* dealing with sex discrimination renders unlawful the exclusion of persons of the one sex from participation in any sporting activity (not being the coaching of persons engaged in any sporting activity, the administration of any sporting activity or any prescribed sporting activity).

Sport (Cth):

Section 42 *Sex Discrimination Act*.

It is not unlawful to exclude persons of one sex from participation in any competitive sporting activity in which the strength, stamina or physique of competitors is relevant.

This doesn't apply to coaching, umpiring, administration etc, or, to sporting activities for children under the age of 12.

Penalties - NSW

In NSW if complaints are not resolved by the ADB, they may be referred to the ADT. The ADT may make orders (including):

- Dismissing the complaint in whole or in part
- Awarding compensation up to \$100,000
- Making orders for discrimination to cease
- Ordering publication of an apology or a retraction

Penalties - Cth

If the complaint cannot be resolved through the Australian Human Rights Commission, proceedings may be commenced in the Federal Magistrate's Court or Federal Court. Orders may include:

- Declarations and orders to cease discriminatory conduct
- Ordering a reasonable act of redress
- Damages (the monetary limits in NSW do not apply here)

Liability for employees etc (NSW)

- Under the *Anti-Discrimination Act* the Club will usually be liable for discriminatory acts carried out by its employees and agents, especially if the Club authorises the conduct (either expressly or by implication).
- The Club can be jointly and severally liable with the person who actually carried out the discriminatory act.
- The Club can avoid liability by taking all reasonable steps to prevent the employee or agent breaching that Act.

Liability for employees etc (Cth)

Under the *Sex Discrimination Act*:

- A person who causes, instructs, induces, aids or permits another person to engage in unlawful discrimination under this Act, will be taken also to have done the act.
- If an employee or agent engages in unlawful discrimination under the Act, the Club will be held liable unless it took all reasonable steps to prevent it

The scenario:

- Is discrimination occurring in this situation?
- What are the risks in the situation?
- What advice would you give and what action would you recommend?
- Would the situation be different if the issue had been a request by two 7 day male members to play in the Women's Thursday Competition?
- What would you do if, after being called by the Club, you were also called for assistance or consultation by the two women involved?

Contact:

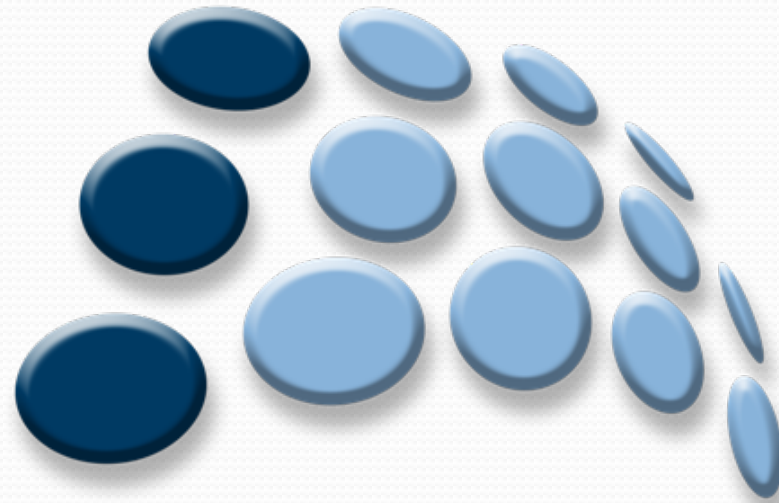
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On Monday 16 April 2012 our Sydney office is relocating to our new premises at Level 25, 1 O'Connell Street, Sydney. Our telephone and fax numbers will remain the same.



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