

Equal opportunity in golf

> A quick guide to preventing sex discrimination in sport and club membership

The Victorian Equal Opportunity and Human Rights Commission (the Commission), in consultation with Golf Victoria and Golf Australia, has developed this quick guide to assist clubs to understand their obligations under the *Equal Opportunity Act 2010*, (the Act) and to prevent discrimination. Golf clubs are encouraged to refer to the publication *Equal opportunity in golf: What you need to know about sex discrimination in sport and club membership*. This quick guide provides a brief overview.

What is discrimination?

The Act makes discrimination in sport against the law. It also operates in a number of other areas that can be relevant to sport, such as club membership, employment and the provision of goods and services.

In these areas, it is against the law to treat, or propose to treat, someone unfavourably because of a personal characteristic including their sex, disability, age, industrial activity or sexual orientation. To do so constitutes 'direct discrimination' under the Act. It is also against the law to propose or impose a condition, requirement or practice which appears to be neutral, but in fact disadvantages people with a personal characteristic, and is unreasonable in all the circumstances. This is known as 'indirect discrimination'.

It is against the law to discriminate against a person who is applying for club membership in:

- refusing or failing to accept a person's membership application
- setting general terms of membership, or setting terms for admitting a particular person



- processing a membership application
- in the arrangements made for deciding who should be offered membership.

A 'club' is defined under the Act as an association of more than 30 persons associated together for social, literary, cultural, political, sporting, athletic or other lawful purposes that:

- has an ongoing licence to supply liquor under the Liquor Control Reform Act 1998; and
- operates its facilities wholly or partly from its own funds.

For existing club members, a club must not discriminate by:

- depriving a person of membership or changing the terms of their membership
- refusing or failing to accept an application for a different type of membership
- denying or limiting access to club benefits (such as the right to play golf or access to playing competitions at premium times)
- subjecting a club member to any other detrimental or harmful treatment, including humiliation or denigration of the club member.¹

The Act also places a positive duty on golf clubs to take reasonable and proportionate measures to eliminate discrimination as far as possible. This includes taking proactive steps to prevent discrimination from happening.

Sex discrimination issues that may arise at golf clubs

Common issues arising for golf clubs in relation to sex discrimination can relate to limited playing times for women, unfair club booking systems, separate women's committees and single-sex competitions. These issues may or may not be discriminatory, depending on whether they meet the definitions of discrimination (outlined above), the conduct amounts to an exception or special measure under the Act (see below), or the club has been given a temporary exemption from the Act by the Victorian Civil and Administrative Tribunal (VCAT).

If a golf club's rules do not allow women access to the golf course at the same time as men, or prevent women having a separate but equivalent playing time to men, they are likely to be considered discriminatory and may be against the law.

Example: Starting times

Scheduling a women's Saturday competition tee-off for 8.45am–9.30am, and a men's Saturday competition tee-off for 6.30am–12.30pm is unfair and unfavourable to women players and may constitute sex discrimination.

Example: Management committee

Aisha wishes to nominate for the committee of her local golf club. Despite being a club member for a significant period, she is surprised to hear the all-male committee is unsure about her nomination. The club rules require two committee members to nominate a person for the committee, and Aisha finds she is unable to convince anyone to do so. She hears later from another member that a letter has been distributed among the current committee members urging them not to nominate her, and saying that 'women don't know anything about running a club'. This makes Aisha so humiliated that she decides to give up joining the committee.

Refusing to nominate a person to a committee or subjecting a club member to humiliating or denigrating conduct, where that refusal is because of their sex, can amount to unlawful discrimination.

A club should periodically review its policies and procedures to explore how it can be inclusive and support participation and leadership across a range of diverse groups. This should include codes of conduct or behaviour and rules about who can join committees.

Special measures

Under the Act, people are allowed to take positive steps (called 'special measures') to help disadvantaged groups. These proactive measures can help level the playing field for people. Any activity which meets the test for being a 'special measure' is not considered to be discrimination. A special measure must meet a number of criteria. It must be:

- undertaken in good faith to promote/achieve substantive equality for members of the group
- reasonably likely to achieve this purpose
- a proportionate way of achieving the purpose
- justified because group members have a particular need for advancement or assistance.²

Although Victoria has the highest percentage of female golf club members among states, only 23 per cent of golfers are female. Many women have been discouraged from participating by practices that have excluded them in the past. Measures aiming to address women's underrepresentation may amount to a special measure, depending on whether it meets the characteristics discussed above.

1 *Equal Opportunity Act 2010* (Vic) s 65.

2 *Equal Opportunity Act 2010* (Vic) s 12(3).

Example: Open days

Women and girls' golf days are promoted by a large golf club several times a year. These events aim to encourage female participation in golf through having demonstrations by female golfers and offering discounts on merchandise and coaching. The golf course is opened to all visitors, male and female, but the emphasis is on signing up female club members and advertising for that.

Clubs also need to take care that women's committees are meeting their aim of remedying inequalities for women at their club rather than taking action which could amount to discrimination, for example, imposing competition entry rules favouring better players or committee members.



anti-discrimination law and may have to apply for a separate exemption under federal law.

Exceptions

There are times when the law allows for club benefits to be provided separately to men and women, so long as an equal opportunity to access the benefits is provided. There are also three exceptions relevant to a claim of discrimination in sport on the basis of sex, which allow sporting clubs to exclude people of one sex from competitive sporting activities (contests, competitions, championships or an exhibition or a demonstration of the sport). Single sex competitions can be held where:

- the strength, stamina and physique of the competitors is relevant to the outcome³
- competing in a single-sex competition is necessary for competitors to progress to national or international elite level competition
- running a single sex competition will facilitate the participation of men or women in the sport.

Exemptions

If no exceptions apply a golf club can consider applying to VCAT for a temporary (up to five years) exemption from the Act. VCAT will consider the reasons for undertaking the activity and the impact this has on other people's right to equality. A club must set out why the exemption is needed, provide an affidavit with evidence to support its application, and pay an application fee. Golf clubs should also consider obligations under federal

3 It is very likely that this exception will not be relevant in single-sex nett golf competitions because the handicap system is designed to balance any such differences. This exception does not apply to non-competitive sporting activity.

Example: Exemptions

The Wardley Golf Club wants to increase club membership and attract new female seven-day members in the 16 to 30 year old age group. However, regular feedback is that younger women tend to be intimidated to play at the same time as older players with a lot of experience. In response, it is recommended to the committee that the club introduce a trial women-only casual timeslot of 6pm-8pm on Sundays during summer, after the club has usually closed. Concerned that this might be discrimination, the club applies to VCAT for an exemption.

VCAT grants a five-year exemption, noting that existing male members are not disadvantaged. The new timeslot amounts to a reasonable limitation on the right to equality of male players given its purpose to encourage women to play in a supportive environment, enjoying the social and health benefits of playing golf. The trial timeslot may help address a historical membership imbalance.

Member Protection Policies

Victorian golf clubs are required to publish a Member Protection Policy. Individual golf clubs may base their Member Protection Policy on Golf Australia's existing policy which promotes the duty to provide equality of access to sport and clubs.

Membership Protection Policies should include a complaints handling process so complaints of discrimination can be dealt with internally, if the complainant wishes. Clubs should also consider appointing a Member Protection Information Officer to educate club members about the policy and a club's duties under the Act.



Making a complaint

If a person believes they may have been discriminated against, they may make a complaint to the Commission in relation to Victoria's Equal Opportunity Act, or the Australian Human Rights Commission in relation to federal anti-discrimination laws.

You can find more information on our website humanrightscommission.vic.gov.au or you can call 1300 292 153.

Legal disclaimer

This information is intended as a guide only. It is not a substitute for legal advice.

This guideline may be updated from time to time. For the latest version, please visit humanrightscommission.vic.gov.au/resources.

More information



**Victorian Equal Opportunity
& Human Rights Commission**

Enquiry Line	1300 292 153 or (03) 9032 3583
Fax	1300 891 858
Hearing impaired (TTY)	1300 289 621
Interpreters	1300 152 494
Email	information@veohrc.vic.gov.au
Website	humanrightscommission.vic.gov.au
Follow us on Twitter	@VEOHRC
Find us on Facebook at	facebook.com/VEOHRC



Level 1, 47A Wangara Road
Cheltenham, VIC 3192

Telephone	(03) 8545 6200
Fax	(03) 9543 9307
Website	golfvic.org.au