



Victorian Equal Opportunity
& Human Rights Commission

Equal opportunity in golf

> What you need to know about preventing sex discrimination in sport and club membership





Victorian Equal Opportunity & Human Rights Commission

Published by the Victorian Equal Opportunity and Human Rights Commission, Level 3, 204 Lygon Street, Carlton, Victoria 3053. March 2018.

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Disclaimer

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

The information in this publication is not intended to cover every provision or defence available under the Equal Opportunity Act. Please check the Act to see whether any exceptions may be relevant to your circumstances. It is also important to consider legal obligations under other laws that may apply. Even where exceptions and exemptions apply under the Equal Opportunity Act, you or your club may still have obligations under federal anti-discrimination laws.

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

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Foreword from the Commissioner

Sporting clubs can be a great place for the community to meet and socialise, and it is well known that involvement in sport can have a positive impact on a person's health and fitness. The underlying values of most sporting clubs include fairness and the goal of encouraging people to participate in sport on a social or competitive level.

Sporting clubs also have legal obligations under the *Equal Opportunity Act 2010* to act fairly and provide equal opportunity for members to participate, as well as to make sure that there are fair outcomes for members. Clubs play a key role in setting the standards of behaviour expected by their members – but equally must act as role models and ensure that sports and club memberships are provided without discrimination.

We are pleased to be able to work with Golf Victoria and Golf Australia to develop this publication about what obligations golf clubs have

under the Act, particularly with regard to sex discrimination. We hope it will provide guidance to clubs and act as a conversation starter within management committees about how they will prevent discrimination from occurring in their clubs.



Victorian Equal Opportunity
and Human Rights Commissioner

Foreword from Golf Victoria

Victorian golf clubs are well known for their friendly and welcoming environments and are often seen as the backbone of communities, especially in regional Victoria. However, there have been examples over history of individuals or groups that have been excluded or prevented from participating equally.

Consequently, Golf Victoria has sought assistance from the Victorian Equal Opportunity and Human Rights Commission on ways to ensure that clubs are aware of their obligations under the Equal Opportunity Act.

Offering different terms and conditions of membership based on sex; limiting access to facilities; reducing playing/competition opportunities; and assuming individuals or groups won't be interested in or good at certain tasks because of their sex are all examples of where discrimination may occur.



Clubs that allow discrimination also risk losing members and volunteers, reduced income, and also face the prospect of legal liability and associated financial costs. Treating someone unfavourably on the basis of a number of attributes – for example sex, race, disability, age, religion, and sexual orientation – is against the law.

This document covers a variety of scenarios that may occur within golf clubs and how these scenarios may be affected by Victoria's Equal Opportunity Act. It also discusses the future roles of women's committees and the introduction of Member Protection Information Officers to golf clubs.

Golf clubs are encouraged to use this document as a guide to understand obligations under the Act. Golf Victoria thanks the Commission for its assistance in producing this guide and we look forward to continuing our work with our clubs to ensure that golf is, and always will be, the game for life.

Statements of support

Golf Australia

Golf Australia is committed to ensuring all golfers are protected from discrimination and that everyone involved in our sport is aware of their legal responsibilities. Golf Australia thanks the Victorian Equal Opportunity and Human Rights Commission and Golf Victoria for their work in producing this important publication. The feedback we have already received from clubs is that it will add significantly to the golf industry's understanding of its legislated obligations as regards equal opportunity.



Golf Australia encourages all clubs to carefully review this document and consider if their current practices are compliant. Please be aware that the document does not attempt to provide definitive

legal guidance on every scenario that will be important across all Victorian golf clubs. There are two main reasons why this is impossible:

- Firstly, while some guidance is based on historical legal cases, other aspects relate to scenarios as yet untested in a court of law. For those in the latter category, there can naturally be no legal certainty at this time. So guidance on these scenarios instead takes the form of legal opinion of how a case might be expected to be resolved.
- Secondly, it is common for golf clubs to operate processes that vary to those at other clubs. As a result, you may find that the exact scenarios relevant to your club are not directly covered.

Where a club has any doubt as to whether a certain practice is lawful, or any other queries on the document, Golf Australia encourages you to contact Golf Victoria in the first instance.

The R&A

The Equal opportunity in golf guide is an extremely useful reference guide and provides clear and practical guidance on situations which can arise in the day to day management of golf clubs. I would like to commend Golf Australia and Golf Victoria for taking the initiative to provide such useful guidance on discrimination and equal opportunities legislation to their member clubs.



Golf, as with all sports, has a duty to ensure that those joining clubs are treated equally and do not suffer discrimination on grounds of gender,

race, religion or nationality. It is important for clubs to understand their responsibilities under equal opportunity legislation and ensure their policies and procedures are fully compliant.

The R&A works with 153 affiliated organisations around the world, including Golf Australia, and we encourage the national associations to highlight examples of best practice which can be adopted in other parts of the world. I am sure there will be other national associations who will recognise the issues raised in this guide and consider providing similar guidance in their own countries.

Martin Slumbers
Chief Executive, The R&A



What does the law say?

The *Equal Opportunity Act 2010* (the Act) is Victoria's anti-discrimination law. It aims to prevent and prohibit discrimination, sexual harassment and victimisation, and also to address systemic discrimination.

Under the Act it is against the law to treat, or propose to treat, someone unfavourably because of a personal characteristic. This is called 'direct discrimination' and it often occurs because of negative stereotypes or assumptions about a person based on their characteristic.

It is also against the law to propose or impose conditions, requirements or practices which appear to be neutral, but in fact disadvantage people with a personal characteristic, and which are unreasonable in all the circumstances. This is known as 'indirect discrimination'.

There are 18 personal characteristics protected by the Act, including sex, age, disability, sexual orientation, gender identity, industrial activity (including being a member of a professional association or union), race, religious belief or activity, political belief or activity, and status as a parent or carer. Personal association with a person that has one of these attributes is also protected.

The purpose of the Act is to eliminate discrimination to the greatest possible extent. This is set out in its objectives and is reinforced through a 'positive duty', which requires everyone with obligations under the Act to take reasonable and proportionate measures to eliminate discrimination as far as possible. This means people have to take steps to prevent discrimination from happening. This is the broader context within which all of the specific duties and obligations under the Act operate.

Relevant to golf, 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. 'Services' is defined to

include provision of recreation, refreshment or entertainment services.¹

This guide deals specifically with discrimination in golf and in club membership, with a focus on sex discrimination. It does not deal with the provision of goods and services or sexual harassment in clubs.

For more information about protected attributes, sexual harassment or discrimination in employment or the provision of goods and services, you can visit the Victorian Equal Opportunity and Human Rights Commission website at humanrightscmission.vic.gov.au.

Discrimination in sport

The Act prohibits discrimination in sports such as golf. Specifically, it is unlawful to exclude a person from participation in a sporting activity because of the person's protected characteristic.

Participating in a sporting activity includes playing the sport, as well as coaching, refereeing, and participating in the administration of a sporting activity (such as through a management committee).

A person who discriminates against someone in sport can be personally liable for that conduct. Where that person is employed by a sports club, or is acting as its agent, then the club will also be legally responsible for the actions of its employee or agent unless it can prove it took 'reasonable precautions' to prevent the conduct. This is called vicarious liability.²

1 *Equal Opportunity Act 2010* (Vic), s 4.

2 *Ibid* s 109–110.



Discrimination in clubs

A 'club' is defined in the Act as:

an association of more than 30 persons associated together for social, literary, cultural, political, sporting, athletic or other lawful purposes that –

- (a) *has a licence (other than a temporary limited licence or a major event licence) to supply liquor under the Liquor Control Reform Act 1998; and*
- (b) *operates its facilities wholly or partly from its own funds.*³

This definition is likely to cover the majority of golf clubs in Victoria. Golf clubs which do not meet the definition, for example because they have fewer than 30 members or do not have a liquor license, are still likely to be covered by other parts of the Act such as sport and provision of services.

The Act prohibits discrimination in the process of considering and approving club membership applications, as well as in the treatment of members by a club. It covers conduct taken or decisions made by the club (that is, by people who work for the club and are implementing its policies and practices), or by a member of the governing body of the club such as the management committee.⁴

This means that a golf club will be liable for the discriminatory conduct of people acting on its behalf, and members of club governing bodies

can be personally liable as well. It is therefore important that clubs take steps to ensure that their employees, contractors and volunteers are aware of their obligations.

Specifically, it is against the law to discriminate against a person applying for club membership in:

- refusing or failing to accept a person's membership application
- setting the terms of membership generally, or setting terms for admitting a particular person as a member
- processing a membership application
- the arrangements made for deciding who should be offered membership.⁵

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

- depriving them 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
- subjecting a club member to any other detrimental treatment (which includes humiliation or denigration of the club member).⁶

Examples of benefits provided by golf clubs include the right to play golf generally, and access to playing competitions at premium playing times such as the weekend.⁷

⁵ Ibid s 64.

⁶ Ibid s 65.

⁷ *Corry v Keperra Country Golf Club* (1985) 64 ALR 556, 558; *Walker v Wakehurst Golf Club Ltd* [2011] NSWADT 213 [56].

³ Ibid s 4.

⁴ Ibid s 64–65.



Common issues for golf clubs

Sex discrimination

Common issues that may arise for golf clubs in relation to sex discrimination relate to limited playing times for women, unfair club booking systems and holding single-sex competitions. These issues may or may not be unlawful discrimination, depending on whether the conduct:

1. meets the definition of direct or indirect discrimination, and
2. has occurred substantially because of the person's protected personal characteristic, such as sex, and
3. occurs in relation to club membership, participation in sporting activity or provision of goods and services (as outlined above), or
4. amounts to an exception or special measure, or the club has an exemption granted from the Victorian Civil and Administrative Tribunal for the conduct.

We explore some of these issues and how the law might apply in the examples below.

Example: Starting times

Namila is a full member of her local golf club and plays regularly. Her membership is the equivalent of a seven-day membership. Currently the women's Saturday competition tee-off time is between 8.45am and 9.30am. However, the men's Saturday competition tee-off time is between 6.30am to 12.30pm. This means women get 45 minutes to tee-off, and men get six hours. Namila works full time, and so the only time she can play is on weekends.

Namila asks the club manager whether the schedule could be more inclusive or the women's tee-off time lengthened. She states that premium weekend playing time is significantly less for women than for men. The manager explains that the times have been set

for years in this way because there are more male members than female members, women have more time during the week than men to play, and because women take longer to play 18 holes than men.⁸

Example: Start time booking rules

Ilene is a casual golfer and has recently joined a new club as a full member. Her club has an online booking system that allows players to register for casual games in two-hour timeslots between 8am and 6pm on Saturdays. Sundays are reserved for competitions. It's possible to book a timeslot up to eight days in advance.

There are a number of rules that make it difficult for Ilene to get any casual weekend playing time. Firstly, on Saturdays women only have access to two timeslots – one in the morning and one in the afternoon. Secondly, if the women's timeslots have not been booked by 6pm on a Friday night, these times are available to male players. The club does not open empty male timeslots to the female players. As Ilene works until 7pm on a Friday, she is never able to get online to book before 6pm and has to rely on other members of the club to book a starting time for her. The club has told her that women should get less playing time because there are fewer women than men at the club.⁹

8 See for example *Walker v Wakehurst Golf Club Ltd* [2011] SNWADT 213.

9 See for example *Corry v Keperra Country Golf Club* [1985] 64 ALR 556.



How might the Equal Opportunity Act apply to these case studies?

Under the Act, if a golf club's rules don't allow women access to the golf course at the same time as men, or do not allow women to have an equivalent but separate playing time to men, it is likely to be considered discrimination in the area of club membership (and also possibly in the area of sport). This is because the right to play golf on the course is one of the key benefits of golf club membership,¹⁰ and denying or limiting access to a benefit provided by a club is unlawful under section 65 of the Act. It could also be excluding a person from participating in a sporting activity, which is unlawful under section 71 of the Act.

In both Namila and Ilene's examples, the club's rules limit their right to play golf and may amount to direct discrimination. The reason both Ilene and Namila have limited access to playing times is because they are women, and this is unfavourable treatment.¹¹

- In Namila's example, the rule is based on assumptions about women's work availability, as well as stereotypes about women's physical capacity to finish an 18-hole round of golf in a particular period of time.
- In Ilene's example, as a woman she is only allowed to book and play golf in two particular timeslots on Saturdays – despite paying a full membership fee – and does not have equivalent access to the premium playing times as men. While no comparison is required under the Act, it is useful to see the unfairness in this rule by contrasting her situation to male players: they have more timeslots available and are able to book into any empty women's timeslots after 6pm on Friday. In practice this means there is

likely to be little to no restriction on their right to play golf under these rules.

- Also in relation to Ilene's example, the practice of opening up the women's timeslots is problematic as the club is not opening up the male slots to female players, another example of not providing an equivalent opportunity for female players to access playing times. This practice may amount to indirect discrimination – as an apparently neutral condition which disadvantages female club members – if it cannot be justified as reasonable in all the circumstances.

There are some exceptions to unlawful discrimination described on the next page which might apply to these situations.

The Commission encourages all clubs to review their tee time and booking practices, club membership rules and competition formats to ensure that they are not treating one group of people unfavourably or imposing unreasonable conditions, requirements or rules that disadvantage people with an attribute that is protected under the Act.

¹⁰ Ibid 556, 558.

¹¹ *Walker v Wakehurst Golf Club Ltd* [2011] NSWADT 213 [54].

Example: Mid-week single-sex competitions

Samantha is a seven-day member of Sunny Creek Golf Club. Samantha works Wednesday through to Saturday and the club runs their women's only competition on Thursday and Sunday mornings. This means she is only able to attend one competition a week. In addition, the men's competitions are held all day on Tuesdays and Sunday afternoons, meaning that she cannot practise on Tuesdays as the club does not allow social play on a competition day. As a seven-day member, Samantha feels aggrieved that she is prevented from playing on Tuesdays and therefore cannot utilise the club for the full seven days that she pays for.

Samantha raises this issue with her club manager. To remedy the problem, they agree to change the format of the competitions so that mid-week single-sex competitions are only held in the mornings, with the afternoon free for both club competition for men and women, as well as social play subject to availability. This means that Samantha can book afternoon tee times on Tuesdays after the men's competition and even play a club competition if one has been scheduled.

We encourage club members to raise concerns with their clubs

Club members should be encouraged to utilise their Member Protection Policies (discussed on page 14) and raise their concerns. Clubs who are complying with their positive duty to eliminate discrimination as far as reasonably possible are likely to be open to hearing feedback and complaints, and improving their systems to make them fairer for everyone.

In Samantha's example, she has raised her concern about sex discrimination with the club, who have considered reasonable options available and come to an agreement with her about how to resolve the situation.

Example: Management committee

Aisha wishes to nominate for the committee of her local golf club. Despite being a member for a significant period, she is surprised to hear the all-male committee is unsure about her nomination. The club rules require two seven-day committee members to nominate a person for the committee, and Aisha finds that 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'. The letter makes Aisha so humiliated she decides to give up her attempts at joining the committee.

Discrimination within a club is not limited to access to facilities

The Act prohibits discrimination in relation to all benefits that arise from being a member, the ability to hold a club membership, and the way that members are treated in exercising their club membership. Humiliating a club member can fall under 'subjecting the member to any other detriment', prohibited by section 65(e) of the Act when done because of a person's protected characteristic like sex.

Refusing to nominate a person to a committee or subjecting a club member to humiliating or denigrating conduct, where that conduct is because of their sex, can amount to unlawful discrimination. A club needs to periodically look at its policies and procedures to explore how they 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 Equal Opportunity Act people are allowed to take positive steps to help disadvantaged groups. These steps are called ‘special measures’, and can help level the playing field for people. The Act recognises that some groups that have been disadvantaged by discrimination in the past may need special assistance to address that disadvantage, rather than simply being treated the same in a formal sense.

Section 12 of the Act describes in detail what a special measure is. All the elements set out in the Act have to be met for something to be a special measure. A special measure must be:

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

Any activity which meets the test for being a ‘special measure’ is not considered to be discrimination.

In 2016 the Victorian Civil and Administrative Tribunal (VCAT) found that a recruitment organisation was taking a special measure when it advertised and shortlisted women for management and board positions to meet its client’s diversity policies. This is because there is evidence that women are underrepresented in leadership and executive and board positions, and that preferential selection by the recruitment agency would give female candidates a better opportunity at obtaining those roles.

In this decision, VCAT stated that it is preferable for organisations to make their own assessment about their circumstances and give effect to the purposes of the Act without a legal process.¹²

Example: Underrepresentation of women on club committees

A golf club wishes to nominate additional women to apply to be on its club match committee. The committee is aware that few women are represented and seeks to make the club an inclusive place for all of its members. The committee decides to implement a target of 30 per cent new female committee members over the next two years, which involves prioritising female committee applicants over male applicants. The committee is confident that it can overcome the underrepresentation of women in the administration of the club through this measure, and decides not to make an application to VCAT to authorise the conduct.

¹² *Waite Group* [2016] VCAT 1258.

Many golf clubs may have committees for the categories of competition available at the club, or for different club functions. Clubs must ensure that the composition of these committees, and their rules and activities do not discriminate against members by treating people with particular attributes unfavourably, or by imposing unreasonable conditions, requirements or rules that disadvantage people with an attribute.

In addition, some committees – such as women's committees and the activities they organise – also have the potential to be special measures if they meet the criteria outlined above. For example if the purpose of a women's committee is to encourage more women to join the club, and the activities of the committee (such as membership drives or mentoring programs) are proportionate and reasonably likely to achieve this purpose, a committee will likely qualify as a special measure. As with any special measure, clubs need to take care that their women's committees are both meeting their aim of remedying inequality for women at their club, whilst not taking action which of itself amounts to discrimination.

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, regardless of sex, but the emphasis is on signing up female club members and advertising for that.

Although Victoria has the highest percentage of female golf club members among states, only 23 per cent of golfers are female and many women have been discouraged from participating by practices that have excluded them in the past. Measures which aim to address the underrepresentation of female golfers may be a special measure, depending on the type of action taken, whether it is trying to promote substantive equality for women, taken in good faith, is reasonably likely to achieve this purpose, and is a proportionate way of achieving its goals.



What are the exceptions?

While equal opportunity law, like sport, is about promoting opportunity and participation, there are times when the law allows participation in sport to be restricted or for club benefits to be provided separately to men and women.

The Equal Opportunity Act says that if an exception applies to your activity or conduct, then it is not considered unlawful. Exceptions work as a defence to any claim of discrimination to say that you are not in breach of the law.

If you are relying on an exception, you need to be comfortable that you have information to support your position. It is up to you to show that an exception applies if someone makes a complaint about discrimination.

It is important to remember that, just because the exceptions are there, this doesn't mean that your members and other participants expect you to use them. Many people enjoy mixed games and they can be good for game development, participation in the sport and general enjoyment.

Exceptions to discrimination in sport

There are three exceptions which are 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.¹³

A 'competitive sporting activity' includes ordinary competitions, championships, an exhibition or a demonstration of the sport. It involves any contest between sporting participants where the 'outcome normally involves the placing of participants in order of excellence or priority'.¹⁴

However, it doesn't include aspects of sport outside the competition – such as coaching, refereeing and administration, or non-competitive

or casual playing of the sport. In sport, the exceptions only apply to competitive sport involving people over 12 years of age.

1. Strength, stamina and physique

The Act allows sporting clubs to run single-sex competitions where the strength, stamina and physique of the competitors is relevant to the outcome of the competitive sporting activity. In other words, if both sexes competed against each other in a gross event, the competition may well be uneven because of the disparity of strength, stamina and physique of the players. However, 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.¹⁵

Note that strength, stamina and physique is the only relevant exception for sport discrimination under the federal *Sex Discrimination Act 1984*.¹⁶

2. Progression to elite level competition

A club may run single-sex competitions where it is necessary to enable competitors to progress to national or international elite level competition. However, even if this exception applies, you still need to apply for an exemption under federal discrimination law (see page 13).

3. Facilitating participation

The final exception in the Act for discrimination in sport allows a sporting club to run a single-sex competition if the competition will facilitate the participation of men or women in the sport.

¹³ *Equal Opportunity Act 2010* (Vic), s 72.

¹⁴ *Robertson v Australian Ice Hockey Federation* [1998] VADT 112, applied in *Judo Victoria Incorporated (Human Rights)* [2016] VCAT 535 [33].

¹⁵ A gross score is the actual number of strokes that a player physically takes to complete a stipulated round of golf. A nett score is the score that a player has for a stipulated round following the application of the player's handicap to the gross score.

¹⁶ *Sex Discrimination Act 1984* (Cth), s 42.

As long as a club can establish that it is reasonable to run a single-sex competition to help people of a particular sex to participate in the sport, the competition will be lawful under Victorian law. To demonstrate that the competition is reasonable you should consider:

- the nature and purpose of the competition (for example, is the single-sex competition being run to increase the number of female members at the club)
- the consequences of excluding people (for example, would excluding one sex stop them from having a chance to compete for the same prizes)
- whether there are other opportunities for people to participate in competitions (for example, if male-only competitions are run Saturdays will this prevent female golfers from participating if the only time they can attend the club is on Saturdays; could the club run mixed competitions on Saturdays so that both men and women can participate).

If you want to rely on this exception, you will also need evidence to show that the proposed discrimination will facilitate the participation of people of a particular sex in golf, for example evidence that the majority of your club's members are people of a particular sex. As above, you will also need an exemption from federal law.

Exceptions to discrimination in club membership

Where a club wishes to provide access to its benefits and facilities separately to male and female members (for example separate non-competition playing times) it must prove that it is not practicable for men and women to access the benefits at the same time. It must also prove that either it is providing men and women the same or equivalent access times to the golf course separately, or that male and female players are entitled to a reasonably equivalent opportunity to access the golf course. A similar exception applies to discrimination in clubs under the federal Sex Discrimination Act.¹⁷

This means a club must be able to prove that it is not practicable for men and women to play golf at the same time, and that the club is providing equal playing times to both men and women separately. For example, both men and women have a four-hour starting time window available to them, or each have three two-hour timeslots available to book in one day. In relying on this exception, a club would need to have evidence about:

- the purposes for establishing the club
- the membership of the club, including classes or types of memberships available
- the nature of the benefits provided
- the opportunities for the use and enjoyment of those benefits by men and women
- any other relevant circumstances.¹⁸

It is important to note that while this exception specifically relates to a claim of discrimination about limiting access to club benefits (section 65), if a claim is made about discrimination in sport, regarding excluding a person from participating in a non-competitive sporting activity (section 71) for exactly the same conduct, a club may also be able to utilise the club membership exception. This is because the Act provides that exceptions can apply to more than one area of public life, if the alleged unlawful conduct is the same in relation to each area.¹⁹

What if none of the exceptions apply?

If none of the exceptions apply to your golf club (or you are unsure about whether they do), you can consider applying to VCAT for a temporary exemption from the Act.²⁰

Before granting an exemption, VCAT will look at whether an exception clearly applies. Where an exception applies, you don't need an exemption. VCAT must also consider whether the conduct – which would otherwise be discrimination – is a reasonable limit to the right to equality of people affected.

Exemptions apply for a limited period of time (up to five years) and can be renewed. VCAT will consider your reasons for undertaking your activity and the impact this has on other people's right to equality.

You may find it useful to talk to the Victorian Equal Opportunity and Human Rights Commission about how to work with the community to build a better understanding of equal opportunity and its benefits. You can also talk to Golf Victoria for more guidance.

How do we apply for an exemption?

You will need to fill in an application form available on the VCAT website, and pay an application fee. You need to set out reasons for why the exemption is needed and provide an affidavit with evidence to support your application.

¹⁸ *Equal Opportunity Act 2010* (Vic), s 69(2).

¹⁹ *Ibid* s 13(1)(b).

²⁰ *Ibid* s 89–90.

If no further information is required, VCAT may grant the application based on the information provided. If there is insufficient information for it to make a decision, VCAT will give you the opportunity to provide further information in writing or sometimes at a hearing. You are not required to have a lawyer as part of this process and VCAT provides information and explanations throughout the process about what you need to do.

More information about applying for an exemption from the Act is available from VCAT at vcat.vic.gov.au/resources/factsheet-equal-opportunity-exemption-applications.

Example: Exemptions

The Wardley Golf Club is a regional club with 60 five-day members and 45 seven-day members. Only twelve of their members are women and most are aged over 55 years and are five-day members. Club President Ken Jones 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 who are new to the sport are intimidated to play at the same time as older men and women with a lot of experience.

Mr Jones has decided that the club should introduce a trial women-only casual timeslot after the club has usually closed, between 6pm and 8pm on Sundays in the summertime. The club's committee is concerned that this might be discrimination. They apply to the VCAT for an exemption to allow them to do this.

VCAT grants the exemption for a period of five years, as existing members are not disadvantaged, and because the new timeslot amounts to a reasonable limitation on the right to equality of the male players given the purpose is to encourage women to play in a supportive environment, enjoy the social and health benefits of playing golf. The after-hours women-only trial timeslot may assist in the long-term with rectifying the historical membership imbalance as women gain experience in playing and take up seven-day membership.²¹

Do federal anti-discrimination laws apply to us, too?

Yes. Golf clubs also need to consider obligations under federal anti-discrimination law. Even if your activity falls within one of the exceptions under the Victorian Equal Opportunity Act (or you have an exemption under the Act), you still have to comply with federal law.

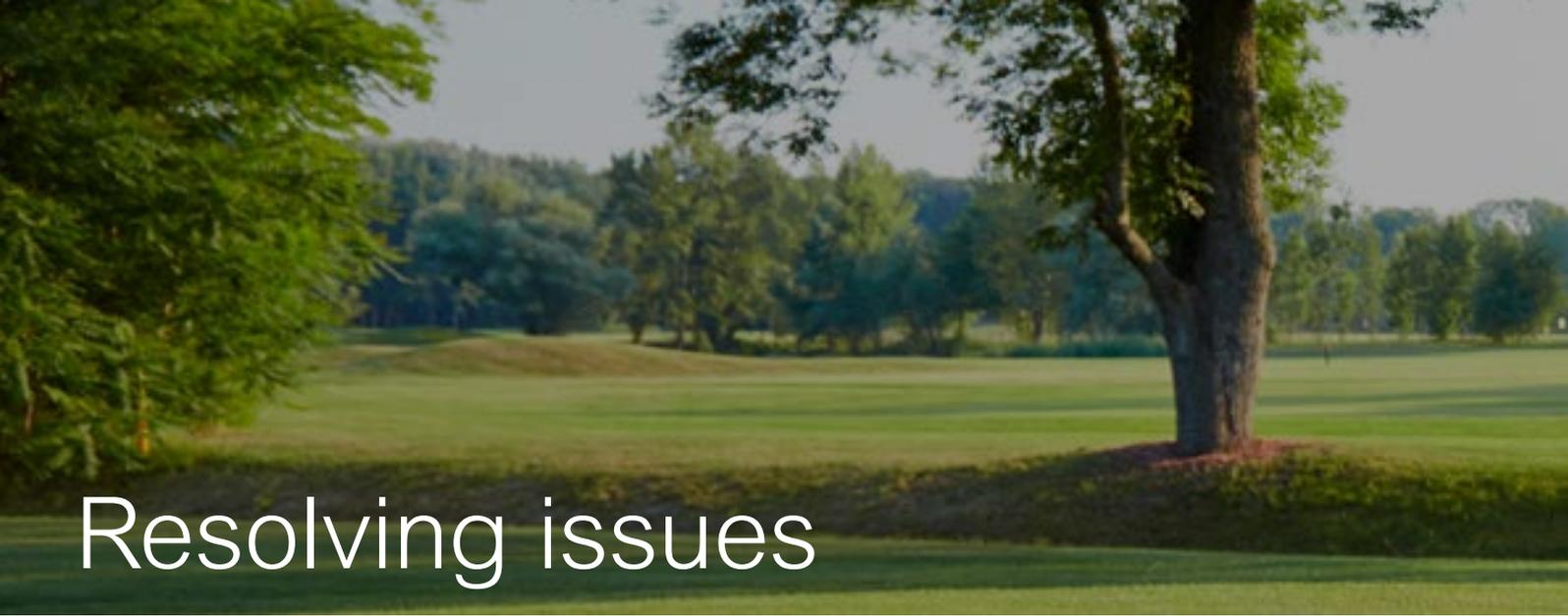
The federal Sex Discrimination Act makes it against the law to discriminate against someone on the basis of sex in club memberships and in the provision of services.

Under federal law, there is a similar exception relating to the enjoyment of club membership benefits. The exception exists where separate but equal benefits can be provided only where it is not practicable for the benefit to be used or enjoyed simultaneously or to the same extent, and either the same or equivalent benefit is provided separately, or where men and women are each entitled to a fair and reasonable proportion of the use and enjoyment of the club benefit.

The only federal exception that allows a club to run single-sex competitions is where the strength, stamina and physique of the participants is relevant.

This means that you may need to apply to the Australian Human Rights Commission for an exemption from the Sex Discrimination Act. Guidelines on applying for an exemption under federal law are available at: humanrights.gov.au/our-work/legal/exemptions.

²¹ See for example *City of Casey – Casey Aquatic & Recreation Centre (Anti-Discrimination)* [2012] VCAT 893 (27 June 2012).



Resolving issues

The complaint process

Victorian law

Under Victorian law, if someone thinks they have been discriminated against, they can make a complaint to the Commission or apply directly to VCAT for a public hearing and binding decision.

Complaints to the Commission are resolved through a free and informal dispute resolution process known as conciliation. Conciliation helps parties to develop options, consider alternatives and attempt to reach an agreement. Many complaints are resolved at conciliation and outcomes may include making an apology, financial compensation or an agreement to change or stop behaviour. The Commission does not have the power to make orders or award compensation but instead acts as an independent third party to assist the parties negotiate an outcome.

If a person's complaint is not resolved at the Commission, or they decide they want to go directly to VCAT, they can make an application to VCAT to have their complaint heard and a binding decision made by a VCAT member.

If VCAT decides that a golf club has unlawfully discriminated against a club member or club applicant, the club may be ordered to:

- stop committing any further breaches (for example, by ceasing any discriminatory practices)
- pay compensation to the complainant (this can be for financial losses as well as hurt and humiliation)
- do something to address the discrimination (for example, running a mixed competition or ensuring tee-off times are gender-neutral).

Federal law

Under federal law, a person can make a complaint to the Australian Human Rights Commission. If the matter is not resolved by the federal Commission's dispute resolution service, a federal court can consider the complaint.

Member Protection Policies and Play by the Rules

Victorian golf clubs must promote equality – based on obligations under the Equal Opportunity Act – as this is required by a club's Member Protection Policy, which makes funding contingent on compliance with relevant legislation.

The funding arrangements the Australian Sports Commission (ASC) has with National Sporting Organisations (NSOs) require those organisations to develop, adopt, implement and regularly update a Member Protection Policy so that they comply with the law and facilitate a safe and positive environment for all involved in sport and related activities. The Golf Victoria policy can be found on its website golfvic.org.au.

The ASC also requires that state, regional, district and other associations and clubs associated with the relevant sport should also have their own Member Protection Policy. Those organisations should base their policy on the national policy of the relevant NSO, modified as needed based on their particular circumstances and state or territory legislative requirements. This means that individual golf clubs should also have a Member Protection Policy based on Golf Victoria's policy.

A club's Member Protection Policy should promote its duty to provide equality of access to sport and clubs. Clubs should consider appointing a Member Protection Information Officer to educate club members about the policy and a club's duties

under the Act. Ideally, the appointee would be a person with strong knowledge about how the club operates and a commitment to ensure that its processes are equitable.

Member Protection Policies should also include a complaints handling process so that complaints of discrimination can be dealt with internally at the first instance, if the complainant so wishes. The policy should provide clear guidance on how to fairly deal with complaints according to natural justice, and with the confidentiality and seriousness that the complaint requires.

The Australian Sports Commission has created a template that can assist in developing a Member Protection Policy that outlines the responsible behaviour expected of club members to ensure a person's right to be treated with respect and dignity and not to be discriminated against is

observed at all times. The template also provides guidance about internal complaint handling processes. It is available at ausport.gov.au/supporting/nso/member_protection.

Finally, Play by the Rules is an initiative promoting and reinforcing the messages of safety, fairness and inclusion on and off the sporting field. It provides a diverse range of information, resources, tools and free online training to increase the capacity and capability of club participants – including administrators and officials – to comply with the law relating to discrimination, harassment, child safety and integrity in sport, including the Equal Opportunity Act. These tools can assist in preventing and dealing with discrimination, harassment and child safety issues at your club.

Please see playbytherules.net.au for further information and helpful resources.

More information

Victorian Equal Opportunity and 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](https://twitter.com/VEOHRC)
Find us on Facebook at facebook.com/VEOHRC

Golf Victoria

Level 1, 47A Wangara Road
Cheltenham, VIC 3192

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

Australian Human Rights Commission

Telephone: (02) 9284 9600
National Information Service: 1300 656 419
General enquiries and publications: 1300 369 711
TTY: 1800 620 241
Fax: (02) 9284 9611
Website humanrights.gov.au

Golf Australia

Level 2, 111 Coventry Street
South Melbourne, VIC 3205

Telephone (03) 9626 5050
Website golf.org.au



Victorian Equal Opportunity
& Human Rights Commission

Contact us

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