



Victorian Equal Opportunity
& Human Rights Commission



bowls victoria

Equal opportunity in lawn bowls

> What you need to know about
holding single-sex competitions



Sport plays an important role in making our communities happier and healthier. Sport should be a safe, inclusive and fair environment for everyone. That's why equal opportunity laws apply to sport – to ensure that we can all participate in the public life of our community free from discrimination. When you are thinking about running single-sex sporting competitions, you need to consider your obligations under state and federal anti-discrimination law.

What does the law say?

The purpose of the Victorian *Equal Opportunity Act 2010* is to eliminate discrimination to the greatest possible extent. This is set out in the objectives of the Act and is reinforced through the positive duty, which requires everyone with obligations under the Act to take reasonable and proportionate measures to eliminate discrimination as far as possible.

More specifically, the Equal Opportunity Act makes discrimination in sport, including lawn bowls, against the law. Excluding people from sporting teams, competitions and tournaments because of their sex by running single-sex competitions is discrimination. In some situations, this type of discrimination is allowed.

Anti-discrimination law often asks you to consider what is reasonable in particular circumstances, so there aren't always rules that can be applied across the board. Therefore, what is considered reasonable in one club, may not be reasonable in another because the facts, circumstances and context are not the same. The material below is designed to help you step through the things you need to consider when thinking about running single-sex competitions in your club.

Example: A lawn bowls club offers single-sex competitions for both men and women. Although the club is providing competitions for both sexes, this can still be discrimination because they are excluding people from particular competitions because of their sex. There may be a number of reasons why people would want to play in the other competition, such as convenience of time, playing with someone they know or it being a good fit in terms of the level of the competition. The club will need to consider whether one of the exceptions in the Equal Opportunity Act applies to allow it to run single-sex competitions.

What are the exceptions?

While equal opportunity law, like sport, is about promoting opportunity and participation, there are times when the law allows participation to be restricted to one sex to help ensure everyone has a fair go. The Equal Opportunity Act includes three exceptions which allow sporting clubs to run single-sex competitions in particular circumstances. These exceptions are explained below.

It is important to remember that even if there are exceptions which allow you to run single-sex competitions, many people enjoy mixed competitions because they can be good for game development, developing social networks and general enjoyment.

1. Strength, stamina and physique

The Equal Opportunity Act allows sporting clubs to run single-sex competitions where the strength, stamina and physique of the competitors is relevant to the outcome (for example, a male swimmer may have a competitive advantage if he was allowed to compete in an exclusively female swimming race).

The Victorian Civil and Administrative Tribunal (VCAT) has found the strength, stamina and physique of competitors is irrelevant to the outcome of lawn bowl competitions. As a result, this exception should not be relied on to run single-sex competitions in lawn bowls.

Although Victorian law contains a number of other exceptions, it is important to note that strength, stamina and physique is the only relevant exception for sport under the federal *Sex Discrimination Act 1984*.

2. Progression to elite level competition

You may be able to 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.

Example: A lawn bowls club in Victoria runs men's only qualifying competitions to select winners to compete in a national men's championship. The rules of the national championship state that this is the only way participants can progress to the championship. The club is not breaching Victorian law because participation in the men's only competition is necessary for a person to qualify for the national championship. However, the club would still need to seek an exemption from the federal Sex Discrimination Act.

3. Facilitating participation

The final exception in the Equal Opportunity Act allows you to run a single-sex competition if the competition will facilitate the participation of men or women in lawn bowls. As long as you 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.

If you are considering running a single-sex competition, you need to demonstrate that the competition is reasonable. This means that 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 prize money)
- whether there are other opportunities for people to participate in competitions (for example, if male-only competitions are run Saturdays will this prevent female bowlers 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 a people of a particular sex in lawn bowls (for example, evidence that the majority of your club's members are people of a particular sex).

Example: A lawn bowls club decides to run a women's only competition to encourage more women in lawn bowls. The club's membership numbers indicate that women are under-represented at the club and feedback from women in the community shows that they won't play mixed competitions because they feel uncomfortable and intimidated playing with men. Other opportunities remain for men to play bowls in a mixed competition. The club's conduct is not against the law in Victoria because running a women's only competition is a reasonable way to facilitate the participation of women in lawn bowls. The club will also need to consider its obligations under federal anti-discrimination law, which doesn't have this kind of exception.

Example: Several of the male bowlers at a lawn bowls club have asked the club to run men's only competitions on Saturdays. The club already runs a women's only competition on Saturday mornings. The men have indicated that although they enjoy competing in mixed-sex games, there are social benefits to participating in single-sex games. The club needs to consider whether there is a lawful reason to restrict the participation of women by running a men's only competition. The club could do this by gathering evidence to show that running a men's only competition would facilitate the participation of men in lawn bowls. The evidence may include feedback from male players and other men in the community about their experiences in lawn bowls, including whether the lack of men's only competitions prevents them from participating. The club should also consider whether there are sufficient opportunities for women to participate in competitions, including considering the number of competitions, playing times and any other consequences, such as the prizes offered in different competitions. If the club is satisfied that running a men's only competition would facilitate the participation of men in lawn bowls, the club may also need to seek an exemption under federal anti-discrimination law, which doesn't have this kind of exception.

What about special events and carnivals?

If you want to run special single-sex events, such as country carnivals or commemorative events, you will need to consider whether one of the exceptions apply or whether you need to apply for a special exemption from VCAT (see discussion below). One arguable exception for running special events is to facilitate the participation of people of a particular sex in lawn bowls. However, you will need to consider the particular circumstances of the event to determine whether this exception might apply.

Things that you will need to consider are:

- the nature and purpose of the event
- the consequences of excluding people from the event
- whether there are other opportunities for people to participate in an equivalent or similar lawn bowls event.

Example of a commemorative event: A lawn bowls club wants to run a special women's only event to commemorate a famous female bowler. The club needs to consider whether the event facilitates the participation of women in lawn bowls (for example, by encouraging women to participate more broadly in the sport by taking part in competitions or other activities). The club uses this event to celebrate the achievements of women in the club and promote lawn bowls to women in the community, running a membership drive in conjunction with the event. It continues to run competitions that men can participate in and there is an opportunity for men to compete for similar prizes. The club is satisfied that the participation exception applies to allow them to run the special women's only event.

Example of a country carnival: A lawn bowls club wants to run a women's country carnival and a men's carnival on alternate years. The club should consider whether the carnivals facilitate the participation of both women and men in lawn bowls (for example, by encouraging both women and men to engage in the sport more broadly and by giving each sex the opportunity to participate in the carnivals on alternate years). The club will also need to consider if there are any adverse consequences of excluding the other sex. The club isn't sure that it can show the measure is a reasonable restriction to facilitate the participation of one sex in the sport, so it applies to VCAT for exemptions for both of these events.

Example about prize money: A lawn bowls club receives a gift of money from a member's family to be used as prize money for a specific men's only competition. It is not against the law for the club to use the money as prize money for the single-sex competition – but they still need to consider anti-discrimination laws before they run any single-sex competition. The club would need to ensure that the competition itself is not discriminatory (ie if the club runs a single-sex competition, it needs to fit within one of the exceptions under the Equal Opportunity Act or have been granted an exemption).

If you are not sure whether or not a particular activity falls within one of the exceptions, you can apply to VCAT for an exemption or change your approach to otherwise comply with the law. You can raise with VCAT that you think an exception may be relevant, but you are seeking a decision from them to ensure you are doing the right thing.

What if none of the exceptions apply?

If none of the exceptions apply to your bowls competition, you can consider applying to VCAT for a temporary exemption from the Equal Opportunity Act. Alternatively, you can work with the community to provide equal opportunity by running mixed lawn bowl competitions.

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 Bowls Victoria and other clubs to find out how they successfully run mixed lawn bowls competitions and activities.

How do we apply for an exemption?

You can apply to VCAT for a temporary exemption from the Equal Opportunity Act. Exemptions apply for a limited period of time (up to five years) and can be renewed. VCAT will consider your reasons for running a single-sex competition or event and the impact this has on other people's right to equality.

Before granting an exemption, VCAT will look at whether an exception clearly applies (such as the exception to facilitate participation). Where an exception applies, you don't need an exemption.

If you decide to apply for an exemption, you need to complete a form setting out reasons for why the exemption is needed. 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 Victorian Equal Opportunity Act is available at:

humanrightscommission.vic.gov.au/exception.

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

Yes. As a lawn bowls club (which provides services including running bowls competitions) you also need to consider your obligations under federal anti-discrimination law. The federal Sex Discrimination Act makes it against the law to discriminate against someone on the basis of sex (for example, by running single-sex competitions).

Under federal law, the only exception that allows a club to run single-sex competitions is where the strength, stamina and physique of the participants is relevant. When courts and tribunals have considered this issue in the past, they have decided that this exception does not apply to lawn bowls.

Even if your activity falls within one of the exceptions under the Equal Opportunity Act (or you have an exemption under the Equal Opportunity Act), you still have to comply with federal law. 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:

hreoc.gov.au/legal/exemptions

Example: A lawn bowls club decides to run a women's only competition to increase the number of female bowlers at the club. The club gathers evidence which indicates that the competition will facilitate the participation of women in lawn bowls. Although the competition falls within an exception under the Equal Opportunity Act, the club will still need to apply to the Australian Human Rights Commission for an exemption from the federal Sex Discrimination Act. If the club does not apply for an exemption, a person could make a complaint to the Australian Human Rights Commission.

What happens if someone makes a complaint?

Victorian law

Under Victorian law, if someone thinks that they have been discriminated against, they can make a complaint to the Commission or apply directly to VCAT.

Complaints to the Commission are resolved through a free and informal process known as conciliation. Conciliation helps parties to develop options, consider alternatives and try 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.

Example: John lodges a complaint with the Commission claiming that he was discriminated against because he was unable to play in a women's only bowls competition that runs on Saturday mornings. The parties attend a conciliation at the Commission to attempt to resolve the dispute. During the conciliation, John explains that the only time he can attend the club is on Saturday mornings. The club decides to review its schedule to ensure that both men and women have the opportunity to play bowls on Saturday mornings.

If VCAT decides that you have unlawfully discriminated by running a single-sex competition, you may be ordered to:

- stop committing any further breaches (for example, by ceasing to run the single-sex competition)
- pay compensation to the complainant
- do something to address the discrimination (for example, running a mixed competition).

Although VCAT has the power to order you to pay compensation, it is unlikely that you will be ordered to do so if you can demonstrate that you have taken positive steps to meet your obligations under the Equal Opportunity Act. VCAT will often make orders to fix the discriminatory conduct. For example, in *South v Royal Victorian Bowls Association* [2001] VCAT 207, VCAT ordered that the rule defining affiliated membership be amended to delete the requirement that only males could be affiliated members.

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.

More information

Australian Human Rights Commission

GPO Box 5218

Sydney, NSW

Enquiries: 1300 369 711

TTY: 1800 620 24

Website: heorc.gov.au

Key questions to consider

1. Is running a single-sex competition necessary to feed into an elite level national or international competition?

If yes, your single-sex competition is allowed under Victorian law and you don't need to apply to VCAT for an exemption, but you may still have to apply for an exemption from federal law.

2. Would a single-sex competition facilitate the participation of one sex in lawn bowls and is running a single-sex competition a reasonable step in the circumstances?

If yes, your single-sex competition is allowed under Victorian law and you don't need to apply to VCAT for an exemption, but you may still have to apply for an exemption from federal law.

3. What do I need to show when applying for an exemption from anti-discrimination laws?

In your exemption application you need to explain what you are proposing to do and why. An exemption from discrimination law limits other people's right to equality, so there has to be a good reason for granting it.

When can we run a single-sex competition?

1. Would a single-sex competition be reasonable to help to **facilitate participation** in the sport by one sex?

2. Are you running a competition that is a feeder to an **elite national or international level** that requires single-sex competitions?

3. Are you running a **special event** that will facilitate the participation in the sport of one sex?

4. Do you have an **exemption** from the Victorian Equal Opportunity Act to run a single-sex competition?

Yes



You may be able to run a **single-sex** competition

Consider



You may also need an exemption from the Commonwealth Sex Discrimination Act



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Need more information?

Contact the 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	enquiries@veohrc.vic.gov.au
Website	humanrightscommission.vic.gov.au

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We welcome your feedback!

Was this resource useful? Easy to use? Would you like to see something else included? Please email us at communications@veohrc.vic.gov.au.

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

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