



Victorian Equal Opportunity
& Human Rights Commission

Equal Opportunity in Sport

> 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 – the aim is to ensure that we can all participate in the public life of our community free from discrimination.

What does the law say?

The purpose of Victoria's *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 (section 15). 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.

More specifically, the Equal Opportunity 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).

Discrimination can take many forms. You can discriminate against a person when you treat them unfavourably on the basis of a personal characteristic protected by the law. For example, the Equal Opportunity Act generally makes it against the law to discriminate on the basis of sex. This can include excluding people from sporting teams and competitions because of their sex by running single-sex competitions (section 71).

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 does this in a number of ways – through special measures, exceptions and temporary exemptions.

Example: A golf club offers single-sex competitions for men and single-sex competitions for women. While they are 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 for them. The club will need to consider whether one of the exceptions applies to allow it to run single-sex competitions.

Special measures

Under the Equal Opportunity Act, people are allowed to take positive steps to help disadvantaged groups. These are called 'special measures' (section 12). These proactive measures 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.

The Equal Opportunity Act describes in more detail what a special measure is, and 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
- be reasonably likely to achieve this purpose
- be a proportionate way of achieving the purpose, and
- be justified because the members of the group have a particular need for advancement or assistance.

Example: A football club runs a special program to encourage the participation of girls in the sport. They are seeking to promote substantive equality for women and girls who are under-represented in the sport and traditionally haven't had opportunities to play. The program is aimed at girls aged 8–12 years because their research has shown that targeting this age group will help to give women and girls opportunities in the sport long-term. The program will run for 10 years. This could be a special measure – which is not discrimination under the Equal Opportunity Act.

Exceptions

There are also exceptions in the Equal Opportunity Act that allow single-sex competitions in a range of circumstances (section 72). The exceptions in the Act reflect Parliament's views about when discrimination may be allowed to balance other rights and interests in the community.

The exceptions only apply to competitive sport involving people over 12 years of age. A 'competitive sport' can include ordinary competitions, championships, an exhibition or a demonstration sport, however, it doesn't include aspects of sport outside the competition – such as coaching, refereeing and administration.

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 competitions and they can be good for game development, participation in the sport and general enjoyment.

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.

The Equal Opportunity Act sets out three exceptions that relate to sport. These are explained on the following pages.

1. Discrimination on the basis of sex and gender identity is allowed where the strength, stamina and physique of players is relevant

Example: A club that runs ocean swimming races held one event for women and one event for men. A man sought to compete in the women-only competition and the club said that he couldn't. This was lawful because the club could establish that the strength and stamina of the competitors was relevant to the competition and it would not be fair for him to compete in the women's competition

This exception will apply to many competitions. When looking at whether this exception applies, you need to think about:

- the relative differences between the sexes in strength, stamina and physique
- the nature of the competitive sporting activity (not just the sport, but also the age group of the competitors)
- whether the differences between the sexes are significant for the sport – such as where differences in size and strength give players of one sex a competitive advantage over players of the other sex.

2. Discrimination on the basis of sex is allowed if participating in a single-sex competition is necessary to progress to a national or international elite level competition

Example: The national darts championship has single-sex competitions for men and women. The rules of that competition allow the winners of the male and female competitions in each state to progress to the national competition. Victoria runs local single-sex competitions to select the male and female winners in Victoria to compete in these national championships. This is the only way a person can be selected for the national competition. The Victorian club's conduct is lawful under Victorian law because participation in the single-sex competition is necessary for participants to move on to the national competition. *Note: The club has to consider any obligations it has under federal discrimination law.*

3. Discrimination on the basis of sex is allowed if running a single-sex competition will facilitate the participation of people of a particular sex in the sport, and this is a reasonable approach

Example: A lawn bowls club decides to run a women-only competition to encourage more women in the sport. They have evidence from their membership numbers that women are under-represented in their 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 because running a single-sex competition for women is a reasonable measure to facilitate the participation of women in the sport. *Note: This doesn't automatically mean that the club could also run men's-only competitions. They would need to consider separately whether there is a lawful reason to restrict the participation of women from competition by running a men's-only competition, for example, by considering whether the participation of men would be facilitated by also running a men's only competition.*

When looking at whether running a single-sex competition is reasonable, you should consider things like:

- the nature and purpose of the activity, for example, is the single-sex competition being run for a beneficial purpose such as community participation
- the consequences of excluding people, for example, the consequences of exclusion are different for a one-off event, compared to an ongoing activity
- whether there are other opportunities for people to participate in the sporting activity.

Note: You might consider this in the context of a particular competition, club or the sport across the state. However, you will need the evidence to show that the discrimination you propose will facilitate the participation of people of a particular sex in the sport and that the measure is reasonable. This may be harder to do if you are trying to apply a blanket rule across a whole sport. It may also be harder to meet your positive duty to take reasonable steps to eliminate discrimination, as far as possible.

What can we do if none of the exceptions apply?

If none of the exceptions apply to you, you have a number of options:

1. You can work with your community to provide equal opportunity by running mixed sporting activities. You may find it useful to talk to the Commission about how to work with the community to build a better understanding of equal opportunity and its benefits. You can also talk to other clubs, your state sporting association or local sport and recreation officers, for example, to find out how other people have successfully run mixed sporting activities.
2. You may be able to modify what you do in other ways, for example, by providing a range of competitions and other sporting activities. This can help you meet the criteria for one of the exceptions set out above.

Example: A netball club thinks that running a single-sex competition for young women aged 12 to 13 would facilitate the participation of women in the sport. They have assessed that the strength, stamina and physique of players at this age (12 and 13) is not relevant to their competition, but they have also assessed that playing with young men often changes the engagement of young women in the sport and restricts them from playing an active game. They have information from coaches and experts from their state sporting association to support this. But the club is concerned that running a single-sex competition still might not be a reasonable step to take because it would mean that young men in their town would have no opportunity to play the game. They decide to join with neighbouring towns to run a mixed competition on Thursday nights to ensure everyone has an opportunity to play netball.

3. You can also apply to the Victorian Civil and Administrative Tribunal (VCAT) for an exemption from the Equal Opportunity Act (under section 89). Exemptions allow discrimination for a specific purpose for a limited period of time (up to five years). Exemptions can be renewed. When considering exemption applications, VCAT will look at your reasons for running a single-sex competition and the impact this has on other people's right to equality. It is useful to set out your reasons and supporting information in your application to VCAT.

Example: A bridge club wanted to run a special women's-only event once a year to commemorate the work of a leading woman in their club. They applied for an exemption from the Victorian Civil and Administrative Tribunal to run this event annually.

Do federal anti-discrimination laws apply to us too?

Yes, you also need to consider your obligations under federal anti-discrimination law. The federal *Sex Discrimination Act 1984* (Cth) generally makes it against the law across Australia to discriminate against someone on the basis of sex. This obligation can be relevant, for example, if you are employing people, running a club or offering a service.

Under the Sex Discrimination Act, a **club** means an association of 30 people or more that provides and maintains its facilities, in whole or in part, from the funds of the association, and that sells or supplies liquor for consumption on its premises. This will apply to some sporting clubs.

A **service** has its ordinary meaning and can include things like recreational services – most people running sporting activities will be providing a service.

Like Victorian law, federal law recognises special measures taken to achieve equality between men and women and says that this is not unlawful discrimination (section 7D).

There is also an exception in section 42 of the Sex Discrimination Act that allows people to run single-sex competitions, when the **strength, stamina and physique** of the people playing the sport is relevant. This is like the exception in Victorian law described above. However, there are no other relevant exceptions in the federal legislation.

People can apply to the Australian Human Rights Commission for exemptions from the Sex Discrimination Act (under section 44).

Note: Even if your activity comes within one of the exceptions under the Victorian Equal Opportunity Act or you have an exemption under Victorian law, you still have to comply with federal law and a complaint of sex discrimination can still be made under the federal legislation.

What happens if someone thinks they have been discriminated against?

Under Victorian law, if someone feels they have been discriminated against, they can make a complaint to the Victorian Equal Opportunity and Human Rights Commission. The Victorian Commission offers a free, fair and timely dispute resolution service. People can also take their complaint to VCAT, which will make a decision about whether there has been unlawful discrimination.

Under federal law, people can make complaints about sex discrimination to the Australian Human Rights Commission. The Australian Commission also offers a dispute resolution service. If matters aren't resolved there, a federal court can consider the complaint.

Ten key questions to ask

1. Are you proposing to run single-sex competitions in your sport?

If yes, you need to consider your anti-discrimination obligations under federal and Victorian law.

2. Are you a club or providing a service that falls under the Commonwealth Sex Discrimination Act?

If yes, you will have obligations under federal law not to discriminate against people on the basis of sex. Strength, stamina and physique in competitions for people over 12 is the only exception specifically relevant to sport under federal law.

3. Does your proposal involve a competitive sporting activity?

If no, the exceptions in the Victorian Equal Opportunity Act will not apply to you and you need to ensure that you don't discriminate against people when running your activity.

4. Is the competition for people under 12?

If yes, the exceptions in the Equal Opportunity Act and the Sex Discrimination Act will not apply. It is expected that young children will participate in sporting activities together unless there is a reason for a special measure to help level the playing field.

5. Could the strength, stamina and physique of the people be a relevant factor in the competition?

If yes, exceptions in the Equal Opportunity Act and the Sex Discrimination Act may allow you to run single-sex competitions. Because age can also be relevant to this issue, you need to think about this question for the different competitions that you run.

6. Where could you find information to work out whether strength, stamina and physique is relevant?

Think about who are the experts in your sport. For example, this could be coaches and people from your state sporting association.

7. Is a single-sex competition required to progress to an elite level (nationally or internationally)?

If yes, an exception in the Equal Opportunity Act will allow you to run the single-sex competition, but you may need an exemption from federal law.

8. Would a single-sex competition facilitate participation in the sport by a particular sex and where could you find information to work this out?

Think about why you want to run a single-sex competition and where this information comes from. For example, you could look at membership numbers, reports about low participation numbers of one sex in the sport, and feedback from players and other members of the community about their experiences in the sport. If this supports your view that a single-sex competition would facilitate participation, an exception in the Equal Opportunity Act may allow you to run a single-sex competition. But you also need to think about whether it is a reasonable step to take and you may still need an exemption from federal law.

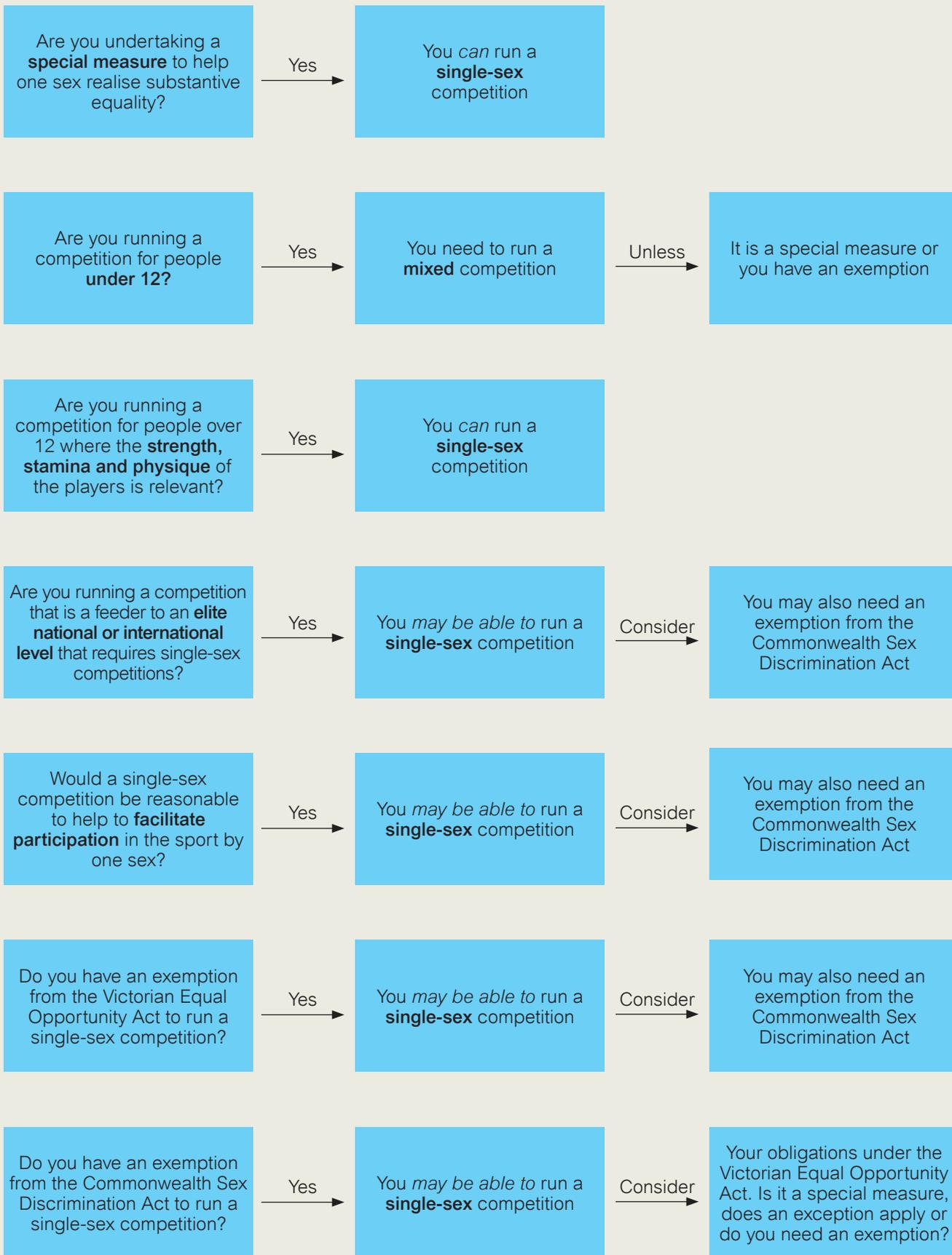
9. What impact does running a single-sex competition have on other people wanting to play the sport?

Thinking about this will help you to work out whether your proposal to run a single-sex competition is reasonable. It's more likely to be a reasonable step to take if other people still have an opportunity to play the sport.

10. Does this apply to all of our sporting activities?

The exceptions don't allow more discrimination than necessary, so you have to turn your mind to these issues for the different activities that you run. For example, you might have a reason for running a single-sex competition to encourage the participation of women in a sport dominated by men. This doesn't automatically mean you can run single-sex competitions across the board. You have to consider the need and the purpose for the range of single-sex competitions that you propose to run.

When can we run a single-sex competition?





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

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