

**Guidelines for the promotion
of equal opportunity for
women and girls in golf**

MARCH 2019



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Guidelines for the promotion of equal opportunity for women and girls in golf

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March 2019

Australian Human Rights Commission 2019



**Australian
Human Rights
Commission**

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Kate Jenkins

*Sex Discrimination Commissioner
Australian Human Rights Commission*



FOREWORDS

Australian Human Rights Commission

The Australian Human Rights Commission (the Commission) welcomes this opportunity to partner with Golf Australia on the development of these Guidelines for the promotion of equal opportunity for women and girls in golf (the Guidelines).

The Guidelines provide information on the operation of the *Sex Discrimination Act 1984* (Cth) (the Act), and practical guidance on how golf clubs can promote equal opportunity for women and girls.

With its use of a unique handicap system, golf is particularly well placed to be an inclusive game for people of all genders, ages and abilities. However, participation rates for women and girls remain low and issues of equal opportunity persist. The Guidelines provide an opportunity for golf clubs around Australia to revisit their policies and practices to ensure compliance with the Act, and address these issues. The Guidelines are particularly timely given the current momentum in relation to the participation of women in sport.

Taking active steps to promote equal opportunity for women and girls in golf in line with the Guidelines has many benefits including:

- increasing the diversity of golf clubs
- engaging women and girls as paying members and volunteers
- minimising the likelihood of a discrimination claim.

I look forward to golf clubs implementing these Guidelines to support Golf Australia's vision for making golf an inclusive game for everyone.

A handwritten signature in black ink that reads "Kate Jenkins". The signature is written in a cursive, flowing style.

Kate Jenkins
Sex Discrimination Commissioner

Golf Australia

I would like to express Golf Australia's sincere appreciation to the Commission for agreeing to produce this publication for the game of golf.

To this point there has been a clear gap in the guidance we have been able to make available to clubs on two significant issues that relate to equal opportunity for women and girls. Firstly, the consistency of various golf operational practices with the federal sex discrimination law, which has been in force since 1984; and secondly, what it is that clubs can do to implement policies to promote equal opportunity for women and girls in golf. We believe this document will go a long way towards filling this space.

We strongly encourage all clubs to work through this publication and to follow the guidance of the Commission. In particular:

- we believe it will be important in assisting clubs to meet their legal obligations
- where there is any doubt as to whether a certain practice complies with the law, we would urge clubs to focus on maximising the inclusion of women and girls and where appropriate, seek legal advice. This approach will help to minimise the risk of a discrimination claim, against a club or an official, under the Act.

Empowering Australian golf clubs to ensure they meet their legal obligations and are gender inclusive is a hallmark of Golf Australia's 'Vision 2025: The Future of Women & Girls in Golf' strategy. Consequently, supporting clubs to follow the guidance of the Commission will help to further develop the inclusive nature of our sport.

The handicap system has historically made golf a very connected game, enabling people of all abilities and ages to compete with each other. The work we have done with the World Handicap System, will result in competition between players of different sexes becoming far more seamless.

Everyone who loves our sport should be excited about this latest step we are making with the Commission to deliver a friendly experience for all golfers, regardless of their sex.

Stephen Pitt
Chief Executive Officer

The R&A

The R&A is the international governing body for golf in all areas of the world except the United States and Mexico.

I commend Golf Australia and the Commission for taking the initiative to provide, through the Guidelines, such useful guidance on discrimination and equal opportunity legislation to its member clubs.

This extremely useful reference tool provides clear and practical guidance on situations that can arise in the day-to-day management of golf clubs. Golf, as with all sports, has a duty to ensure that those joining clubs are treated equally and do not suffer discrimination on any ground, including sex, race, religion or nationality. It is important for clubs to understand their responsibilities under equal opportunity legislation and ensure that their policies and procedures are fully compliant.

The R&A works with 157 affiliated organisations around the world, including Golf Australia, and we encourage national federations to highlight examples of best practice that can be adopted in other parts of the world. I am sure other federations will recognise the issues raised in this guide and consider providing a similar resource in their own countries.

Martin Slumbers
Chief Executive



Executive summary

These Guidelines have been developed to provide guidance to golf clubs on the promotion of equal opportunity for women and girls in golf.

The Guidelines provide:

- information about the operation of the *Sex Discrimination Act 1984* (Cth) (the Act) in relation to unlawful and permissible discrimination on the basis of sex
- practical guidance for promoting equal opportunity for women and girls in golf clubs.

As set out in the Act, it is unlawful to discriminate on the basis of sex in golf unless:

- the different treatment amounts to a 'special measure' (in other words, positive discrimination), or
- an exemption applies.

Golf clubs can minimise the likelihood of a successful discrimination claim and promote equal opportunity by:

- ensuring membership categories are gender neutral
- providing open access to the course for women/girls and men/boys
- maximising the participation of women and girls in competitions
- facilitating the inclusion of women and girls in governance arrangements.

Clubs should ensure they are familiar with the content provided in **sections 5** and **6** of these Guidelines, which outline ways in which equal opportunity can be promoted.



1.1 The importance of equal opportunity in golf

Participation in sport is a human right.¹ Sport provides physical, social and mental health benefits, and plays a positive role in building communities. For this reason, it is essential that both women and men feel welcome to participate in sport, including golf.

Please note that when the terms 'women' and 'men' are used in these Guidelines, the discussion is also generally applicable to girls and boys respectively, unless the context requires otherwise.

Golf in Australia

Golf the game

Golf is a game that can be played socially or competitively. There are 1,600 clubs in Australia and 400,000 golf club members. There are many different variations of the game. For scoring purposes, play can either be conducted on a 'gross' or 'net' basis. When golf is played on a 'gross' basis the score in a game is based on the number of strokes taken to hit the golf ball into the hole. When golf is played on a 'net' basis the gross score is adjusted based on a player's 'handicap'.

A player's handicap is calculated with reference to their gender, proficiency, the tee they are hitting the ball from and the nature of the course they are playing on. The way that handicaps are calculated varies from country to country. A uniform 'World Handicap System' has recently been developed. Australia plans to adopt this system in 2020.

Administration of golf

The administration of golf in Australia is led by Golf Australia, as the national sporting organisation. Golf Australia manages game and industry development, handicapping, play management, rules, the men's and women's Australian Opens, national amateur championships and elite player development. Golf Australia is an affiliate of The R&A, which is the international governing body for golf in all areas of the world, except the United States and Mexico.

As a national sporting organisation, Golf Australia has a Member Protection Policy (MPP) which sets out its commitment to ensuring 'that every person involved in Golf is treated with respect and dignity and protected from discrimination'.² The MPP provides guidance on how to make and respond to complaints.³

There are a number of other organisations that play a key role in the administration of golf in Australia:

- Professional Golfers Association of Australia
- Australian Ladies Professional Golf
- Golf Management Australia
- Australian Golf Course Superintendents' Association
- Society of Australian Golf Course Architects.



1.2 A need for guidance

Many clubs are committed to promoting equal opportunity in golf. However, the participation rates for women and girls in golf remain low and issues of equal opportunity persist, particularly in relation to membership, course access, competitions and governance. Female members currently make up only 20% of club members in Australia—a significant decrease from a high of 34% in 1970.⁴

Golf Australia has identified the need for national guidance on how golf clubs can comply with their legal obligations under federal sex discrimination law, and to maximise the inclusion of women and girls in golf.

The Guidelines have been developed by the Commission in partnership with Golf Australia, and are informed by a targeted consultation process. The Commission thanks Golf Australia for its commitment to promoting equal opportunity for women and girls in golf, and those who participated in the consultations for sharing their knowledge, expertise and experiences.



02 About the Guidelines



These Guidelines are issued under section 48(ga) of the *Sex Discrimination Act 1984* (Cth) (the Act). This provision gives the Commission the power to publish guidelines 'for the avoidance of discrimination' on the ground of sex.

These Guidelines do not address the issue of discrimination on the ground of 'gender identity'. If you require further guidance on the operation of the Act in relation to 'gender identity' please refer to the Commission's 'Guidelines for the inclusion of transgender and gender diverse people in sport'.⁵

2.1 Who are the Guidelines for?

These Guidelines have been developed for those who play a role in operating golf clubs. This includes:

- boards, management committees and their members
- administrators
- other staff and volunteers.

The Guidelines may also assist players and members in understanding their rights under the Act.

The Guidelines are designed for golf clubs in their capacity as administrators, and they do not address issues specific to employment.

2.2 Why should I follow the Guidelines?

These Guidelines provide information to assist decision makers to comply with their legal obligations under the Act, and to maximise the inclusion of women and girls in golf.

There are important reasons for following the Guidelines. It is against the law:

- to discriminate against another person on the basis of their sex in the provision of goods, services and facilities, unless a special measure is in place or an exemption applies (see **sections 3.2(b)** and **3.3**)

- to discriminate against another person on the basis of their sex in relation to club membership or benefits, unless a special measure is in place or an exemption applies (see **sections 3.2(c)** and **3.3**)
- to request information from a person for the purpose of discriminating against them on the basis of their sex (see **section 3.2(d)**).

The Guidelines do not provide a definitive legal answer to all of the issues of discrimination that may arise under the Act in the context of golf clubs. This is because:

- Many scenarios outlined in the case studies have not been tested in the Federal Court of Australia, so there is limited legal certainty about how a court may decide these issues.
- Golf clubs differ in their structure, processes and policies, so the scenarios outlined may not be directly applicable to all clubs.
- The Commission can provide general guidance on promoting equality between women and men, but it is not in a position to provide specific legal advice to individual golf clubs.

Given these constraints, the Guidelines indicate when the Commission considers that a discrimination claim 'may' or is 'likely' to be successful.

Golf clubs and individuals should seek their own independent legal advice if they have concerns regarding their compliance with the Act, or with relevant state or territory anti-discrimination legislation.⁶

A golf club or individual will not be protected from a finding of unlawful discrimination if they claim that they complied with, or relied on, these Guidelines. However, the Commission considers that compliance with the Guidelines will minimise the likelihood of a successful discrimination claim being made.



This section outlines the relevant provisions of the federal *Sex Discrimination Act 1984* (Cth) (the Act).

In addition to the federal Act, golf clubs also have obligations under state and territory anti-discrimination laws (see [section 3.6](#)). State and territory anti-discrimination laws should also be considered in the development of policies and practices by golf clubs.

Summary of the federal *Sex Discrimination Act 1984* (Cth)

It is unlawful to discriminate on the basis of sex in golf unless:

- the different treatment amounts to a 'special measure', or
- an exemption applies.

A **special measure** can be understood as 'positive discrimination' or 'affirmative action'. Special measures are positive actions used to promote equity for disadvantaged groups.

An **exemption** 'exempts' a person or organisation from the operation of the Act, and means that a successful claim of unlawful discrimination cannot be brought.

There are four exemptions that are particularly relevant to golf:

1. club exemption
2. voluntary body exemption
3. competitive sporting activity exemption
4. temporary exemption.

See the diagram on [page 22](#) for a visual representation of how the discrimination provisions of the Act work together.

3.1 What is discrimination on the basis of sex?

Under the Act, discrimination on the basis of sex can include both direct and indirect discrimination.

'Direct discrimination' occurs when a person is treated less favourably than another person on the ground of sex, or a characteristic generally associated with a person of that sex, in circumstances that are the same or not materially different.⁷

An example of direct discrimination would be if a golf club refused a seven day membership to someone because of being a woman.

'Indirect discrimination' can be less obvious. Indirect discrimination occurs when a condition, requirement or practice that applies to everyone, disadvantages persons of a particular sex, and the condition, requirement or practice is not reasonable in the circumstances.⁸

What does 'reasonable' mean?

The Act provides that the following matters are to be taken into account when deciding whether a condition, requirement or practice is reasonable:

- the nature and extent of the disadvantage
- the feasibility of overcoming or mitigating the disadvantage, and
- whether the disadvantage is proportionate to the result sought.⁹

An example of indirect discrimination might be if a golf club only permitted seven day members who had been club members for at least five years to nominate for the Board, and the club had only allowed women to become seven day members three years prior. Although not specifically targeting women, this condition would have the effect of excluding women members of the club from being nominated for the Board. If reasonableness could not be established, the club might be at risk of a successful discrimination claim.

3.2 When is it unlawful to discriminate?

(a) Overview

The Act makes discrimination unlawful in particular areas of public life.

Unless an exemption applies or the different treatment amounts to a special measure, it is unlawful to discriminate on the basis of sex, including in relation to:

- the provision of goods, services and facilities¹⁰
- club membership and benefits, for members and applicants for membership.¹¹

It is also unlawful to request information from a person for the purpose of discriminating against them.¹²

What is a 'club'?

Under the Act, a 'club' means an association of 30 or more people associated together for social, literary, cultural, sporting, political, athletic or other lawful purposes, that:

- provides and maintains its facilities wholly or partly from its own funds, and
- sells or supplies liquor for consumption on its premises.¹³

Golf usually involves the provision of 'goods, services and facilities' and—where the definition of 'club' is met—the provision of club membership and benefits. Participation in golf may also involve requests for information.

Discrimination in the context of golf may arise if a golf club refuses to allow a woman:

- to participate in the competitions it runs, or
- to join the club it operates.

Further details on these provisions are outlined in **sections 3.2(b) to (d)**.

(b) Discrimination in the provision of goods, services and facilities

It is unlawful to discriminate against another person based on their sex in the following ways:

- by refusing to provide goods or services, or make facilities available¹⁴
- in the terms or conditions which apply to the use of the goods, services or facilities¹⁵
- in the manner in which the goods or services are provided, or the facilities are made available.¹⁶



(c) Discrimination in club membership

It is unlawful for a club, a club's management committee or individual members of a club's management committee, to discriminate against an applicant for membership of a club, or an existing member, based on their sex, in relation to certain activities.¹⁷

The discrimination provisions regarding club membership only apply to organisations that meet the definition of 'club' under the Act. See [page 15](#) for the definition of 'club'.

Most golf clubs will meet the definition of a 'club' for the purpose of the Act.

For clubs that do not meet the 'club' definition, the Act will usually still be applicable by way of the 'provision of goods, services and facilities' section.¹⁸ However, if a golf club is a 'voluntary body' under the Act and not a 'club' it will be exempt from the key anti-discrimination provisions of the Act (see [section 3.3\(b\)\(ii\)](#)).

(i) Discrimination against applicants for club membership

It is unlawful for a club to discriminate against an applicant for club membership based on their sex:

- by refusing or failing to accept the person's application for membership, or
- in the terms or conditions on which the club is prepared to admit the person to membership.¹⁹

(ii) Discrimination against club members

It is also unlawful for a club to discriminate against a club member based on their sex:

- in the terms or conditions of membership that are afforded to the member
- by refusing or failing to accept the member's application for a particular class or type of membership
- by denying the member access, or limiting the member's access, to any benefit provided by the club
- by depriving the member of membership or varying the terms of membership, or
- by subjecting the member to any other detriment.²⁰

Barnett v Royal Queensland Golf Club

Barnett v Royal Queensland Golf Club [2018] FCCA 3697 (*Barnett*) is a decision by a single judge of the Federal Circuit Court.

Ms Barnett was a full member of the Royal Queensland Golf Club. Ms Barnett claimed that the Royal Queensland Golf Club discriminated against her on the basis of her sex in relation to the course access provided by the 2016 and 2017 playing schedules.

In *Barnett*, the judge found that the Royal Queensland Golf Club had discriminated against Ms Barnett in 2016 by having a playing schedule that denied her the opportunity to play a full 18 holes of golf on all seven days of the week, when men who were full members had this opportunity.²¹ In 2017, the playing schedule changed so that full members (regardless of their sex) could only play a full 18 holes on six days of the week. The judge found that this new schedule was not discriminatory.

The judge also explicitly stated that the case before him was not about whether excluding a woman from a single sex men's golf competition on the basis of sex was a discriminating practice that offends the Act.²² See **section 3.3(b)(iii)** for further discussion on the 'competitive sporting activity' exemption.

(d) Unlawful requests for information

It is unlawful to request or require a person to provide information if:

- the information is requested in connection with, or for the purpose of doing an act, and
 - it would be unlawful (in particular circumstances) in doing that act to discriminate against a person based on their sex, and
 - people who are of a different sex would not be asked to provide the same information.²³
- The Commission understands that some golf clubs require women to provide evidence that they work during the week in order to access Saturday play. If this requirement does not also apply to men, such a practice might be unlawful and could put a golf club at risk of a successful discrimination complaint. Such requests for information might also be held to be unlawful.

3.3 When is discrimination allowed?

Discrimination on the basis of sex in golf will be permitted under the Act if:

- the different treatment amounts to a 'special measure', or
- an exemption applies.

(a) Special measures

Special measures are positive actions used to promote equality for disadvantaged groups. They are often referred to as 'positive discrimination' or 'affirmative action', and address the unequal position of two groups of people (for example, women and men) by implementing a practice which favours the disadvantaged group.

The Act allows for a special measure to be taken for the purpose of achieving substantive equality between women and men.²⁴

While the Act does not define 'substantive equality', the Federal Court has held that 'substantive equality' means equality in substance, rather than 'formal' equality.²⁵ Equality in substance recognises that, for disadvantaged groups, formal equality before the law—or treating everyone the same—is not always sufficient to eliminate the effects of historical discrimination, and may actually entrench existing discrimination.

Positive actions that confer an extra benefit on members of a disadvantaged group may be required to attain 'real' or substantive equality.

Depending on the circumstances, taking steps to encourage the participation of women in golf may constitute a special measure under the Act. If a golf club wants to adopt a 'special measure', it will need to determine that the action it is taking is for the purpose of achieving substantive equality between women and men. Examples of potential special measures in the context of golf are set out below.

The Commission does not have the power to certify special measures under the Act, nor does any other body. Instead, a golf club should satisfy itself that a proposed measure constitutes a special measure. Even if a golf club has determined that an action it has taken is a 'special measure', this action could still be the subject of a complaint to the Commission by someone who disagrees with the golf club's characterisation of its actions as a special measure. **Section 7** includes further information about the Commission's complaints process.

The Commission has published **guidelines** on special measures under the Act, which provide detailed guidance to assist individuals and organisations to assess their own equity initiatives for consistency with the Act.²⁶

Special measures in the context of golf

The following are examples of actions which may, depending on the circumstances, be regarded as a special measure:

- reserving a number of board or management committee positions for women
- establishing a women only committee to create an inclusive space for women in the club and increase the number of women members at a club (for example, a women's committee which has this as one of its objectives)
- offering reduced fees for new women members, or waiving introductory fees and charges
- holding training sessions for new women members
- holding competitions for women only
- allocating particular day/s in the weekly playing schedule to women only.



(b) Exemptions

The Act provides for both temporary and permanent exemptions from the operation of the anti-discrimination provisions of the Act.²⁷ An exemption makes certain conduct lawful under the Act and prevents a person from successfully claiming that an action is unlawful discrimination.

A golf club must apply to the Commission to obtain a temporary exemption. A golf club does not need to apply to the Commission to rely on a permanent exemption.

If a golf club wishes to rely on a permanent exemption it will need to make its own assessment that the exemption applies.

Relying on an exemption is not mandatory. Golf clubs may choose to comply with the core anti-discrimination provisions of the Act even when it is possible to rely on an exemption.

(i) Permanent exemption—club

Under the Act there are particular circumstances where it is permissible for a club to discriminate on the basis of sex in relation to club membership and benefits:

- if the membership of the club is only available to persons of a different sex,²⁸ or
- if it is not practicable for both men and women to use or enjoy the benefit at the same time or to the same extent and either:
 - » men and women are provided with the same benefit (or an equivalent benefit) separately, or
 - » they are entitled to a 'fair and reasonable' proportion of the use and enjoyment of the benefit.²⁹

The use and enjoyment of a benefit for both women and men at the same time, or to the same extent, will likely only be treated as 'not practicable' if it creates a situation of practical difficulty (for example, where a club only has changing facilities that can accommodate one sex at a time). A mere social preference (in other words, men not wanting to play golf with women or vice versa) is unlikely to meet the criteria.

When deciding whether it is 'practicable' for men and women to use or enjoy the benefit at the same time or to the same extent, the following factors will be considered:

- the purpose for which the club is established
- the membership of the club, including any class or type of membership
- the nature of the benefits provided by the club

- the opportunities for the use and enjoyment of those benefits by men and women, and
- any other relevant circumstances.³⁰

(ii) Permanent exemption—voluntary body

Under the Act it is permissible for a 'voluntary body' to discriminate against a member or a person seeking to become a member on the basis of the person's sex, as well as in the provision of benefits, facilities or services to members.³¹

What is a 'voluntary body'?

A 'voluntary body' is an association or other body (incorporated or unincorporated) 'the activities of which are not engaged in for the purpose of making profit'.³²

A voluntary body does not include:

- a 'club' (see definition in **section 3.2(a)**)
- a 'registered organisation'
- a body established by a law of the Commonwealth, or a State or a Territory
- an association that provides grants, loans, credit or finance to its members.³³

A 'registered organisation' means 'an organisation registered, or an association recognised under the *Fair Work (Registered Organisations) Act 2009* (Cth)'.³⁴



If a golf club does not meet the definition of 'club' under the Act it may be a 'voluntary body'. If a golf club meets the definition of a 'club', it cannot be a 'voluntary body'.

(iii) Permanent exemption—competitive sporting activity

The Act contains a permanent exemption in relation to 'competitive sporting activity'.³⁵ This is commonly referred to as the 'single-sex competition' exemption, although it does not operate to make all single-sex sporting competitions lawful.

The exemption allows for discrimination on the grounds of sex only in 'any competitive sporting activity in which the strength, stamina or physique of competitors is relevant'.³⁶

The words 'strength', 'stamina' and 'physique', and the term 'competitive sporting activity', are not defined in the Act and few cases have considered this exemption in the federal courts.

While the Federal Circuit Court case of *Barnett v Royal Golf Club of Queensland*³⁷ (*Barnett*) references the 'competitive sporting activity' exemption, the judge explicitly stated that the case before him was not about whether excluding a woman from a single sex men's golf competition on the basis of sex was a discriminating practice that offends the Act.³⁸ The question was not the subject of full legal argument by the parties in *Barnett* and remains unresolved at law.

However, in considering an equivalent exemption in the Victorian legislation, the Victorian Civil and Administrative Tribunal has stated that the exemption will only operate if, when both sexes competed against each other, the competition would be uneven because of the disparity between the relative strength, stamina and physique of male and female competitors.³⁹ This interpretation was approved by the Federal Court of Australia.⁴⁰

The objective of the exemption is to restrict competitive sporting activity to people who can 'effectively compete'⁴¹ with each other. This is intended to recognise that 'biological differences between men and women are relevant to competitive sporting activities'.⁴² It can be understood as ensuring a 'level playing field'.

If a golf club decides to rely on the 'competitive sporting activity' exemption to exclude women from a particular competition, it will need to satisfy itself that 'strength', 'stamina' or 'physique' are relevant in the particular circumstances. See [page 34](#) for guidance on factors to consider when seeking to rely on the 'competitive sporting activity' exemption.

Additionally, the exemption is limited to competitive sporting activities and does not apply to:

- coaching
- umpiring or refereeing
- administration
- 'prescribed sporting activities'⁴³
- sporting activities by children who are younger than 12 years of age.⁴⁴

(iv) Temporary exemption

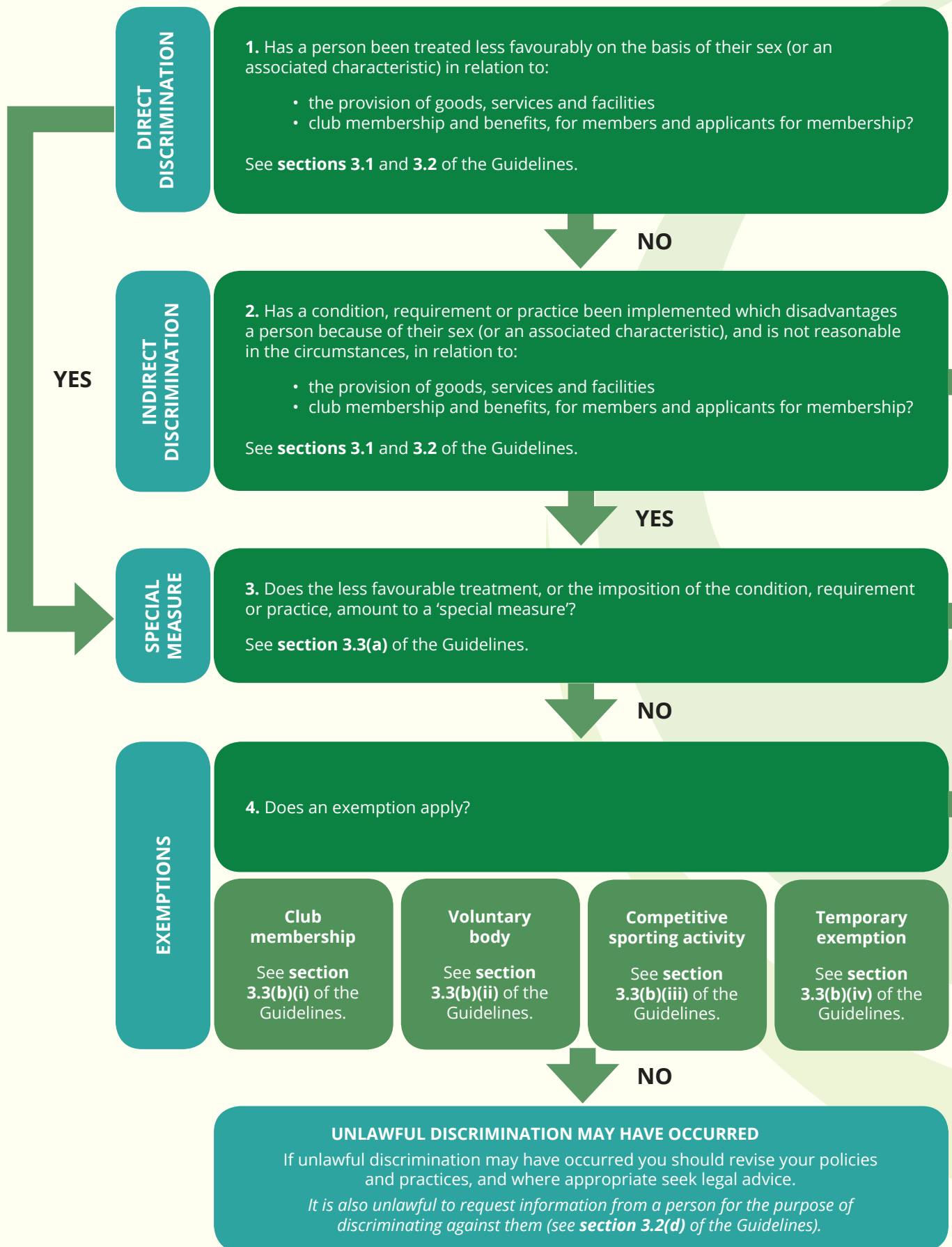
A golf club may apply to the Commission for a temporary exemption. Given the permanent exemptions that already exist in the Act, the Commission grants temporary exemptions sparingly. The Commission has published [guidelines](#) about how it assesses applications for temporary exemptions under the Act.⁴⁵

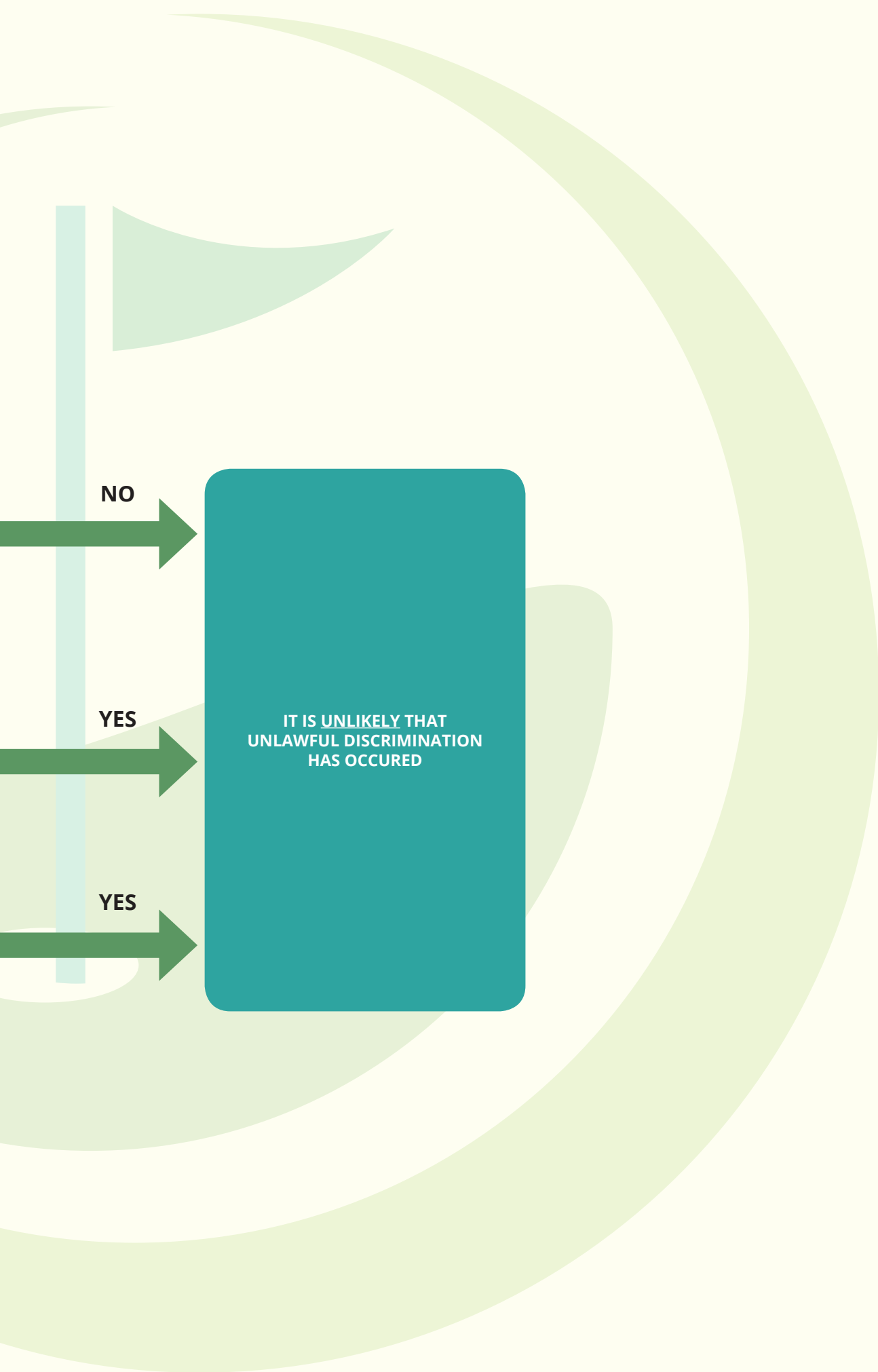
Temporary exemptions can be granted:

- subject to certain terms and conditions, and
- for a period of up to five years.⁴⁶

If a temporary exemption is granted, it will not be possible for a successful complaint to be brought in relation to the circumstances covered by the exemption.

3.4 Discrimination and golf under the *Sex Discrimination Act 1984* (Cth)







3.5 Who is legally responsible for discrimination under the Act?

Legal responsibility—often described as liability—determines who has to pay compensation or take other actions because of a finding of unlawful discrimination.

Both an individual or an organisation who discriminates against an individual, and a person who aids or permits the unlawful discrimination, can be held liable under the Act.⁴⁷

It is also important to note that a golf club can be vicariously liable for the actions of their employees or agents where these amount to unlawful discrimination, or an unlawful request for information.⁴⁸

3.6 What about state and territory laws?

(a) The interaction between the Act and state and territory anti-discrimination laws

In addition to the provisions of the Act, as the federal anti-discrimination law, golf clubs also have legal obligations under state and territory anti-discrimination legislation.

The Act does not exclude the operation of state and territory anti-discrimination legislation that is capable of operating alongside the Act.⁴⁹ This means that state and territory anti-discrimination legislation might impose different, or stricter, obligations.

A person is not entitled to make a complaint to the Commission in relation to unlawful discrimination if they have already:

- made a complaint,
- instituted a proceeding, or
- taken any other action,

in relation to the same act or omission under the law of a state or territory which deals with the same matter.⁵⁰

(b) Summary of state and territory laws

The following table provides an overview of relevant resources that golf clubs may wish to consult in assessing their compliance with state and territory anti-discrimination laws. Some of the terminology used in the state and territory legislation is different from the terminology used in the Act (for example, in some states and territories a 'special measure' is called an exemption or exception).

See **section 7** for the contact details of the state and territory human rights commissions.

| State or territory | Anti-discrimination legislation | Human rights or equal opportunity commission | Other relevant guidance |
|------------------------------|---|--|---|
| Australian Capital Territory | <i>Discrimination Act 1991</i> (ACT) | ACT Human Rights Commission | <ul style="list-style-type: none"> • Sex discrimination and special measures • Exemptions |
| New South Wales | <i>Anti-Discrimination Act 1977</i> (NSW) | Anti-Discrimination Board of NSW | <ul style="list-style-type: none"> • Sex discrimination • Exemptions and exceptions |
| Northern Territory | <i>Anti-Discrimination Act 1992</i> (NT) | Northern Territory Anti-Discrimination Commission | <ul style="list-style-type: none"> • Discrimination |
| Queensland | <i>Anti-Discrimination Act 1991</i> (Qld) | Anti-Discrimination Commission Queensland | <ul style="list-style-type: none"> • Sex Discrimination • Exemptions • Temporary exemptions • Sport |
| South Australia | <i>Equal Opportunity Act 1984</i> (SA) | Equal Opportunity Commission | <ul style="list-style-type: none"> • Discrimination • Special measures • Sport • Discrimination in clubs • Temporary exemptions |
| Tasmania | <i>Anti-Discrimination Act 1998</i> (Tas) | Equal Opportunity Tasmania | <ul style="list-style-type: none"> • Sex Discrimination (PDF) • Sex Discrimination (Text) • Exceptions |
| Victoria | <i>Equal Opportunity Act 2010</i> (Vic) | Victorian Equal Opportunity and Human Rights Commission | <ul style="list-style-type: none"> • Equal opportunity in golf • Sex Discrimination • Discrimination in sport and exceptions • Discrimination in clubs and exceptions • Special Measures • Temporary exemptions |
| Western Australia | <i>Equal Opportunity Act 1984</i> (WA) | Equal Opportunity Commission | <ul style="list-style-type: none"> • Sex Discrimination (PDF) • Sex Discrimination (HTML) • Special Measures • Temporary exemptions |



The historical experience of women and girls in golf



Historically, the experiences of women and girls in golf have been very different from those of men and boys. This section provides some important context on the origins of various existing practices. This section also contains background information on the challenges faced by women and girl golfers, and how different aspects of the game of golf interact (for example, membership and course access).

4.1 Membership

Traditionally, women and girls could only join golf clubs as ‘associate’ or ‘lady’ members—a lower cost category of membership with fewer benefits than the membership enjoyed by men and boys.

Most clubs have now moved away from gender-based membership categories and provide both women and men with full day-based membership (for example, seven, six or five day membership). However, the interaction of membership categories with the playing schedules and governance arrangements of some clubs may continue to prevent women from practical enjoyment of the same club benefits as men. For example, a woman or girl who is a seven day member at a club that only allows men and boys to play on Saturdays would, practically, only be able to access the course on six days of the week.

4.2 Course access

A club’s playing schedule has also historically had an impact on the ability of women and girls to participate in golf, particularly on Saturdays. Saturdays have traditionally been reserved for men and boys, with respect to both social and competitive play. A weekday (for example, Tuesdays) has traditionally been ‘ladies’ day’. This allocation of playing days was based on the assumption that women and girls did not perform paid work on weekdays. If women and girls are unable to access the course on Saturdays, paying for a seven day membership is impractical.

Most clubs have opened up Saturday play to women and girls but this may:

- only be in relation to social play
- require proof that they are in paid work during the week and unable to play on ‘ladies’ day’.

Allocated tee times may also affect the ability of women and girls to participate in golf. In some cases, women and girls may:

- only be able to access limited timeslots (for example, 11.15 am – 11.23 am)
- not be able to book as far in advance as men and boys.

4.3 Competitions

The primary way for a golfer to gain and maintain a handicap is to play in competition fields.

Due to limitations on course access, women’s competitions have traditionally been held on Tuesday (for example) or ‘ladies’ day’. This means that women and girls who perform paid work, or have other fixed obligations, on weekdays are unable to participate. Some clubs do hold competitions for women (either single-sex or mixed) on Saturdays.



In addition, the prizes awarded to women and girls are often of a significantly lower value than those awarded to men. In club competitions, the value of prizes is usually based on the number of competitors in the field.

4.4 Governance

Traditionally, men have held the leadership positions in golf clubs. This culture limits the ability of women and girls to participate in the governance of clubs.

One way in which these barriers to participation in the governance of a club have historically been addressed is through the establishment of women's committees. The role of the women's committee varies from club to club and may change over time. Generally, women's committees do not have any official role in the governance of a club (in other words, they are not a sub-committee of the board).

In addition to this cultural challenge, membership categories can also affect the ability of women and girls to participate in the governance of a club. In many clubs, only 'full' or seven day members are able to:

- vote at the annual general meeting
- nominate for the Board.

Without representation in leadership positions, women and girls may continue to face barriers to participation in golf.

How can I promote equal opportunity in golf?



This section:

- outlines a number of common issues experienced by women and girl golfers which, depending on the circumstances, may amount to unlawful discrimination
- provides practical guidance on how golf clubs can address these issues and promote equal opportunity in golf.

The case studies below have been developed to provide guidance on common equal opportunity issues that arise in golf clubs. Guidance is provided on how the law may apply in these scenarios.

Golf clubs should satisfy themselves that their processes comply with the Act in order to minimise the risk of a successful discrimination claim being made against them.

5.1 Membership categories

Golf clubs can promote equal opportunity through membership categories by:

- ensuring membership categories are gender neutral
- assessing whether any other factors which intersect with membership categories (for example, the weekly playing schedule or provisions of the club Constitution) affect the ability of women and girls to fully enjoy the benefits of their membership.

5.2 Course access

Golf clubs can promote equal opportunity through course access by:

- providing open access to the course for women/girls and men/boys
- making Saturdays, as the most desirable playing day, an open day on which both women/girls and men/boys can play
- only limiting course access where there is a practical need to do so (for example, capacity) on the basis of a criterion other than sex (for example, handicap, duration of club membership)⁵¹
- allocating a large block of timeslots on a specific day exclusively to women and girl golfers—to address the historical disadvantage experienced by women and girls in golf
- implementing a booking system that provides all members, regardless of their sex, with the same access to timeslots for bookings (subject to any day-based membership restrictions)
- allocating extra timeslots to women and girls in the booking system to address the historical disadvantage in golf.

Case study

Course access—limiting Saturday play

Anna is a seven day member of her golf club. The golf club is a 'club' within the definition of the Act.

Saturday has traditionally been men's competition day at Anna's golf club. Recently the golf club has allowed female members to play on the course from 3pm. Anna and her friends can rarely complete a full 18 holes before it gets too dark to play.

When Anna raises this with the manager of the golf club, he indicates that this limitation is in place to ensure that the male members are able to complete their competition. Men who are seven day members of the club have the opportunity to play 18 holes of golf on all days of the week.

The golf club's limitation of Anna's course access on a Saturday, an important benefit of seven day membership, may amount to unlawful discrimination on the basis of sex. This means that the club may be at risk of a successful discrimination claim being brought by Anna.

Case study

Special measure—retaining 'ladies' day'

Sofia is a seven day member of her golf club. The golf club is a 'club' within the definition of the Act. Of its 1,000 members, 200 are women. Saturday play was traditionally reserved for the men's competition but has recently been opened up to both women and men. Tuesday is ladies' day—a day on which a large block of timeslots are reserved for the women's competition only.

Sofia books a timeslot to play on Saturday.

A male member complains to the club that, given that women can now play on Saturday, the club is 'in breach of the Act' by continuing to have a ladies' day.

The Board meets to discuss whether to retain ladies' day, or whether to make Tuesday open to all golfers. The Board hears from women members that they feel less intimidated playing in a women only competition and that it is easier to encourage women to participate in golf if they can begin competing in a women's competition. The Board determines that retaining 'ladies' day' is likely to be permitted under the Act, on the basis that it is likely to amount to a 'special measure' and that it is unlikely to give rise to a successful discrimination claim. The low proportion of club members who are women, suggests that substantive equality has not yet been achieved at the club. The club wants to encourage more women to participate in golf and so the Board decides to retain ladies' day.

Case study

Course access—booking systems

Geetha is a seven day member of her golf club. The golf club is a 'club' within the definition of the Act.

Both men and women can play on Saturdays.

Men are able to book a Saturday timeslot eight days in advance. Women are only able to book a timeslot four days in advance. Due to the demand for Saturday play, this often results in all of the timeslots being booked prior to the booking system being available to women members.

The advance access to the booking system provided to men may amount to unlawful discrimination on the basis of sex. This means that the club may be at risk of a successful discrimination claim being brought by Geetha.

5.3 Competitions

Golf clubs can promote equal opportunity in their competitions by:

- Considering ways to maximise the participation of women and girls in both net and gross competitions, taking into account the role of the 'competitive sporting activity' exemption. This may include:
 - » increasing the number of mixed sex competitions
 - » holding women only competitions and girl only competitions
 - » organising net competitions on the basis of a criterion other than sex, such as handicap
 - » holding any separate women's and men's competitions on the same or comparable days, where possible (for example, not limiting women's competitions to weekdays only).
- Ensuring that prizes awarded to women/girls and men/boys are the same or of equal value, or at the very least proportionate.





Case study

Weekday competitions

Rabia is a seven day member of her golf club. The golf club is a 'club' within the definition of the Act.

Rabia is in paid employment during the week so generally only plays socially on Saturdays at the club. The women's competition is only held on Wednesdays, which means that Rabia is unable to compete. The men's competition is held on both Thursdays and Saturdays to cater for all the male club members (for example, students, retirees and those in paid employment).

Holding competitions for women on Wednesdays only may amount to unlawful discrimination on the basis of sex if it means that women cannot play in competitions at all if they work during the week. This means that the club may be at risk of a successful discrimination claim being brought by Rabia.

Case study

Competitive sporting activity exemption—a woman playing in the 'men's competition'

Clea is a seven day member of her golf club and a very talented golfer and plays off a handicap of three. Her golf club is a 'club' within the definition of the Act.

The golf club runs its women's competition on Wednesdays but Clea cannot attend because of work and caring responsibilities. Clea approaches the Board to request permission to play in a gross weekend competition that is generally reserved for men.

The Board notes Clea's talent and that she frequently competes against, and occasionally beats, men in mixed competitions and social games that she would be playing against in the weekend competition.

The Board considers the 'competitive sporting activity' exemption but ultimately decides that, given Clea's ability to effectively compete in the men's gross competition, 'strength, stamina and physique' are not relevant in the circumstances.⁵² The Board allows Clea to play in the weekend men's competition.

Relying on the 'competitive sporting activity' exemption

There may be times when a golf club considers that it is not possible to hold a mixed competition, or to allow women and girls to play in the men's or boys' competitions (respectively), because of differences between the 'strength, stamina and physique' of the competitors.

When seeking to rely on the 'competitive sporting activity' exemption, golf clubs should consider the specifics of the proposed activity including:

- the relevance of the 'strength, stamina and physique' of the competitors
- whether the competition is being determined on a gross basis or net basis
- whether the activity is a 'competitive sporting activity' rather than an activity of which the sole purpose is participation.

The competitive sporting activity exemption is less likely to apply to a net competition because it involves the use of a handicap system (for example, an inbuilt equaliser). The Federal Court of Australia has not yet considered how a handicap system interacts with the 'competitive sporting activity' exemption. If a golf club wants to rely on the competitive sporting activity exemption in the context of a net competition, it may be at risk of a successful discrimination claim.

In relying on the exemption to exclude an individual (or group of people) from a competition, a golf club can promote equal opportunity by adopting a fair and robust decision-making process which affords the affected individual(s) an opportunity to respond to a preliminary decision.

5.4 Governance

Golf clubs can promote equal opportunity in their governance arrangements by:

- allowing all club members, regardless of their membership category, to vote at the annual general meeting
- allowing all club members, regardless of their membership category, to nominate for positions on the board or management committee of the club
- ensuring, if only full, or seven day, members are able to vote at the annual general meeting or nominate for the board or management committee, that women and girls are able to fully enjoy the benefits of this category of membership (in other words, practical seven day access)
- reserving board or management committee positions for women/girls (for example, through a target)
- having a committee to promote and support the participation of women and girls at the golf club
- ensuring that their policies and processes align with the anti-discrimination statements and complaints procedures outlined in Golf Australia's MPP.



Case study

Special measures—reserving club board positions for women

With falling numbers of women members, the board of Southbridge Golf Club is concerned about the lack of female leadership on its board.

The club is in the process of changing the club's Constitution to reserve three of the eight board positions for women in the hope that increased female leadership will demonstrate its commitment to gender equality and encourage new ideas about increasing female membership. The club intends to regularly monitor and review the effect of the increased female presence on the board and its relationship to the number of women members. There will be provision in the new Constitution to remove the measure once substantive equality is achieved between women and men in the club.

Some male members have complained that reserving these positions would limit their ability to secure a seat on the board and that it amounts to unlawful discrimination because men make up 80% of Southbridge's members.

Reserving board positions for women is unlikely to amount to unlawful discrimination because it would likely be considered a special measure. This is because the measure:

- is taken for the purpose of achieving substantive equality between women and men (for example, as demonstrated by golf club membership demographics)
- appears to be objectively reasonable to address the substantive inequality that has been identified
- appears to be proportionate and appropriately targeted to addressing the inequality.⁵³

A special measure should stop once substantive equality between women and men in the club is achieved. Regular monitoring and review should be conducted to evaluate the effectiveness of a special measure and whether it is still required.

Case study

Governance—voting rights and Board nomination

Mei is a six day member at her golf club. The golf club is a 'club' within the definition of the Act.

The club's Constitution only allows seven day members to vote at its Annual General Meeting, and nominate for Board positions.

Women and girls are notionally able to play on Saturdays at the golf club but can rarely access the few spots assigned to women. Mei considered becoming a seven day member but the difficulty in securing a playing time on Saturdays means she has decided to retain her current six day membership instead. Many of the women that Mei regularly plays with have made the same decision.

Mei would like to nominate for a Board position but is unable to because of the restriction in the Constitution.

The restriction in the Constitution may amount to unlawful discrimination on the basis of sex. This means that the club may be at risk of a successful discrimination claim being brought by Mei.

Women's committees

Many golf clubs have women only committees. The role of women's committees varies between clubs. Generally clubs do not have men's committees. A women's committee should not generally be regarded as an alternative to women participating in the central governance of a golf club (for example, on the Board).

Whether a women only committee is permitted under the Act as a 'special measure' will depend on the particular objects and activities of the women's committee, and any other relevant facts. A women's committee is more likely to be a 'special measure' if one or more of its objects and activities are focused on achieving substantive equality between all women and men at a golf club. For example, promoting increased female membership of a club, or facilitating training opportunities for female members.



Checklist for promoting equal opportunity for women and girls in golf



The checklist below is designed to help golf clubs minimise the risk of a successful discrimination claim and identify practical steps that they can take to promote equal opportunity for women and girls in golf.

Questions

Membership categories

1. Are your club's membership categories gender neutral?
2. Are there any other factors connected with your club's membership categories (for example, the weekly playing schedule or provisions of the club Constitution) which affect the ability of women and girls to fully enjoy the benefits of their membership?

Course access

3. Do women/girls and men/boys have open access to the course throughout the week?
4. Can both women/girls and men/boys play socially and in competitions on Saturdays?
5. If there is a practical need to limit access to the course, is access limited based on a criterion other than sex?
6. Have you considered allocating a large block of timeslots exclusively to women and girls on a specific day?
7. Does the booking system provide all members (who hold the same type of day based membership) with the same access to timeslots for booking?
8. Do you have extra timeslots in the booking system allocated to women and girls?

Competitions

9. Have you considered ways to maximise the participation of women and girls in competitions?

Some examples of how this may be achieved include increasing the number of mixed competitions, holding women only or girl only competitions, arranging net competitions based on a criterion other than sex, or providing access to competitions for both women and men throughout the week (for example, not limiting women's competitions to weekdays only).

10. If you are relying on the 'competitive sporting activity exemption', have you:

- a) taken into account all of the relevant factors?
- b) adopted a fair and robust decision-making process?

11. Are women/girls and men/boys awarded the same prizes or prizes of equal value (or at the very least proportionate) in competitions?

Governance

12. Are all club members, regardless of their membership category, able to vote at the annual general meeting?

13. Are all club members, regardless of their membership category, able to nominate for a position on the club's board or management committee?

14. If only full, or seven day, members, are able to vote at the annual general meeting and nominate for the board or management committee, are women and girls able to fully enjoy the benefits of this type of full, or seven day, membership?

15. Are a number of board or management committee positions reserved for women/girls?

16. Do you have a committee to promote and support the participation of women and girls at the club (for example, a women's committee which has this as one of its objects)?

17. Do you have policies and processes in place which align with the anti-discrimination statements and complaints procedures outlined in Golf Australia's MPP?





Australian Human Rights Commission

National Information Service

The Commission's **National Information Service** provides information and referrals for individuals, organisations and employers about a range of human rights and discrimination issues.

Phone 1300 656 419 or (02) 9284 9888 to access this service.

Complaints process

The Commission can also investigate complaints about discrimination and other human rights breaches. The complaints process is simple, free and flexible. For further information on the complaints process please visit the Commission's **website**.

Golf Australia

For support with queries regarding the promotion of equal opportunity in golf for women and girls please contact Golf Australia's Club Support team by email at **clubsupport@golf.org.au**, or by phone on (03) 9626 5050.

Play by the Rules

Play by the Rules is a website that contains information, resources, tools and free online training for sports clubs and participants about discrimination, harassment, child safety, inclusion and integrity issues in sport.

In addition to these Guidelines, the Commission can provide assistance in the form of diversity and inclusion training workshops and educational resources. For more information please contact us by sending an email to **training@humanrights.gov.au**.

Endnotes

- 1 United Nations Educational, Scientific and Cultural Organization, *International Charter of Physical Education, Physical Activity and Sport* (adopted 21 November 1978) article 1; *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, 3rd sess, 183rd plen mtg, UN Doc A/810 (10 December 1948) article 24; International Olympic Committee, *Olympic Charter* (entered into force 9 October 2018) 11.
- 2 Golf Australia, *Member Protection Policy* (10 July 2018) 2 <https://www.golf.org.au/ckfinder/userfiles/files/Golf%20Australia%20-%20MPP_10_07_2018%20GA%20Board%20Approved.pdf>.
- 3 Golf Australia, *Member Protection Policy* (10 July 2018) 30 <https://www.golf.org.au/ckfinder/userfiles/files/Golf%20Australia%20-%20MPP_10_07_2018%20GA%20Board%20Approved.pdf>.
- 4 Golf Australia, *2017 Golf Club Participation Report* (June 2018) 14 <<https://www.golf.org.au/newsdisplay/golf-club-participation-report-for-2017-released/101092>>.
- 5 Australian Human Rights Commission, *Guidelines for the inclusion of transgender and gender diverse people in sport* (March 2019) <<https://www.humanrights.gov.au/guidelines-transgender-gender-diverse-inclusion-sport-2019>>. We note for completeness that the *Guidelines for the promotion of equal opportunity for women and girls in golf* use sex based language (for example, female and male) and gender based language (for example, man and woman) interchangeably. The Commission uses the terms inclusively except where they refer to legislative provisions that only refer to the ground of 'sex'.
- 6 See **section 3.6** for further information on state and territory anti-discrimination legislation.
- 7 *Sex Discrimination Act 1984* (Cth) s 5(1).
- 8 *Sex Discrimination Act 1984* (Cth) ss 5(2), 7B.
- 9 *Sex Discrimination Act 1984* (Cth) s 7B(2).
- 10 *Sex Discrimination Act 1984* (Cth) s 22.
- 11 *Sex Discrimination Act 1984* (Cth) s 25. 'Club' includes the club's management committee and individual members of the club's management committee.
- 12 *Sex Discrimination Act 1984* (Cth) s 27.
- 13 *Sex Discrimination Act 1984* (Cth) s 4 (definition of 'club').
- 14 *Sex Discrimination Act 1984* (Cth) s 22(1)(a).
- 15 *Sex Discrimination Act 1984* (Cth) s 22(1)(b).
- 16 *Sex Discrimination Act 1984* (Cth) s 22(1)(c).
- 17 *Sex Discrimination Act 1984* (Cth) ss 25(1), 25(2).
- 18 *Sex Discrimination Act 1984* (Cth) s 22.
- 19 *Sex Discrimination Act 1984* (Cth) s 25(1).
- 20 *Sex Discrimination Act 1984* (Cth) s 25(2).
- 21 *Barnett v Royal Queensland Golf Club* [2018] FCCA 3697 (12 December 2018) [62].
- 22 *Barnett v Royal Queensland Golf Club* [2018] FCCA 3697 (12 December 2018) [51], [56] and [58].
- 23 *Sex Discrimination Act 1984* (Cth) s 27.
- 24 *Sex Discrimination Act 1984* (Cth) s 7D(1)(a).
- 25 *Jacomb v Australian Municipal Clerical and Services Union* (2004) 140 FCR 149, 168.
- 26 Australian Human Rights Commission, *Guidelines: Special measures under the Sex Discrimination Act 1984* (Cth) (November 2018) <<https://www.humanrights.gov.au/our-work/sex-discrimination/publications/guidelines-special-measures-under-sex-discrimination-act>>.
- 27 A temporary exemption is not available in relation to the Act's sexual harassment or victimisation provisions.
- 28 *Sex Discrimination Act 1984* (Cth) s 25(3).
- 29 *Sex Discrimination Act 1984* (Cth) s 25(4).
- 30 *Sex Discrimination Act 1984* (Cth) s 25(5).
- 31 *Sex Discrimination Act 1984* (Cth) s 39.
- 32 *Sex Discrimination Act 1984* (Cth) s 4 (definition of 'voluntary body').
- 33 *Sex Discrimination Act 1984* (Cth) s 4 (definition of 'voluntary body').
- 34 *Sex Discrimination Act 1984* (Cth) s 4 (definition of 'registered organisation').
- 35 *Sex Discrimination Act 1984* (Cth) s 42.
- 36 *Sex Discrimination Act 1984* (Cth) s 42(1).
- 37 *Barnett v Royal Queensland Golf Club* [2018] FCCA 3697 (12 December 2018).
- 38 *Barnett v Royal Queensland Golf Club* [2018] FCCA 3697 (12 December 2018) [51], [56] and [58].
- 39 *Taylor and others v Moorabbin Saints Junior Football League and another* [2004] VCAT 158 (17 February 2004) [19]–[20].
- 40 *Ferneley v Boxing Authority of New South Wales* (2001) 115 FCR 306, 323–324.
- 41 Explanatory Memorandum, Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013 (Cth) 6.
- 42 Explanatory Memorandum, Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013 (Cth) 6.
- 43 The Act allows for sporting activities to be prescribed by Parliament as exempt. There are currently no prescribed activities.
- 44 *Sex Discrimination Act 1984* (Cth) s 42(2)(e).
- 45 Australian Human Rights Commission, *Temporary exemptions under the Sex Discrimination Act 1984 (Cth): Commission Guidelines* (2009) <<https://www.humanrights.gov.au/temporary-exemptions-under-sex-discrimination-act-1984-cth>>.
- 46 *Sex Discrimination Act 1984* (Cth) s 44(3).
- 47 *Sex Discrimination Act 1984* (Cth) s 105.
- 48 *Sex Discrimination Act 1984* (Cth) s 106.
- 49 *Sex Discrimination Act 1984* (Cth) s 10(3).
- 50 *Sex Discrimination Act 1984* (Cth) s 10(4).
- 51 It is noted that limiting course access on the basis of length of membership may indirectly discriminate against women, depending on the club and the circumstances. For example, if a club only recently permitted women to have 'full' membership, then this may still impact a woman's access to the course.
- 52 See *South v Royal Victorian Bowls Association* [2001] VCAT 207 (23 January 2001).
- 53 See *Jacomb v Australian Municipal Administrative Clerical and Services Union* (2004) 140 FCR 149; and *Walker v Cormack* (2011) 196 FCR 574.

Further Information

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