

## NV Transgender & Gender Diverse Policy and Gender Regulation Resource Document

Last updated: April 2022

### Introduction

This document has been developed to help support our Associations, Leagues and Clubs in an area that some people might not be familiar with or find challenging. It is designed to provide practical guidance and information to the Victorian netball community to support the inclusion of boys, transgender and gender diverse people in netball, as well as helping to prevent discrimination in grassroots netball.

### Who has this information been written for?

This information has been developed for Netball Victoria affiliated Associations, Leagues and Clubs – their staff, volunteers and participants.

### Why is this information important?

We believe inclusive participation in netball is critical to achieving sustainable participation and involvement in our sport for years to come. We want to help support our Associations, Leagues and Clubs to do this.

It is also against the law to discriminate against another person on the basis of their gender identity in sport, unless a statutory exception applies. There are exceptions in the Act and it's important for all our Associations, Leagues and Clubs to understand these so they can be inclusive and proactive in the prevention of discrimination.

### Effect on Netball

As the state sporting body for Netball in Victoria we want to encourage all our Associations, Leagues and Clubs to be inclusive, where every individual has the opportunity to participate at a level and in a manner appropriate to their ability and comfort level. We understand that not every competition can achieve this aspiration, however as a collective, we believe Netball can offer a range of participation options for the enjoyment of all Victorians.

### Where can I find more advice and information?

As an initial step, Netball Victoria's Affiliate Services Team and our Metropolitan and Regional Development staff are available to help support Associations, Leagues and Clubs. Netball Victoria also have specialist staff in the area of inclusion who are always willing to provide help, assistance or referral where required.

In addition, a formal NV support group has been commissioned to support our affiliates to navigate the vast range of scenarios that may present in our netball community. To contact this group at:

W: [memberservices@netballvic.com.au](mailto:memberservices@netballvic.com.au)

P: 03 9321 2255

Outside of Netball Victoria, the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) can be contacted.

## Legal Considerations

### 1 INTRODUCTION

#### 1.1 What is discrimination?

Discrimination is treating someone unfairly on the basis of a protected attribute (personal characteristic) under the *Equal Opportunity Act 2010 (Act)* or relevant Commonwealth legislation, including but not limited to gender identity, age, sex, religion, disability. In determining whether a person has discriminated against someone else, the person's motive is irrelevant.

#### 1.2 What is 'Direct' and 'Indirect' discrimination?

**Direct discrimination** is when you treat, or propose to treat, a person with a protected attribute unfavourably because of that attribute.

**Indirect discrimination** is when you impose, or propose to impose, an unreasonable requirement, condition or practice – which may appear to treat people equally – that has or is likely to have the effect of disadvantaging a person with a protected attribute. For example, it may be discriminatory to enforce a uniform policy that has the effect of disadvantaging people based on their religion, physical features or gender identity, such as banning head scarves or requiring all females to wear skirts, irrespective of their gender identity.

### 2 WHEN IS DISCRIMINATION IN NETBALL UNLAWFUL?

Everybody has the right to participate in sport without discrimination. Under the Act, it is against the law to discriminate against another person based on a protected attribute:

- by refusing or failing to select them in a sporting team; or
- by excluding them from participating in a sporting activity.

This extends to activities of people who are not 'playing' the particular sport, such as, coaching, umpiring or refereeing, or participating in the administration of a sporting activity.

This means that netball Associations, Leagues and Clubs cannot discriminate against a person based on a protected attribute by denying them participation in netball competitions.

Otherwise discriminatory behaviour will be lawful if:

- a permanent *statutory exception* in the Act applies; or
- you have been granted a *temporary exemption* from the law by the Victorian Civil and Administrative Tribunal (VCAT). An exemption is only required if a statutory exception is not available.

### 3 WHAT ARE THE STATUTORY EXCEPTIONS?

There are two statutory exceptions relevant to grassroots netball competitions in Victoria. The law permits otherwise discriminatory behaviour based on the relevance of strength, stamina, and physique to the sport. It also permits netball Associations, Leagues and Clubs to set age limits for competitions.

### **3.1 Statutory Exception – strength, stamina and physique**

The Act contains a statutory exception which permits the exclusion of people of one sex or gender identity from participating in netball where the strength, stamina or physique of players is relevant to competition in the sport.<sup>1</sup>

The law recognises that differences in strength, stamina and physique don't generally arise until adolescence. Under the Act, it is unlawful to exclude people of one sex from a competition for players under 12 years old. This means that boys cannot be excluded or restricted from playing in netball competitions 12 years old or under.

### **3.2 Statutory Exception - Age**

The Act also contains an exception which permits netball Associations, Leagues or Clubs to restrict participation to people of a specified age or age group.

## **4 WHO CAN BE HELD LIABLE FOR DISCRIMINATION?**

### **4.1 Individuals can be liable**

A person or organisation may be directly liable for discriminating against another person. This means that they can be legally responsible for their behaviour and may be required to pay compensation to the person they discriminated against if the matter proceeds to the Victorian Equal Opportunity and Human Rights Commission (VEOHRC), Australian Human Rights Commission (AHRC), or to a court or tribunal.

An individual may also be liable for requesting, instructing, inducing, encouraging, authorising, or assisting another person to participate in unlawful conduct.

### **4.2 Organisations can be liable for the actions of their employees and agents**

Organisations may be vicariously liable for the unlawful behaviour of people who act on their behalf. For example, netball Associations, Leagues and Clubs may be responsible for discrimination by its staff (including administrators, coaches and umpires) or its contractors.

An organisation may not be liable, however, if it can show that it has taken reasonable and proportionate steps to prevent discrimination from occurring.

## **5 WHAT IS THE INTERNAL COMPLAINTS PROCESS?**

If an individual makes a complaint of discrimination or harassment, they should aim to deal with the matter at Club level first, in line with NV's internal Member Protection Policy.

[https://netball.com.au/sites/default/files/2019-07/Member-Protection-Policy-and-Attachments\\_FINAL-APRIL-2017.pdf](https://netball.com.au/sites/default/files/2019-07/Member-Protection-Policy-and-Attachments_FINAL-APRIL-2017.pdf)

## **6 WHAT IS THE EXTERNAL COMPLAINT PROCESS?**

If the matter is not resolved internally, a person may lodge a complaint of discrimination against the netball Association, League and Club with the VEOHRC or AHRC. A person can also lodge a complaint of discrimination directly with VCAT.

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<sup>1</sup> *Equal Opportunity Act 2010* (Vic) s 72 (1)

### Frequently Asked Questions & Answers

Netball Victoria (NV) is committed to promoting an environment that is inclusive of all people and preventing discrimination as far as possible. NV strongly recommends that netball Associations, Leagues and Clubs encourage participation of all players in grassroots competitions, regardless of a protected attribute, such as sex and gender identity.

#### **1. Can you discriminate based on strength, stamina and physique?**

Yes, but only in limited circumstances. You can only exclude people of a particular sex or gender identity from participating in a netball competition where the strength, stamina or physique of players is relevant. Current case law in Victoria and associated research indicates that differences in the strength, stamina and physique of males and females playing netball only exist when players reach 13 years of age. Sport is about more than just strength, factors such as fitness, training, age and experience also play a part in making someone a good athlete.

#### **Can you discriminate based on age?**

Yes, but in limited circumstances. The law recognises that it may be unfair to have people from different ages playing together, and permits netball Associations, Leagues and Clubs to restrict participation to people of a specified age group. For example, under 15's competitions may have a minimum age of 12.

#### **2. What is the cut-off age at which boys can no longer play in 'girls only' competitions?**

Netball Victoria's Gender Regulation stipulates the following:

Males who are 13 years of age (and older) are not permitted to participate in a female competition. To avoid any doubt:

- a. males must be less than 13 years of age (actual age) as at the first day of the competition or season; and
- b. males that turn 13 during that competition or season will be permitted to participate for the duration of that competition or season.

#### **3. What should we do if a 13-year-old boy wants to play, or wants to continue playing, netball in our competition?**

We encourage you to include males of all ages to play in grassroots netball competitions. If your organisation still wants to exclude the participation of males, you could advise them that a legal exception applies which allows you to exclude boys from age 13 from girl's competitions based on strength, stamina and physique. To assist males continuing to play netball refer them to surrounding associations or leagues that accommodate mixed or male competitions. Alternatively put them in contact with the Victoria Men's & Mixed Netball Association (VMMNA).

Click Here for More Information: <http://vmmna.org/pathways/mens-netball/>

#### **4. Can we exclude a male if he is stronger, faster or taller than female players under the age of thirteen?**

The law does not allow you to exclude an individual, specifically a male player because he (alone) is stronger than females in the team. Relevant provisions of applicable discrimination legislation are

only excluded where there is evidence of a significant difference in strength, stamina or physique of males under the age of 13.

**5. What should we say to parents who are not happy with their daughters playing against boys who are stronger and bigger than them?**

You cannot discriminate against an individual boy due to his strength, stamina, or physique. Current case law in Victoria and associated research indicates that differences in the strength, stamina and physique of males and females playing netball exist when players reach 13 years of age.

**6. What should we do about the absence of mixed and 'male only' netball Associations, Leagues and Clubs in our local area for boys who have played in our competitions since they were 8 years old?**

NV is committed to increasing the number of opportunities for mixed and 'boys only' netball competitions to ensure fairness to all people regardless of sex or gender identity. We will continue to work with our netball Associations, Leagues and Clubs to increase opportunities for everyone to participate. To assist males continuing to play netball refer them to surrounding associations or leagues that accommodate mixed or male competitions. Alternatively put them in contact with the Victoria Men's & Mixed Netball Association (VMMNA). Click Here for More Information:

<http://vmmna.org/pathways/mens-netball/>

**7. What if a player has a gender identity that differs to their sex?**

Netball Associations, Leagues and Clubs should provide a safe, fair and inclusive netball environment, in which people from all backgrounds can contribute and participate.

Like all players, people who identify as transgender or gender diverse should be always treated with dignity and respect. Reference should be made to Netball Victoria's Transgender and Gender Diverse Policy to be guided in instances such as this. ([Link Policy Here](#))

**8. What Does Applying the NV Transgender and Gender Diverse Policy mean for us in practice?**

NV will not tolerate any discrimination, bullying or harassment of a person based on their sex, gender identity or sexuality. Unlawful exclusion has significant and negative implications for health, well-being and inclusion in community life. NV strongly supports the participation in netball by all people, irrespective of their sex or gender identity.

NV recognises that there is debate over whether a male that identifies as female may obtain a physical advantage over female participants. This debate is reflected in divergent discrimination laws across Australia. If issues with performance arise, NV will support Associations, Leagues and Clubs through this process.

Our focus is on creating an inclusive netball community, and we encourage all netball Associations, Leagues and Clubs to adopt the same approach.

**9. What do we do if someone chooses other on their registration form?**

Participants identifying as neither male or female or non-binary must be treated in accordance with their gender identity (for example, if the Participant is non-binary, they must be treated as neither male or female). NV supports the participation of trans and gender diverse people in single sex

competitions as appropriate to their identified gender. Non-binary players can elect which team they consider more appropriate to join.

Whilst the players privacy is at the forefront of our minds, it is important to have open discussion between the competition organisers and participant to ensure their experience is a positive one and their wellbeing is always respected.

### **10. I have a player who is gender fluid, what should I do?**

Each scenario needs to be looked at on its own individual merit. Contact NV working group to navigate an outcome satisfactory to all parties.

### **11. If we require additional training, what do we do?**

NV provide training to Affiliates and the community. If you require additional training to what is being offered, please contact NV and we will individually work with you to provide further training and support where required.

## **Other Key information**

### **Uniforms**

Uniforms can be an important part of sports participation (for example, in identifying team members). All Players, Participants, Employees/Volunteers, or any other person associated with a club or organisation should be able to participate in a uniform they feel most comfortable wearing. Uniform choice can be made more inclusive by:

- Removing the need for differences between men's and women's uniforms.
- Providing a range of uniform styles to choose from.
- Providing a range of sizes to choose from.

### **Collecting information (membership forms)**

Information collection processes can be modified to be more inclusive of transgender and gender diverse people and respect the privacy of all sports participants.

Information collection can be made more inclusive by:

- Only collecting personal information if it is necessary for fulfilling a legitimate object of NV.
- Accepting legal declarations (such as a statutory declaration) in place of identity documents (such as a passport or birth certificate) to verify characteristics such as age, name or gender.
- Providing the option for participants to select an alternative gender option on registration forms (for example, an option for 'male', 'female', 'non-binary').
- Asking for a 'preferred name' on registration forms.
- Providing an opportunity to nominate which pronouns someone uses on registration forms.
- Securely storing all personal information with regards to someone who is transgender or gender diverse in accordance with all other private information and not disclosing information about someone's status or identity with others, unless absolutely necessary to fulfil a legitimate aim of the organisation.

Note that depending on circumstances, requesting additional information from Transgender and Gender Diverse people may be unlawful.

### **Inclusive language**

Inclusive language is a powerful tool for acknowledgement and respecting diversity in sex, sexuality, and gender identity. It ensures people are not left feeling isolated or disrespected in written and verbal communication.

People often make assumptions about someone's sex, sexuality, or gender identity based on their appearance or pre-existing societal expectations. Incorrect assumptions can be avoided by adjusting language to be more inclusive. If you make an incorrect assumption or use incorrect pronouns to address someone, quickly apologise and continue the conversation. Examples of adjusting language to be more inclusive include:

- Person first – refer to the individual by their affirmed name.
- Avoid using gendered terms such as 'husband' and 'girlfriend' to refer to someone's relationship and use words such as 'partner'.
- Avoid using gendered terms such as 'mum and dad' and opt for 'parents or guardians' when referring to a child's parents.
  - Learn the usual personal pronouns people use to identify themselves:
  - Identifying as male: he/him/his
  - Identifying as female: she/her/hers
  - Identifying as neither male or female: they/them/theirs
  - If you are unsure of someone's personal pronouns, you can politely ask which pronouns they use

The pronoun a person uses to describe themselves generally reflects their Gender identity.

### **Best Practice for use of toilets, change rooms and other facilities**

A significant barrier to sports participation for transgender and gender diverse people is the lack of access to appropriate facilities. Transgender and gender diverse people are at risk of being victimised, assaulted or harassed in toilets and change rooms.

All Players, Participants, Employees and any other person associated with a club, Association or League are entitled to use toilets, change rooms and other facilities in accordance with their gender identity. There is also a strong preference for privacy in using facilities, which is the case for many people regardless of whether they are part of the transgender or gender diverse community or not. People who identify as non-binary may prefer to use unisex or gender-neutral facilities.

Clubs and organisations should consult with landowners such as council to ensure their facilities are more inclusive of all people in a number of ways including:

- Unisex changerooms, where there is more than one cubicle, require flooring to ceiling cubicle doors.
- Changing signage on facilities to offer a unisex or gender-neutral facility, preferably without co-locating it with an accessible facility or family facility.
- Improving change room facilities with private changing and bathroom spaces (examples include, cubicle shower/change rooms, room dividers.
- Ensuring all changerooms have appropriate waste disposal.

## KEY CONTACTS

### Netball Victoria

NV LGBT+ Working Group

W: [memberservices@netballvic.com.au](mailto:memberservices@netballvic.com.au)

P: 03 9321 2255

### Proud 2 Play

Proud 2 Play is a peak body for LGBTI+ inclusion in sport. Proud 2 Play work at all levels of the sporting community providing education, policy advice, running inclusive events, conducting research and forming partnerships.

W: [www.proud2play.org.au](http://www.proud2play.org.au)

E: [info@proud2play.org.au](mailto:info@proud2play.org.au)

### Sport Australia

Sport Australia promotes and supports the development of a cohesive national sport sector that creates opportunities for all Australians to participate and excel in sport and physical activity.

W: [www.sportaus.gov.au](http://www.sportaus.gov.au)

P: 02 6214 1111

### Australian Human Rights Commission

The Australian Human Rights Commission is an independent statutory organisation, established by an act of Federal Parliament to protect and promote human rights in Australia and internationally.

W: [www.humanrights.gov.au](http://www.humanrights.gov.au)

P: 02 9284 9600

### Coalition of Major Professional and Participation Sports (COMPPS)

COMPPS Australian Football League, Cricket Australia, Football Federation Australia, National Rugby League, Netball Australia, Rugby Australia and Tennis Australia.

W: [www.compps.com.au](http://www.compps.com.au)

E: [jsetright@compps.com.au](mailto:jsetright@compps.com.au)

### Gender Wellbeing Service

The Gender Wellbeing Service is a free service and safe space for people who are questioning their gender or who identify as transgender or gender Diverse, as well as their families, friends and other support people.

W: <https://www.shinesa.org.au/community-information/sexual-gender-diversity/gender-wellbeing/>

P: 08 7099 5320 or 08 7099 5322

### Ygender

Ygender is peer led support and advocacy group for young transgender and gender diverse young people.

<https://www.ygender.org.au/>



### **Parents of Gender Diverse Children**

Offers support for parents of transgender and gender diverse children

W: <https://www.pgdc.org.au/>

P: 03 9663 6733

### **Victorian Equal Opportunity and Human Rights Commission**

An independent statutory body with responsibilities under three laws; Equal Opportunity Act, Racial and Religious Tolerance and Charter of Human Rights and Responsibilities. The Commissions role is to educate people about the rights and responsibilities contained in the Charter and to report annually to the government about the operation of the Charter.

W: <https://www.humanrights.vic.gov.au/>

P: 1300 292 153

### **Transgender Victoria**

Can provide information and advice on a range of issues and provides training and education.

W: <https://tgv.org.au/>

P: 03 9020 4642