



Anti-Discrimination Act Review, 2023 Submission Equal Pay for Equal Play NSW

Female athletes are disturbingly vulnerable to discrimination in NSW.

At present the statutory framework fails to prevent a variety of instances of sex or gender-based discrimination from occurring in sports competitions. When female athletes do experience gender discrimination in sport, they are not covered by the Act and therefore unable to seek recompense or prevent it happening in future.

Equal Pay for Equal Play calls on the government to review the definition of “workplace” under discrimination laws to include female athletes competing for money - whether prize money, contract pay or a salary. Additionally, we would like to see the Act cover sponsorships to ensure better equality between male and female athletes.

Reforms to include sporting events and sponsored athletes in the Act would have significant and meaningful impacts on the sports industry. We believe our suggested changes would empower female athletes and help move society towards a more fair and equal sports industry.

Prize money

Under the current legal framework, sporting events fall through the gaps of anti-discrimination law.

As [this article explains](#), one-off sporting competitions do not seem to fall under the definition of “employment relationship” in the Sex Discrimination Act. Athletes are not considered “employees” of the events they compete in under anti-discrimination legislation and there is usually no form of contractual agreement in place for athletes to participate in those events.

The result is that women and men are often being rewarded with vastly different prize money, for competing in the same events. As the article linked above details, professional surfer Lucy Small was paid less than half the prize money of male competitors for winning a surfing competition on the same day in the same waves as the men. This took place in NSW in 2021, though no legal changes have been made since then to prevent the same thing happening.

Effectively, athletes are being asked to perform the same work in a professional sense. The costs and effort being put in are the same. But the athletes are paid unequally, based purely on sex.



This kind of discrimination is unlawful in most other employment and should be considered unlawful in sporting contexts. Unfortunately, the current lack of coverage in our legislation enables discrimination via prize money inequality to occur. And occur it does - evidenced in Lucy's situation as well as this article from May, [published in the Courier Mail](#).

The community outrage that has occurred in response to these situations, and the publicity those situations receive in media, emphasises that there is broad support for changes in the law to recognise prize money and sporting competitions in anti-discrimination law. Such change is not unheard of. In fact in California, a jurisdiction and community with many similarities to the values and lifestyle of NSW and Australians' way of life, the state government has already enacted a law to prevent unequal prize money. In 2019, the US state introduced an "equal pay for equal play" law, making it illegal to pay women and men differently in athletic events held on state land.

In NSW, sporting competitions are one of the few remaining arenas of public life that gender discrimination is allowed to occur openly, overtly and without consequence.

Sponsorship

Sponsorships do not fall neatly under the definition of an "employment relationship" as defined in the Sex Discrimination Act. This is despite the relationship between a sponsor and an athlete having characteristics of employment.

Typical expectations of a sponsorship agreement may include the athlete being required to produce a suite of deliverables over the duration of a fixed term in exchange for payment of a salary. The sponsoring organisation typically has power to determine the behaviours of individuals and the values expressed during their sponsorship arrangement period. There is a power imbalance and duty similar to an employee-employer relationship.

There are many similarities to being employed on a casual basis, or contracted for the provision of goods and services, under the Sex Discrimination Act. Unfortunately, the Act is not clear enough about whether sponsorship agreements can be considered provision of goods and services. Thus, sponsorship of female athletes is not being covered by Anti-Discrimination legislation.



It is very common for female athletes to be awarded lower pay, by the same company, than male athletes on sponsorships. This is even when the female athletes are achieving the same or better competitive results. Female athletes are additionally asked to deliver more content, via modelling and photoshoots, than male athletes and often have higher public profiles. In many situations there is no explicable cause as to why they are being paid less - while offering more value to the brand on a sponsorship basis.

This murky area of sponsor relationships is not presently subject to any legal oversight for discrimination - either statutory or regulatory. Companies are presently empowered and protected to practise what is essentially workplace discrimination. The culture of the sports industry also means that female athletes are incredibly vulnerable to discrimination as they fear speaking out in case the sponsorship cancelled.

It is common for female athletes to have sponsorship contracts terminated when they become pregnant.

Explicit inclusion of gender discrimination in the sport industry in the Act, including covering the above areas, would be transformative in NSW. We urge the government to close the loopholes currently existing in Anti-Discrimination law.

Signed,

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Equal Pay for Equal Play NSW