



**Submission to the NSW Law Reform Commission
Review of the *Anti-Discrimination Act 1977 (NSW)*
Re: Retention of Exceptions for Sport**

Submitted by: Sport NSW

Date: 15 August 2025

Introduction

Thank you for the opportunity to provide a submission to the NSW Law Reform Commission's review of the *Anti-Discrimination Act 1977 (NSW)* (ADA). Our comments in relation to the review are set out below. At this stage, we have limited our comments to those sections of the ADA which provide exceptions to the application of the Act in response to Question 7.7: Exceptions relating to sport.

Sport NSW is an independent member-based organisation representing the sport and active recreation sector. There are almost 2 million registered sporting participants across NSW. As the peak body, Sport NSW advocates for this community through our representation of over 80 State Sporting Organisations (SSOs) and community sport partners. A key goal of our advocacy is for everyone to have access to the benefits of sport including improved physical health and mental wellbeing, greater social connection and stronger community identity.

The sporting sector upholds the principles of equality and non-discrimination, with fairness, safety and providing meaningful competition important values. The sector actively works to eliminate barriers to participation and foster inclusive, welcoming environments. The growth in programs and pathways that increase participation, particularly for people with disabilities and other underrepresented groups, demonstrate this commitment.

Generally, our understanding from our members is that issues that may give rise to potential claims of discrimination in other settings, such as workplaces, do not often arise in the context of community sport. Where they do arise, such issues are managed at the local level with a genuine focus on the wellbeing of participants and an emphasis on inclusion.

It is acknowledged though that occasionally issues cannot be resolved outside a formal complaints process. Examples might include: a young person seeking to participate in a competition reserved for older participants; or a person medically assessed as unfit to participate in a particular sport, still wishing to participate in that sport. In these circumstances, SSOs may reasonably seek to rely upon the current exceptions in the ADA to strike an appropriate balance between ensuring inclusivity and ensuring a fair and welcoming competition for all participants.



The current exceptions are not barriers to inclusion, rather they provide SSOs with the flexibility to design competitions appropriate to the sport and the participant group.

Our position is that subject to minor changes, the current exceptions in the ADA operate effectively and, while complex, provide the sporting sector with certainty. The current exceptions should be retained. Detailed rationale for our position under each exception in the ADA is set out below.

1. Sex Discrimination exception (s38)

Sport NSW supports the retention of the exception that makes it lawful to categorise participants based on sex in any sporting activity. Sport NSW does not support the narrowing of this exception to mirror Commonwealth discrimination law or laws in other States and Territories.

The exception enables the continuation of male and female-only competitions, which is particularly vital to addressing well-documented disparities in participation, representation and retention between men and women in sport. Without this legal safeguard, the viability of female-only competitions would be severely undermined, potentially deterring many women and girls from participating in sport.

Research and consultation undertaken through the NSW Government's *Play Her Way* strategy clearly demonstrates that women and girls face unique and persistent barriers to participation. These include safety concerns, confidence issues and unwelcoming environments. Removing this exception would only exacerbate those barriers and erode progress toward gender equity.

Cultural sensitivities also play a critical role in ensuring access to sport for women and girls from diverse backgrounds. In many communities, participation in mixed- settings is not culturally appropriate and the availability of female-only competitions provides a culturally safe and respectful option. Removing the ability to offer single-sex competitions would risk excluding entire communities from sport and undermine efforts to foster diversity and inclusion.

Importantly, this exception does not prevent inclusion in sport. Many sports already offer mixed or open competitions and elite pathways that enable players of different sexes to compete alongside and against each other, where appropriate.

The exception reflects longstanding community expectations and supports the broader national objective of increasing female participation in sport. The retention of this exception is critical to continuing the progress toward a more equitable and inclusive sporting landscape.



2. Transgender Discrimination exception (s38P)

Sport NSW supports the retention of this exception.

Sport in NSW and across Australia strives and works hard to be inclusive. Many sports welcome trans and gender diverse participants through inclusive policies, education programs, open and mixed competitions and supportive environments. These efforts are genuine and ongoing,

This is an evolving and complex area of sport policy where the science, community expectations and governing body and event policies are continually developing. In this context, it is critical that any legal framework allows flexibility for sports to review and refine their policies over time in response to new research, eligibility policies, and lived experiences.

Each sport is uniquely placed to determine what is appropriate and required for its participants, rules and competition environment. What is suitable for one sport may not be suitable for another. The retention of this exception allows each sport to assess these factors on a case-by-case basis and implement policies that reflect the realities of their specific context.

The retention of this exception is also essential for some sports to maintain compliance with international rules and guidance. This is particularly relevant in high-performance sports which operate under national and international guidelines and impose strict eligibility requirements.

3. Disability Discrimination exception (s49R)

Sport NSW supports the retention of this exception which is essential to the safe, equitable and inclusive delivery of sport.

The sporting sector agrees that participants with disability often face structural and practical barriers to participation in sport. The current provisions in the ADA enable sports to offer tailored programs that support participation. These include modified formats, classification systems and disability-specific competitions. Without this exception, such programs may be considered unlawfully discriminatory, undermining the very efforts designed to promote inclusion and participation.



The exception also allows for eligibility criteria to be set where a particular disability may impact safety or an individual's capacity to meet the performance standards of a given level of competition. Sporting organisations have a duty of care to all participants, including ensuring physical safety for both the person with disability and their opponents or teammates.

In some cases, medical professionals may be required to assess an individual's risk of participation and make recommendations based on clinical evidence and experience. The exception supports the continued use of these expert assessments in guiding decisions that balance inclusion with safety.

Retaining this exception does not diminish the rights of people with disability. Rather it encourages participation in sport by enabling participation through appropriate, thoughtful and flexible programs.

4. Age Discrimination exception (s49ZYW(1))

Sport NSW supports the retention of this exception.

Age-based competitions are a foundational element of community and competitive sport. Age categorisation ensures that participants are grouped with others at similar stages of physical, cognitive and emotional development. This is especially important in junior sport, where structured age brackets aim to deliver safe, fair and enjoyable experiences. Without this exception, the long-established model of age-based sport could be challenged as discriminatory, potentially undermining participation and disrupting the entire delivery framework.

The exception enables the design of modified formats, rules, and development programs tailored for specific age groups, such as children, youth or older adults (such as Masters competitions). These targeted approaches are essential for maintaining engagement, supporting athlete development, and promoting lifelong participation in sport.

Further each sport has unique characteristics and may operate within national or international frameworks where age-based eligibility criteria are mandated. The current exception allows NSW sports to remain aligned with these broader systems, ensuring consistency with national or global competition pathways.

Importantly, the existing exception does not prevent sports permitting certain participants to compete in an alternative age grade. Many sports already offer flexibility through exemptions, skill-based grading, and open-age competitions to accommodate individual circumstances.

5. Racial Discrimination exception (s22)

Sport NSW supports the retention of this exception.

Sport NSW strongly opposes all forms of racial discrimination in sport and our position should not be construed as supporting or condoning racial discrimination or vilification in sport. This is unacceptable and is not tolerated in the sporting community.

The exception however exists solely to allow for reasonable and widely accepted eligibility criteria to be applied to participants to enable representative competitions to function. In many competitions at national, and international level, eligibility to represent a region or country is based on criteria such as citizenship or residency. The exception enables sporting bodies to implement such eligibility rules consistently and lawfully, in alignment with national and international sporting frameworks.

The exception also indirectly supports the celebration of cultural identity and heritage in sport. The ability to select participants for certain competitions based on nationality or place of birth fosters a deep sense of identity, pride and belonging, strengthening the connection between players and the region or community they represent. Many competitions, events and representative teams are proudly based on cultural heritage, such as First Nations teams or multicultural community teams. These teams foster pride, connection to culture and community engagement through sport.

Without this exception, the ability to form and field culturally representative teams could be jeopardised, undermining programs that have been highly successful in promoting inclusion, reconciliation and belonging. In a multicultural society like Australia, where sport plays a critical role in building social cohesion, the ability to continue to rely upon this exception enables legitimate selection and clear eligibility criteria.

Additional comments

1. In the consultation paper for this review, reference is made to the narrowing the exceptions to the effect that they only apply to *competitive sporting activities* where the *strength, stamina, or physique of participants* is relevant. This proposal is not supported by Sport NSW.

Such a change would be highly impractical at the grassroots level, where volunteers are not equipped to make individual physical assessments across thousands of participants. It would also introduce unnecessary complexity and administrative burden deterring participation.



2. The exceptions in the ADA may intersect or come into tension with other legislative frameworks at both the Commonwealth and state level. This can create uncertainty for sports, particularly those that operate across jurisdictions or are affiliated with national sporting bodies that follow differing policy positions. Sports NSW calls for greater clarification about the applicability of legislative frameworks to ensure that the sports sector can apply eligibility criteria lawfully, confidently and consistently.

In addition, the role that Anti-Discrimination NSW plays in educating the community about respect and equality for all is critically important. Sports NSW calls for additional resources for the NSW sporting community to assist in this educative initiative.

Conclusion

Sport NSW supports the retention of the exceptions under the *Anti-Discrimination Act* that enable inclusive participation in sport. These exceptions are essential to encouraging participation and supporting inclusive practices.

We note that the NSW Law Reform Commission is planning to conduct a series of consultation roundtables later in the year with peak bodies, including those representing organisations covered by exceptions. We look forward to the Commission consulting with Sport NSW and other representatives from the sector at that time.