

ROWING TRANSGENDER-INCLUSIVE COMMUNITY SPORTS GUIDELINE

There are many benefits to being involved in sport and the sporting community. Practices that exclude transgender and gender diverse participants have been found to be harmful not just to transgender and gender diverse people but harmful to all people associated with sporting organisations. The great majority of sporting teams and clubs are founded on a belief in respect, fairness and courage not on difference and exclusion. In line with this belief, transgender rowers will participate according to the gender in which they identify and have a positive sport experience.

PHILOSOPHY OF GENDER IDENTITY PARTICIPATION

Rowing is a sport for everyone. At Rowing Australia (RA), we value inclusion and believe that participation in sport is valuable to an individual's physical, intellectual, social, and character development. Rowers, administrators, coaches, officials, support staff no matter what their background should feel included and free to participate. Guided by this principle, this guideline permits participation in a manner consistent with a person's gender identity.

GUIDELINE ON GENDER IDENTITY-BASED PARTICIPATION

Everyone should have the opportunity to participate in a manner that is consistent with their gender identity, irrespective of the gender listed on their records.

Eligibility to participate

A rower has the right to participate in a manner consistent with the sex listed on their records. A rower whose gender identity is different than the sex listed on their records may participate in a manner consistent with their gender identity in accordance with the guideline below.

Affiliated Associations, Clubs and Indoor Rowing Centres must not ask any rower to undergo a medical examination for the purposes of gender verification.

In the event a rower is gender transitioning or transitions through the course of the Community Rowing competition, the Affiliated Association, Club or Indoor Rowing Centre shall give consideration to that rower's transition and, in discussion with the rower, consider the individual needs of any transition or affirmation.

Affiliated Associations, Clubs and Indoor Rowing Centres have in place well established practices of grading and the selection of rowers within competitions to:

- address the relevant disparity of the rower;
- protect the health and safety of participants; and
- provide fair and meaningful competitions.

Such practices should be applied consistently across all rowers when considering varying skill levels.

The consistent application of these practices within an Affiliated Association, Club or Indoor Rowing Centre will assist in supporting any rower's decision to participate in Community Rowing competitions in accordance with their Gender Identity, whether or not this accords with the sex they were assigned at birth and allow their individual needs to be considered by the Affiliated Association, Club or Indoor Rowing Centre.

Under Federal and State and Territory law it is unlawful to discriminate on the basis of Sex or Gender Identity in sport, unless an exemption applies. An Association, Club or Indoor Rowing Centre may be in breach of these laws if they do not follow these eligibility requirements.

Competition

Without violating a transgender individuals confidentiality or privacy, Affiliated Association, Clubs, and Indoor Rowing Centre's should communicate with their counterparts prior to competitions in which a transgender rower is participating about expectations for treatment of transgender individuals on and off the water, including to ensure access to appropriate changing, showering, or bathroom facilities, and to request the use of preferred names and pronouns by coaches, opponents, officials, announcers, fans, and media.

The Federal Sex Discrimination Act 1984 (Cth) provides for affirmative action in the form of 'positive discrimination', a special measure to promote equality for disadvantage groups. An exemption 'exempts' a person or organisation from the operation of the Act, and mean that a successful claim of unlawful discrimination cannot be brought.

The Act contains a permanent exemption in relation to 'Competitive sporting activity'. The exemption allows for discrimination on the grounds of sex or gender identity only in 'any competitive sporting activity in which the strength, stamina or physique of competitors is relevant'. The words 'strength', 'stamina' and 'physique', and the term 'competitive sporting activity', are not defined in the Act. Their meanings have not been conclusively settled by the Federal Court of Australia.

However, in considering an equivalent exemption in the Victorian legislation, the Victorian Civil and Administrative Tribunal has stated that the exemption will 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. This interpretation was approved by the Federal Court of Australia and the reasoning is likely to extend to people of different gender identities.

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

If any Affiliated Associations, Clubs or Indoor Rowing Centres decides to rely on the 'competitive sporting activity' exemption to exclude a person from a particular competition, it will need to satisfy itself that 'strength', 'stamina' or 'physique' are relevant.

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

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

Relying on the 'competitive sporting activity' exemption

There may be times when Affiliated Associations, Clubs and Indoor Rowing Centres considers that participation on the basis of affirmed gender identity alone is not possible. For example, this may occur where an individual's strength directly affects their ability, and the ability of others, to 'effectively compete'. In these circumstances Affiliated Associations, Clubs and Indoor Rowing Centres may seek to rely on the 'competitive sporting activity' exemption in the Act.

When seeking to rely on the 'competitive sporting activity' exemption, the following factors should be considered:

Importance of inclusion in rowing

Rowing is structured around particular core principles and beliefs, which include respect, fairness, community, integrity, professionalism, and inclusion.

Limits of 'competitive sporting activity'

The exemption only applies to competitive sporting activity in which the competitors are aged 12 years and over.

The exemption only applies to competitors. It does not apply to administrators, coaches, officials, or support staff.

Not all sports or physical activities will constitute a 'competitive sporting activity' for the purpose of the exemption. For example, as the term is not defined in the Act, it is uncertain whether an activity, where the sole purpose is social participation, would constitute a 'competitive sporting activity'.

Relevance of strength, stamina and physique

Where strength, stamina and physique are relevant, the assessment should be based on these factors and not on gender identity.

The exemption only applies where the strength, stamina or physique of a competitor is relevant.

A fair and robust decision-making process

If an Affiliated Associations, Clubs or Indoor Rowing Centres seeks to specifically exclude an individual from a 'competitive sporting activity' by relying on the exemption, then it is advisable for it to consider:

- consulting with the relevant national or state sporting organisation
- consulting with the relevant rowing association
- ensuring that it has an established, clear, written and publicly available policy (prior to seeking to rely on the exemption) which states:
 - how it will assess the application of the exemption
 - who will make the assessment
 - what evidence will be used for this assessment, as well as the other factors on which the assessment will be based
- ensuring that any assessment is undertaken in a timely manner so that the individual is not unnecessarily disadvantaged
- providing the individual with an opportunity to respond to any proposal to exclude them based on the exemption
- providing the individual with written reasons for any decision to exclude them

- providing the individual with an opportunity to seek a review of a decision to exclude them.

ADDITIONAL GUIDELINES

Rowing Australia endorses the following guidelines to ensure the non-discriminatory treatment of transgender rowers participating in rowing activities.

Changing Areas, Toilets, and Showers

Transgender rowers should be able to use the locker room, shower, and toilet facilities in accordance with their gender identity. Every locker room should have some private, enclosed changing areas, showers, and toilets for use by any rower who desires them.

Hotel Rooms

Transgender rowers should be assigned to share hotel rooms based on their gender identity, with a recognition that any rower who needs extra privacy should be accommodated whenever possible.

Language: Preferred names and pronouns

A transgender rower may have a preferred name and gender pronouns that is different from what may be indicated by their records. Coaches, administrators, and officials shall make every reasonable effort to honour the individuals preferred name and pronoun and to ensure that the individuals name and pronoun preferences are respected by others including teammates, opponents, fans, volunteers, announcers, etc. This guideline applies not only for transgender rowers who seek to participate in Affiliated Associations, Clubs and Indoor Rowing Centre activities in a manner consistent with their gender identity, but also to those whose participation is consistent with the sex on their records and not their gender identity.

Dress codes and team uniforms

All team members should have access to uniforms that are appropriate for their sport and that they feel comfortable wearing. No rower should be required to wear a gendered uniform that conflicts with their gender identity. Dress codes for athletic teams when travelling or during a race day should be genderneutral.

PRIVACY

Affiliated Associations, Clubs and Indoor Rowing Centres should consider the provisions of the Privacy Act 1988 (Cth), the Australian Privacy Principles (APPs), and the relevant legislation and regulations of the States and Territories.

This is principally important when dealing with any personal or sensitive information that the Affiliated Association, Club or Indoor Rowing Centre may hold regarding a person's Gender Identity, or transition or affirmation process. The privacy of rowing participants must be adhered to at all times.

Further information is available from the Office of the Australian Information Commissioner at www.oaic.gov.au/privacy-law.

COLLECTING AND USING PERSONAL INFORMATION

Personal information should only be collected from participants if absolutely necessary and with the rower's consent, or where the rower is under the age of 18, their parent's consent. Any personal information collected by must only be disclosed if necessary and in accordance with the law.

Affiliated Associations, Clubs and Indoor Rowing Centres must:

- securely store personal information, in line with privacy legislation;
- not disclose the Gender Identity of a participant without the express consent of the rower; and
- ensure correct names and pronouns are used in conversations, databases, documents and correspondence.

Affiliated Associations, Clubs and Indoor Rowing Centres may also consider:

- accepting legal declarations to verify name and gender (e.g. by way of a statutory declaration) in place of identity documents such as passport or birth certificate where those identity documents have a Sex/gender marker inconsistent with a rower's Gender Identity;
- providing the option of selecting a Non-binary Gender Identity and a gender non-specific title on registration forms; and
- providing 'preferred name' and 'pronoun' options on registration forms

Affiliated Associations, Clubs and Indoor Rowing Centres should be aware that, depending on the circumstances, requesting additional information from Transgender and Gender Diverse people may be unlawful.

ANTI-DOPING

Anti-doping laws may be relevant to transgender and gender diverse people who are accessing hormone therapy as part of their transition or affirmation. Usually this will only be relevant in Elite Rowing level competitions and not at Community level, and even then only in very limited circumstances.

These anti-doping laws allow athletes to obtain permission to use prescribed substances for therapeutic purposes. This publication does not consider these laws and processes.

Further information is available from the Australian Sports Anti-Doping Authority at www.asada.gov.au.

SEXUAL HARRASSMENT

Sexual harassment is unlawful under the Federal and State laws in certain areas of public life. Rowing Australia does not tolerate any form of harassment, including sexual harassment.

‘Sexual harassment’ is defined as an unwelcome:

- sexual advance;
- request for sexual favours; and/or
- conduct of a sexual nature,

in circumstances in which a reasonable person would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.

The Sex and Gender Identity of the person who is harassed are relevant circumstances to be taken into account in determining if a person has been sexually harassed.

Sexual harassment can be physical, spoken or written, and may include comments online or in social media. It may include a range of unwelcome behaviours including:

- requests for sex;
- intrusive comments about someone’s private life;
- sexually suggestive behaviour, such as leering or staring;
- sexually suggestive comments or jokes;
- repeated requests to go out; or
- transmitting sexually explicit messages.

Sexual harassment can also include sexually suggestive or invasive questions, such as asking a transgender or gender diverse person about their sex life, or asking them about their physical characteristics.

VICTIMISATION

A person will be taken to have victimised another person if they threaten to, or do, subject that person to a detriment because they have either made a complaint under Federal and/or State and Territory legislation or these Guidelines, or have engaged in a complaint handling process in some other way.

Victimisation is an offence under Federal and State and Territory legislation. Further, Rowing Australia does not tolerate any form of victimisation.

COMPLAINT HANDLING

Any complaint in relation to this Guideline shall be dealt with in accordance with the Rowing Australia Member Protection Policy.

The Australian Human Rights Commission or State or Territory Human Rights Commission may also assist individuals in relation to any complaints of discrimination, harassment and/or victimisation under Federal or State and Territory laws.

COMMONLY USED TERMS

Affiliated Association, Clubs and Indoor Rowing Centre:

- any rowing association, club or indoor rowing centre that is formally affiliated with Rowing Australia and/or
- any rowing association, club or indoor rowing centre that has agreed to be bound by this guideline and/or
- any rowing association, club or indoor rowing venue that receives funding from Rowing Australia

Australian Rowing – Rowing Australia, together with each of the State and Territory Associations.

Community Rowing – Any rowing competition conducted by an Affiliated Association, Club or Indoor Rowing Centre other than Elite Rowing competitions

Elite Rowing – is rowing at the highest level of competition where the emphasis is on winning prestigious competitions, is distinguished from Community and Recreational Sport where the emphasis is on attracting the maximum number of participants. As such Elite Rowing encapsulates rowing:

- in a State team
- in the Australian National team
- in a touring international or invitational team
- as part of the National Senior Male Championship Team
- as part of the National Senior Female Championship Team
- as part of the National Under 23 Male Championship Team
- as part of the National Under 23 Female Championship Team
- as part of the National Under 21 Male Championship Team
- as part of the National Under 21 Female Championship Team
- as part of the National Junior Male Team
- as part of the National Junior Female Team

Gender diverse – umbrella term that includes all the different ways gender can be experienced and perceived.

It can include people questioning their gender, those who identify as trans/Transgender, genderqueer, non- binary, gender non-conforming etc.

Gender identity – The Sex Discrimination Act 1984 (Cth) defines Gender Identity as the gender related identity, appearance or mannerisms or other gender related characteristics of a person (whether by way of medical intervention or not), with or without regard to the person's designated sex at birth.

Intersex status – is a protected attribute under legislation.

Under the Sex Discrimination Act 1984 (Cth), intersex status means the status of having physical, hormonal or genetic features that are:

- neither wholly female nor wholly male
- a combination of female and male; or
- neither female nor male.

LGBTQI (or variations) – acronym for lesbian, gay, bisexual, Transgender, queer, questioning and intersex. It is used to refer collectively to these communities.

Non-binary – a person who identifies as either having a gender which is in-between or beyond the two categories ‘man’ and ‘woman’, as fluctuating between ‘man’ and ‘woman’, or as having no gender, either permanently or some of the time.

Pronouns – grammatical means of referring to a person or persons. Conventional pronouns are ‘she/her/hers’ and ‘he/him/his’. Some people prefer to use gender neutral pronouns, such as ‘they/them/their’. The pronoun a person uses to describe themselves generally reflects their gender identity.

Sex – refers to a person’s biological sex/gender or sex characteristics. These may be genetic, hormonal or anatomical.

State and Territory Association – the State and Territory Rowing Associations.

Transgender – general term used to describe a person whose gender identity is different from the sex they were assigned at birth. Being Transgender is about how an individual describes their own gender. It is not necessarily about their biological characteristics.

Transition – or affirmation refers to the social, medical or legal steps that a Transgender person takes to affirm their gender identity. A transition or affirmation may or may not involve medical treatment, including surgeries or hormone therapy. People can transition as children or as adults. Each transition is different.

- **Social transition** – process by which a person changes their gender expression to better match their gender identity. This may include changing their name, pronouns or appearance.
- **Medical transition** – process by which a person changes their physical sex characteristics to align with their gender identity. This may include hormone therapy, surgery or both.
- **Legal transition** – process by which a person changes their identity documents, name or both, to reflect their gender identity. This may include changing their gender marker on a passport or birth certificate, or changing their name on a driver’s licence or bank card.