

**PORTFOLIO COMMITTEE NO. 3 – EDUCATION**

**INQUIRY INTO THE EDUCATION LEGISLATION AMENDMENT (PARENTAL RIGHTS) BILL 2020**

Hearing – 21 April 2021

**Supplementary questions and answers  
Save Women's Sport Australasia**

**1. Could you please advise the source of the statistics on risk of injury and concussion to women, and further elaborate on this issue?**

***Risk of Injury – World Rugby***

World Rugby conducted a comprehensive and transparent review of its transgender participation guidelines by considering all existing available evidence in an inclusive and collaborative process led by a working group of experts<sup>1</sup>. This process is the most thorough and impartial investigation ever undertaken of the evidence<sup>2</sup>, and has arguably established a best practice methodology for making decisions in relation to sports policies that seek to balance the principles of fair competition, player safety and welfare, and inclusion<sup>3</sup>.

A broad selection of multi-disciplinary stakeholders and leading independent experts in the fields of performance, physiology, medicine, risk law and socio-ethics<sup>4</sup>, including trans lobby groups, women's advocacy groups, player representatives, scientists, litigation lawyers, human rights lawyers, and unions, were consulted and all were given the opportunity to present their arguments<sup>5</sup>. The working group prioritised the player and relied on an evidence-based approach for all decisions.

The research determined that performance differences between biological males and females range from 10% (sprint speed) to 160% (punching), Males have higher muscle mass, larger muscle cross sectional area, longer levers (different skeleton), less fat mass, higher tendon stiffness and higher cardiovascular capacity (larger heart and lungs, more haemoglobin).<sup>6</sup>

The research further determined that head and neck forces are 20% to 30% greater in men's elite rugby than women's elite rugby as a result of mass differences alone, and scrum forces range from 40% to 120% higher.

Overall, the research determined that there was a 20-30% *conservatively* estimated risk of injury to female players if they were to play against males. Further, the ability to exert force (strength and power) is greater in biological males, and the ability to receive or tolerate that force is reduced in relatively weaker players.

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<sup>1</sup> <https://www.world.rugby/news/591776/world-rugby-approves-updated-transgender-participation-guidelines>

<sup>2</sup> <https://podcasts.apple.com/gb/podcast/why-rugbys-controversial-new-transgender-guidelines/id1461719225?i=1000497073938>

<sup>3</sup> [https://img1.wsimg.com/blobby/go/a69528e3-c613-4bcc-9931-258260a4e77f/TGWG\\_TRANSGENER\\_GUIDELINE\\_EN-0001.pdf](https://img1.wsimg.com/blobby/go/a69528e3-c613-4bcc-9931-258260a4e77f/TGWG_TRANSGENER_GUIDELINE_EN-0001.pdf)

<sup>4</sup> <https://playerwelfare.worldrugby.org/?subsection=84>

<sup>5</sup> <https://fairplayforwomen.com/worldrugby/>

<sup>6</sup> [https://img1.wsimg.com/blobby/go/a69528e3-c613-4bcc-9931-258260a4e77f/TGWG\\_TRANSGENER\\_GUIDELINE\\_EN-0001.pdf](https://img1.wsimg.com/blobby/go/a69528e3-c613-4bcc-9931-258260a4e77f/TGWG_TRANSGENER_GUIDELINE_EN-0001.pdf)

Biological Advantages from Testosterone <sup>7</sup>	Resultant Performance Differences
<ul style="list-style-type: none"> <li>• Significant increases in total body mass</li> <li>• Significant increases in lean/muscle mass and muscle density</li> <li>• Reduction in body fat mass, improving strength and power-to-weight ratio</li> <li>• Increased height, changed dimensions of important levers, greater bone density</li> <li>• Increased haemoglobin levels</li> <li>• Increased heart and lung size</li> </ul>	<ul style="list-style-type: none"> <li>• Significantly greater strength (between 50-60% by adulthood, with relatively greater upper body strength)</li> <li>• Significant speed advantages (between 10-15%) over various durations</li> <li>• Greater capacity to produce force/power (advantages of between 30-40% in explosive movement capabilities)</li> <li>• Strength-to-weight and power-to-weight advantages (even after adjusting for mass, height and similar level of performance (elite, untrained etc.) males have a 30-40% strength advantage)</li> </ul>

The research concluded that even with the suppression of testosterone males retain a physiologic biological advantage because it only removes approximately one-fifth of muscle and strength advantages<sup>8</sup>.

World Rugby prioritised player safety and welfare as the primary concern due to the physical confrontation and collisions inherent to the sport. The working group concluded that the balance between safety, fairness and inclusion could not be provided for if males with a trans identity were to play women's rugby, so the decision was made that they may not play in the female category<sup>9</sup>.

### *Concussion*

There is growing awareness of the impact of concussion and potential long-term ramifications for athletes<sup>10</sup>, including mental illness, cognitive deterioration and dementia<sup>11</sup>.

To date, much of the research focus has been on male athletes, with one reason being because of their higher levels of engagement in high impact, collision and contact sports such as combat sports, AFL or Rugby<sup>12</sup>, but the main one being the

<sup>7</sup> [https://img1.wsimg.com/blobby/go/a69528e3-c613-4bcc-9931-258260a4e77f/TGWG\\_TRANSGENER\\_GUIDELINE\\_EN-0001.pdf](https://img1.wsimg.com/blobby/go/a69528e3-c613-4bcc-9931-258260a4e77f/TGWG_TRANSGENER_GUIDELINE_EN-0001.pdf)

<sup>8</sup> <https://www.world.rugby/news/591776/world-rugby-approves-updated-transgender-participation-guidelines>

<sup>9</sup> <https://www.world.rugby/news/591776/world-rugby-approves-updated-transgender-participation-guidelines>

<sup>10</sup> <https://www.concussioninsport.gov.au>

<sup>11</sup> [https://www.alz.org/alzheimers-dementia/what-is-dementia/related\\_conditions/chronic-traumatic-encephalopathy-\(cte\)](https://www.alz.org/alzheimers-dementia/what-is-dementia/related_conditions/chronic-traumatic-encephalopathy-(cte))

<sup>12</sup> <https://www.theguardian.com/sport/2021/mar/09/women-face-double-the-risk-of-concussion-in-sport-mps-told>

tradition focus of research to be on males because they are regarded as the “default human”<sup>13</sup>.

Yet women and girls participate in other sports that are also regarded as contact sports, such as basketball, soccer and hockey, while increasing numbers of females are beginning to compete in the traditionally male dominated, high impact sports such as AFL, NFL and Rugby<sup>14</sup>.

Emerging evidence is demonstrating that females are at far greater risk of concussion, suffering more concussions, more severe injury at lower impacts, with a longer recovery time and worse outcomes<sup>15</sup>. The impact of concussion on females is only just beginning to be understood<sup>16</sup>. It is clear that sex affects the incidence and effect of sports-related concussion, and more research is needed<sup>17</sup>.

This increased understanding of how sports-related concussion affects the sexes differently should be giving sport organisations, administrators, insurers and legislators pause for thought as to the sensibility of allowing biological males to compete in the female category. It would be reasonable to assume that there is a commensurate and significant increased risk to women for concussion from a policy that includes men or boys, although no research specific to this issue was able to be located as this is an extremely new phenomena.

*Do we expect young girls and women to carry this elevated and foreseeable risk to their cognitive functioning, quality of life, and potentially their lives, in light of the emerging evidence in furtherance of sports policies that are inherently unfair and unsafe?*

### **Male Biological Advantage**

Men and adolescent boys have a male physiology that is the basis for the performance advantage that they enjoy over women and adolescent girls in almost all athletic contests; enabling them to perform better in almost all sports. A male puberty confers physical superiority resulting in boys and men running faster, outputting more physical power, jumping higher, greater physical endurance, and increased strength, size and weight<sup>18</sup>.

This advantage is so substantial that most men, and even adolescent boys, are able to outperform the most elite female athletes. For example, a team of high school

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<sup>13</sup> Caroline Criado Perez *Invisible Women: Exposing Data Bias in a World Designed for Men* 2020

<https://www.penguin.com.au/books/invisible-women-9781784706289>

<sup>14</sup> <http://www.roymorgan.com/findings/7916-sports-women-in-football-aflw-december-2018-201903220415>

<sup>15</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7366411/>

<sup>16</sup> <https://www.pinkconcussions.com/brain-injury>

<sup>17</sup> <https://www1.racgp.org.au/newsgp/clinical/sports-concussions-affect-men-and-women-differentl>

<sup>18</sup> <https://img1.wsimg.com/blobby/go/a69528e3-c613-4bcc-9931-258260a4e77f/downloads/2020.01.07%20G%20Brown%20Report%20Executed.pdf?ver=1621204673666>

boys beat the US World Cup Women's Soccer team<sup>19</sup>, and 1000s of high school boys would be able to outrun the lifetime best performances of the three top-performing female sprinters, Allyson Felix, Sanya Richards-Ross and Christine Ohuruogu<sup>20</sup>.

Emerging research demonstrates that reduction of testosterone is not sufficient to mitigate the superior physical advantages in strength, lean body mass, muscle size and bone density conferred by a male puberty. The data concludes that major performance and safety implications remain, and therefore it is neither safe nor fair to women and girls to allow males to compete in the female category in either elite or non-elite competition even with testosterone reduction<sup>21</sup>.

The risk of allowing males to compete in the female sports category on the basis of a self-declared gender identity is that women and girls will be displaced in their own sports. They will lose scholarships, sponsorships, championship titles and opportunities to compete that were established for the specific benefit of females. Selina Soule lost the opportunity to compete in front of college scouts for a sports scholarship and Chelsea Mitchell was edged out of State Championships because two male athletes won 15 women's high school championships that were once held by nine different girls in the state of Connecticut<sup>22</sup>.

Policies that prioritise inclusion on the basis of "*gender identity*" rather than sex will exclude women and girls, with females already underrepresented in sport<sup>23</sup> the impact will be profound on the hard-won and hard-fought gains that have been made. Girls will self-exclude, feeling demoralised because the outcome of the game is already determined, little girls will be denied role models who would otherwise inspire them to play sport, the message will be sent that the right of biological males to have their gender identity affirmed trumps the rights of girls to be included and celebrated in their own sports, and their right to a fair and safe playing field.

### ***International Olympic Committee***

The IOC Charter 2018<sup>24</sup> outlines the seven fundamental principles of Olympism. Principle 4 refers to '*sport as a human right*' but goes further and requires '*no discrimination of any kind*' and '*mutual understanding with a spirit of friendship, solidarity and fair play*'. This goes to heart of the concept of universal human rights

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<sup>19</sup> <https://www.cbssports.com/soccer/news/a-dallas-fc-under-15-boys-squad-beat-the-u-s-womens-national-team-in-a-scrimmage/>

<sup>20</sup> [https://law.duke.edu/sites/default/files/news/Doriane\\_Coleman\\_Oral\\_Testimony\\_April\\_2.pdf](https://law.duke.edu/sites/default/files/news/Doriane_Coleman_Oral_Testimony_April_2.pdf)

<sup>21</sup>

[https://www.researchgate.net/publication/346774077\\_Transgender\\_Women\\_in\\_the\\_Female\\_Category\\_of\\_Sport\\_Perspectives\\_on\\_Testosterone\\_Suppression\\_and\\_Performance\\_Advantage](https://www.researchgate.net/publication/346774077_Transgender_Women_in_the_Female_Category_of_Sport_Perspectives_on_Testosterone_Suppression_and_Performance_Advantage)

<sup>22</sup> <https://adfflegal.org/selina-soule-track-athlete-story#close>

<sup>23</sup> <https://olympics.com/ioc/gender-equality>

<sup>24</sup> <https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/General/EN-Olympic-Charter.pdf>

since classically an assertion of the rights of one person requires from them the recognition of equal rights for everyone else.

This is why Principle 1 includes *'respect for universal fundamental ethical principles'* and Principle 6 sets out that *'The enjoyment of the rights and freedoms ...shall be secured without discrimination of any kind'* and specifically refers to sex. Further Mission 1 of the IOC outlines *'that in sport, the spirit of fair play prevails'* and Mission 8 is specifically *'to encourage and support the promotion of women in sport at all levels and in all structures with a view to implementing the principle of equality of men and women'*.

The IOC Code of Ethics 2018<sup>25</sup> elaborates further and reiterates the importance of *'Respect for the Olympic spirit, which requires mutual understanding with a spirit of friendship, solidarity and fair play'* and *'respect for international conventions on protecting human rights'* which are outlined above. The Basic Universal Principles of Good Governance of the Olympic and Sports Movement also outlines that *'fairness and fair play are central elements of the competition. Fair play is the spirit of sport.'*<sup>26</sup>

Despite this commitment to principles and ethics for fairness and fair play, in 2015 the International Olympic Committee released contentious and controversial criteria that allow males to compete in the female category provided their total serum testosterone levels to be suppressed below 10nmol/L for at least 12 months prior and during competition<sup>27</sup>. This criteria disregards both the normal levels for women are ten times lower, between 0.3 and 2.4 nmol/L and the overwhelming performance superiority that testosterone confers on a male physiology<sup>28</sup>. The new 2015 criteria replaced the 2003 *Stockholm Consensus on Sex Reassignment in Sports* that allowed males who had undergone sex reassignment of male to female prior to puberty to be regarded as female for the purpose of competing in the women's category, and vice versa for natal females<sup>29</sup>.

The 2003 Consensus considered the scenario envisaged to be extremely rare, however with the substantial relaxing of the criteria, it is now known that at least five males are openly intending to try out to compete in the women's category at Tokyo 2021<sup>30</sup>. It should be noted that if these athletes were competing in the male category they would be ranked so low they would not be considered at all for the Olympic team on the basis of a mediocre performance or the fact that they have simply aged out.

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<sup>25</sup> <https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/Documents/Code-of-Ethics/Code-of-Ethics-ENG.pdf>

<sup>26</sup> [https://fairplayforwomen.com/rights\\_sport/](https://fairplayforwomen.com/rights_sport/)

<sup>27</sup> [https://stillmed.olympic.org/Documents/Commissions\\_PDFfiles/Medical\\_commission/2015-11\\_ioc\\_consensus\\_meeting\\_on\\_sex\\_reassignment\\_and\\_hyperandrogenism-en.pdf](https://stillmed.olympic.org/Documents/Commissions_PDFfiles/Medical_commission/2015-11_ioc_consensus_meeting_on_sex_reassignment_and_hyperandrogenism-en.pdf)

<sup>28</sup> [https://fairplayforwomen.com/emma\\_hilton/](https://fairplayforwomen.com/emma_hilton/)

<sup>29</sup> <https://olympics.com/ioc/news/ioc-approves-consensus-with-regard-to-athletes-who-have-changed-sex-1>

<sup>30</sup> <https://www.outsports.com/2021/5/12/22428082/trans-olympic-athlete-tokyo-ioc-paralympic?fbclid=IwAR0g33SCSXx4vBbCRUDYHN7tTS3sISI5gzQcXjF730LwVulkViRFLN-T6cE>

Recent research conducted by Sweden's Karolinska Institute<sup>31</sup> concluded that testosterone reduction does not reduce the male biological advantage; the male competitor may experience a slight decrease in advantage, but it is only fractional, and a substantial advantage remains<sup>32</sup>.

There has been strong global public backlash to this policy; Save Women's Sports wrote to the IOC and received a response that stated it would be "*neither fair, nor ethical or legally admissible*" to the male athletes who had qualified for the Tokyo Olympics under the 2015 Stockholm consensus<sup>33</sup>. In particular, there has been international coverage of Laurel Hubbard, a 42 year old NZ weightlifter and biological male who transitioned in their early 30s after experiencing male puberty, who is expected to compete in the Olympic female weightlifting category<sup>34</sup>. It should be noted that the peak performance elite weightlifters is approximately 26 years old<sup>35</sup>.

The IOC has since declared their intention to amend the criteria, and this is expected to be announced after the Tokyo Olympics<sup>36</sup>.

### ***Lack of Consideration of Elevated Risk to Female Athletes***

The evidence shows that females are a significantly elevated risk of injury if forced to play against males, including a far greater risk of concussion with more serious implications. Allowing males to play (regardless of gender or trans identity) with females puts females at a considerable and foreseeable elevated risk of injury<sup>37</sup>.

NSW Department of Education Bulletin 55 for Transgender Students in Schools<sup>38</sup> policy states that a student with a trans or gender identity is entitled to play in the category that aligns with their gender identity, instead of their biological sex. This policy appears to have prioritised the principle of inclusion to the detriment or exclusion of fair competition, and player welfare and safety.

The substantial elevated risk of foreseeable injury is being placed on female students by the NSW Department of Education's Bulletin 55 policy. It is not unreasonable to presume that serious concussion, significant life-changing or even life-ending injuries could be sustained by female students due to this policy.

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<sup>31</sup> <https://img1.wsimg.com/blobby/go/a69528e3-c613-4bcc-9931-258260a4e77f/downloads/Karolinska.pdf?ver=1621204673667>

<sup>32</sup> <https://link.springer.com/article/10.1007/s40279-020-01389-3>

<sup>33</sup> <https://www.savewomensport.com/media-releases/may-7th-2021----questions-raised-about-fairness-in-olympics-qualification-criteria->

<sup>34</sup> <https://www.reuters.com/lifestyle/sports/females-told-be-quiet-transgender-issue-ex-weightlifter-2021-05-07/>

<sup>35</sup> <https://journals.humankinetics.com/view/journals/ijspp/14/10/article-p1357.xml>;

[https://www.researchgate.net/publication/346774077\\_Transgender\\_Women\\_in\\_the\\_Female\\_Category\\_of\\_Sport\\_Perspectives\\_on\\_Testosterone\\_Suppression\\_and\\_Performance\\_Advantage](https://www.researchgate.net/publication/346774077_Transgender_Women_in_the_Female_Category_of_Sport_Perspectives_on_Testosterone_Suppression_and_Performance_Advantage)

<sup>36</sup> <https://apnews.com/article/f26e5ad2218899dd16a8804c3875dd25>

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[https://www.researchgate.net/publication/346774077\\_Transgender\\_Women\\_in\\_the\\_Female\\_Category\\_of\\_Sport\\_Perspectives\\_on\\_Testosterone\\_Suppression\\_and\\_Performance\\_Advantage](https://www.researchgate.net/publication/346774077_Transgender_Women_in_the_Female_Category_of_Sport_Perspectives_on_Testosterone_Suppression_and_Performance_Advantage)

<sup>38</sup> <https://education.nsw.gov.au/about-us/rights-and-accountability/legal-issues-bulletins/transgender-students-in-schools>

In relation to teaching gender identity ideology in schools, if male students are led to believe that their subjective feelings about their identity entitle them to be recognised as “female”, these students will then be able to take advantage of recent policies released by a range of sports organisations that prioritise gender identity over biological sex for competitive categories<sup>39</sup>. These sports guidelines do not appear to have given due consideration to the sporting principles of fair competition or player safety and welfare, because inclusion of people with a trans or gender identity has been unilaterally prioritised. Consideration of the evidence of risk of injury and concussion to females is either absent or has been dismissed, as well as consideration of the male biological advantage that confers significant superior athletic performance.

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<sup>39</sup> <https://www.prideinsport.com.au/governance-by-sport/>



**2. A number of States in the US have enacted legislation to protect women’s sports at a collegiate and school level. We are aware that a similar named group “Save Women’s Sport” is testifying at the house hearings. Are you affiliated with that organisation, if so, could you explain? If possible, could you please elaborate on the situation over there?**

Save Women’s Sports<sup>40</sup> was founded in the USA by amateur powerlifter and mother, Beth Stelzer in 2019<sup>41</sup> in response to a competition she entered where a male with a trans identity protested throughout the competition because he had been banned from competing in the women’s category<sup>42</sup>.

Save Women’s Sport Australasia is affiliated with Save Women’s Sport in the USA, and was founded in October 2020 by Australian and NZ women in recognition of the fact that they were facing similar issues with gender inclusion sports guidelines. Save Women’s Sports Australasia is a grassroots organisation run by volunteers without funding of any kind<sup>43</sup>.

Title IX of the Education Amendments of 1972 of the Civil Rights Act is the marquee legislation protecting women and girls from discrimination on the basis of their sex in education programs or activities that receive federal funding<sup>44</sup>. Title IX is fundamental to equality between the sexes in America by instigating reform and implementing policies to dedicate resources to ensure equal educational opportunities for females.

US President Biden issued an executive order on his first day in office that directed federal agencies to interpret “sex” to include “sexual orientation and gender identity”<sup>45</sup>. The practical effect of President Biden’s Executive Order is that Title IX will no longer be enforced because male athletes, who identify as female, are allowed to play in women and girls’ sports and must be granted access to facilities such as bathrooms, change rooms, locker rooms and dormitories. Educational institutions that refuse to comply with the Executive Order will lose federal funding.<sup>46</sup>

A poll conducted showed that a significant majority of voters across the US agree with protecting women and girls’ single sex spaces and sports<sup>47</sup>. Over 65% agree that boys and men who identify as transgender should not be allowed to compete in girl’s and women’s athletics, with less than 10% strongly disagreeing.

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<sup>40</sup> <https://savewomenssports.com>

<sup>41</sup> <https://bethstelzer.com>

<sup>42</sup> <https://www.dailysignal.com/2021/03/18/one-female-powerlifters-fight-to-defend-womens-sports/>

<sup>43</sup> <https://www.savewomenssport.com>

<sup>44</sup> <https://www.justice.gov/crt/title-ix-education-amendments-1972>

<sup>45</sup> <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-preventing-and-combating-discrimination-on-basis-of-gender-identity-or-sexual-orientation/>

<sup>46</sup> <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-preventing-and-combating-discrimination-on-basis-of-gender-identity-or-sexual-orientation/>

<sup>47</sup> <https://www.womensliberationfront.org/news/national-poll-support-for-womens-spaces>

In response to the Presidential executive order in January 2021, as at the time of writing, 32 states in the USA have introduced bills to protect women's sports, with six states, Mississippi, Arkansas, Tennessee, Alabama, West Virginia and Montana, passing<sup>48</sup>.

The conversation around protecting women's sports has gained national prominence in America and is being covered in their national press. This is likely because there is significant media coverage of males with a trans identity competing in the female category, including those who are competing at a high school and collegiate level, and across many sports such as basketball, cricket, cycling, dance, fighting and wrestling, NFL, rugby, and soccer<sup>49</sup>.

This is contrary to Australia where press coverage has almost invariably been favourable towards trans and gender inclusion sports policies, and there has been very little positive coverage of the position of those who are critical or questioning such policies.

While there are a number of openly transgender athletes in Australia<sup>50</sup>, the policies here protect the confidentiality of an athlete's trans status and there are now examples of males registering to compete as females without their status being officially disclosed to female competitors.

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<sup>48</sup> <https://savewomenssports.com/state-legislation>

<sup>49</sup> <https://savewomenssports.com/males-in-female-sports-1>

<sup>50</sup> Hannah Mouncey (AFL), Kristi Miller (AFL), Roxy Tickle (Hockey), Ricki Coughlan (Running), Erica James (Cricket)

### **3. Why do you think it is important to keep women's sports for females only? How is this important in relation to school? How does this specifically relate to the NSW legislation?**

Research shows that there is a dramatically high attrition rate of girls from sport around the time puberty commences due to lack of access, safety and transportation issues, social stigma, decreased quality of experience and access to resources, cost, risk of injury, and lack of positive role models<sup>51</sup>. In Australia, more than half of teenage girls stop playing sport by 15<sup>52</sup>.

These reasons will be exacerbated should males be able register to play in the female category. The significantly elevated risk of injury and concussion to females should they play against males has been established. Body image, menstruation, fears of period shaming, restrictions on interacting with males due to cultural or religious factors, having to disrobe or shower in the presence of a male-bodied person, or share overnight accommodation will cause girls to either self-exclude, or parents will choose to withdraw their daughters. In particular, forcing girls to share spaces with males, where they are asleep or in a state of undress, is a known and recognised safeguarding risk<sup>53</sup>.

Voyeurism, video recording, harassment, intimidation and assault of women and girls is on the rise<sup>54</sup>. Boys between the ages of 12 and 15 form the vast majority of juvenile sex offenders, and children between 10-19 years committed over 1 in 4 sexual offences in Australia, in NSW this is primarily males between 10-17 years who attend the same school as the victim<sup>55</sup>.

In the UK, a wide-ranging public consultation on gender neutral bathrooms<sup>56</sup> has recently resulted in amendments being made to building regulations and planning guidance to ensure separate sex toilet facilities are installed in new building or those being developed<sup>57</sup>. During the consultation, it was revealed that mixed sex toilet and wash areas were unpopular with children and parents<sup>58</sup>.

NSW Bulletin 55 specifically allows for a student to use the bathrooms and change facilities that align with their gender identity, this means that children are allowed to use the opposite sex facilities, disregarding the discomfort and need for privacy of other students. Bulletin 55 also implies that should a student feel discomfort or distress, they will be referred to Student Services, and ostensibly be pressured to set

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<sup>51</sup> <https://www.womenssportsfoundation.org/do-you-know-the-factors-influencing-girls-participation-in-sports/>

<sup>52</sup> <https://www.frontiersin.org/articles/10.3389/fspor.2020.00039/full>

<sup>53</sup> [https://fairplayforwomen.com/safeguarding\\_sport/](https://fairplayforwomen.com/safeguarding_sport/)

<sup>54</sup> <https://www.teachusconsent.com>

<sup>55</sup> [https://bravehearts.org.au/wp-content/uploads/2019/10/WIP\\_Facts-and-stats\\_updated-Oct-2019.pdf](https://bravehearts.org.au/wp-content/uploads/2019/10/WIP_Facts-and-stats_updated-Oct-2019.pdf)

<sup>56</sup> <https://web.archive.org/web/20210515234830/https://www.telegraph.co.uk/news/2021/05/15/exclusive-return-ladies-gents-lavatories-ministers-tell-architects/>

<sup>57</sup> <https://sex-matters.org/posts/single-sex-services/sex-matters-influences-toilets-policy/>

<sup>58</sup> <https://www.transgendertrend.com/gender-neutral-toilets-schools/>

aside their own concerns to accommodate the needs of the trans-identified student. This raises safeguarding concerns for girls if male students are allowed to access these facilities, as it overrides existing social norms that allow girls to confront or challenge a male entering such a space. Implementing policies that prioritise gender identity will disempower girls in feeling confident in protecting themselves because such policies teach them that the feelings of a male trans-identified student are more important, and the girls' rights to safety and privacy do not matter.<sup>59</sup>

Many governments and organisations have devoted significant resources to improving opportunities for girls, removing barriers to entry, and preventing discrimination on the basis of sex. In NSW, the Office of Sport has invested millions of dollars in programs such as *Her Sport Her Way*<sup>60</sup>, with individual sports organisations such as AFL<sup>61</sup> doing the same. Policies that prioritise gender identity will risk the gains and investments that have been made in attempting to end the disparity between males and females for participation and resource-allocation in sport.

The benefits of playing sports for girls are well-documented<sup>62</sup>:

- Personal development and life skills such as teamwork, leadership and confidence;
- Being active in sports during adolescence and young adulthood reduces the risk of breast cancer, obesity, in later life<sup>63</sup>
- Education and scholarship opportunities
- Community and family: girls' involvement in sports relates to higher level of family satisfaction
- Improved self-image
- Reduction in levels of mental illness, self-harm and abuse of alcohol and drugs, particularly for organised team sports<sup>64</sup>
- Future career success: 80% of female executives of Fortune 500 companies in the US have a competitive sports background.<sup>65</sup>

*Anti-Discrimination Act 1977* (NSW) s 38P gives express provision for a person with a transgender identity to be excluded from the sports competition of the sex with which they identify. This means that it is not discriminatory or unlawful for a boy or young man declaring a trans identity, attending a NSW school or participating in a NSW based sports competition, to be excluded from competing in the female category. This exclusion in NSW legislation is not mentioned in NSW Bulletin 55<sup>66</sup>,

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<sup>59</sup> <https://sex-matters.org/wp-content/uploads/2021/01/Toilet-provision-for-men-and-women-Sex-Matters-260121.pdf>

<sup>60</sup> <https://www.sport.nsw.gov.au/hersportheway>

<sup>61</sup> <https://womens.afl/features/record-breaking-growth-sees-aflw-smash-broadcast-membership-numbers>

<sup>62</sup> <https://www.frontiersin.org/articles/10.3389/fspor.2020.00039/full>

<sup>63</sup> Staurowsky, E. J., DeSousa, M. J., Gentner, N., Miller, K. E., Shakib, S., Theberge, N., & Williams, N. (2009). [Her Life Depends On It II: Sport, Physical Activity, and the Health and Well-Being of American Girls and Women.](#)

<sup>64</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6683619/#:~:text=139973777802192title>

<sup>65</sup> <https://fortune.com/2017/09/22/powerful-women-business-sports/>

<sup>66</sup> <https://education.nsw.gov.au/about-us/rights-and-accountability/legal-issues-bulletins/transgender-students-in-schools>

instead the document provides a link to the Sport Australia website<sup>67</sup>. The document states that “*It may be lawful to exclude students aged 12 and over from competing in certain sports at the elite level in certain circumstances*”, mention of an exclusion triggering at the age of twelve is presumably a reference to the federal legislation *Sex Discrimination Act 1984* (Cth) s 42 which specifies that a person can be excluded on the basis of sex after the age of 12 if “*strength, stamina and physique are relevant*”<sup>68</sup>. Contrary to the assertion in Bulletin 55, the federal legislation is silent on “certain sports” at “elite level” in “certain circumstances”.

Clearly the NSW legislature made provision to protect women in sports, but the NSW Department of Education has either been ignorant of, or wilfully chosen to ignore, the existing statutory protections, and appears to have chosen to rely on an incorrect interpretation of the federal legislation.

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<sup>67</sup> <https://www.sportaus.gov.au>

<sup>68</sup> <https://www.legislation.gov.au/Details/C2014C00002>

**4. Could you please elaborate on the legislative sport protections that you mentioned in your speech: CEDAW, SDA s 42 and ADA s38P? Why do you think they are being ignored? What could be done to fortify the integrity of women’s sports? What could be done to acknowledge these existing statutes?**

The interests of trans-identified people have been allowed to take precedence in assuming the benefits of anti-discrimination legislation at the expense of females as a protected category. This could be argued to be unlawful.

### **Commonwealth Legislation**

Under the *Sex Discrimination Act 1984* (Cth) “SDA” women have sex-based protections generally in the public arena (such as education and service provision), and specifically in sport according to s42 and CEDAW art. 10(g) and art. 13(c), yet this legislation has been interpreted in such a fashion as to dismiss the legitimate statutory sex-based protections that exist<sup>69</sup> in such documents as NSW Department of Education’s Bulletin 55 and the AHRC and Sport Australia in their *Trans and Gender Inclusion Guidelines*<sup>70</sup>.

The general purpose of the *Sex Discrimination Act 1984* (Cth) is:

*“to eliminate, so far as is possible, discrimination against persons on the ground of sex, sexual orientation, gender identity, intersex status, marital or relationship status, pregnancy or potential pregnancy or breastfeeding in the areas of work, accommodation, education, the provision of goods, facilities and services, the disposal of land, the activities of clubs and the administration of Commonwealth laws and programs.”*

Note that the object uses the word ‘or’ as opposed to ‘and’; this means that ALL the protected characteristics must be considered, no single characteristic must be considered exclusively to the detriment of another<sup>71</sup>. However, policies that consider gender identity favour an interpretation that either ignores or deprioritises the existence of sex-based rights.

The Sex Discrimination Act was amended in 2013 by the *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act*<sup>72</sup>.

Gender identity was inserted in the *Sex Discrimination Act* as protected ground against discrimination in s 5B and is defined in s 4:

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<sup>69</sup> s3, s5, Schedule - CEDAW

<sup>70</sup> [https://www.sportaus.gov.au/integrity\\_in\\_sport/transgender\\_and\\_gender\\_diverse\\_people\\_in\\_sport](https://www.sportaus.gov.au/integrity_in_sport/transgender_and_gender_diverse_people_in_sport)

<sup>71</sup> ‘and’ ‘or’

<sup>72</sup> <https://www.legislation.gov.au/Details/C2013A00098>

*Gender identity* means 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.

This definition comes from a document called the *Yogyakarta Principles* that were drafted by a group of individuals who have unsuccessfully and repeatedly tried to have the document ratified as a UN Convention or "Human Rights Standard"; they have been rejected by the General Assembly, the UN Human Rights Council and other bodies. In Australia, the principles were recognised to have no statutory power by the Senate Legal and Constitutional Affairs Committee:

*"[T]he Yogyakarta Principles have no legal force either internationally or within Australia. They were developed by a group of human rights experts, rather than being an agreement between States."*<sup>73</sup>

The Senate Legal and Constitutional Affairs Committee rejected calls to include them as '*relevant international instruments*' by the Human Rights Law Centre and other lobby groups.

In the absence of definitions for "gender" in the Commonwealth legislation, "*gender identity*" is defined as "*gender-related identity*", "*appearance*", "*mannerisms*", and "*gender-related characteristics*". Essentially, the definition could be read down to mean gender identity is an expression of stereotypes, a set of subjective actions, based on someone's appearance or mannerisms; and in the absence of a definition of gender, it ends up circular and undefinable.

The meaning has scope to be applied to any "*gender-related characteristics*", with or without regard to the person's natal sex, with no explanation as to these elements. It could be implied that these elements for expressions of gender etc. are demonstrative of culturally relative sex-based stereotypes, contrary to Art.5(a) of CEDAW in Schedule 1 of the *Sex Discrimination Act 1984* (Cth) which expressly provides for the elimination of prejudice and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

The nebulous concept of gender identity is further compounded by the view that one's gender identity is regarded by gender identity proponents as being "self-defined", and that it labours under the assumption that each person has a deeply felt internal and individual sense of gender, which everyone else is expected to affirm and support, with apparently limitless scope for definition. Essentially, this introduces

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<sup>73</sup> Responses to questions on notice provided by Attorney-General's Department on 21 May 2013 page 8 in the Senate Legal and Constitutional Affairs Legislation Committee Report on Sex Discrimination Amendment (SOGIIS) Bill 2013 [Provisions] Commonwealth of Australia, June 2013 . pt. 3.41

a subjective category of a self-declared personal identity as a protected attribute reliant on stereotypes or performances, comparative to that of biological sex – which is observable and objective.

Sex is a protected ground against discrimination in s 5 of the SDA, although it is not defined in the legislation. The 2013 amending act removed the definitions of “man” and “woman” from the SDA:

**man** means a member of the male sex irrespective of age.

**woman** means a member of the female sex irrespective of age.

The purpose of removing the definitions was found in the explanatory memorandum to the 2013 amending act<sup>74</sup>:

*18. These items will repeal the definitions of ‘man’ and ‘woman’ from subsection 4(1). To the extent these terms appear in the Act, they will take their ordinary meaning. These definitions are repealed in order to ensure that ‘man’ and ‘woman’ are not interpreted so narrowly as to exclude, for example, a transgender woman from accessing protections from discrimination on the basis of other attributes contained in the SDA.*

A review of Hansard at the time, and the Senate and House Committee reports<sup>75</sup>, reveal that no consideration was given to the impact of allowing a male with a self-declared gender identity to assume women’s sex-based discrimination protection. That a conflict may arise between the rights of women and the rights of a male with a gender identity was not mentioned or discussed at all, it is apparent that the rights of the male with a trans identity were given priority over that of women without any consideration.

The 2013 Amending Act inserted “gender identity” and “intersex status” in addition to “sex” as the relevant categories in the sports protection provision *Sex Discrimination Act* s 42:

*(1) Nothing in Division 1 or 2 renders it unlawful to discriminate on the ground of sex, gender identity or intersex status by excluding persons from participation in any competitive sporting activity in which the strength, stamina or physique of competitors is relevant.*

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<sup>74</sup>

[https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr5026\\_ems\\_1fcd9245-33ff-4b3a-81b9-7fdc7eb91b9b%22](https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr5026_ems_1fcd9245-33ff-4b3a-81b9-7fdc7eb91b9b%22)

<sup>75</sup> [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bId=r5026](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r5026)



The inclusion of the categories have given rise to the express ability to lawfully discriminate against a person on the basis of either or both their sex and their gender identity by excluding them from participating in a sport where “*strength, stamina and physique*” are relevant, the purpose of this was clearly to recognise biological differences between the sexes.

The Explanatory Memorandum<sup>76</sup> for the s42 exemption explains that the Act does not make it unlawful to restrict competitive sporting events to people who can effectively compete:

*“It is legitimate to recognise that biological differences between men and women are relevant to competitive sporting activities. Limiting this exemption to situations in which strength, stamina or physique are relevant is a proportionate means of achieving this objective.”*

Additionally, the House of Representatives committee report stated that there are exceptions to discrimination for competitive sporting activity:

*“which may involve differentiation based on biological differences between men and women”<sup>77</sup>.*

The practical effect of including “gender identity” into the sports protection provision, a concept that is based on performance of stereotypes, is that the intended legislation purpose of the provision to recognise biological differences between the male and female sexes has been rejected.

The sports exclusion provision appears to have been applied in sports policies in such a way as to imply that it is not lawful to discriminate on the basis of gender identity, by imputing that community and elite level sport are distinguished by interpreting “competitive” to have application that is restricted to elite sport and not community or social sport (even though the legislation is silent on that), and ignoring or minimising the overwhelming evidence that males have a demonstrably and significant performance advantage by claiming the relevance of “*strength, stamina and physique*” only applies at elite level or if it is significant or has an impact on their ability to compete. Since October 2020, a number of sports organisation policies have released trans inclusive guidelines that were informed and promulgated by Pride in Sport that unilaterally favour gender identity at the expense of sex<sup>78</sup>.

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<sup>76</sup> [https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5026\\_ems\\_1fcd9245-33ff-4b3a-81b9-7fdc7eb91b9b/upload\\_pdf/378454%20.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5026_ems_1fcd9245-33ff-4b3a-81b9-7fdc7eb91b9b/upload_pdf/378454%20.pdf;fileType=application%2Fpdf) pg.6

<sup>77</sup> Advisory Report *Sex Discrimination Amendment Bill 2013* House of Representatives, Standing Committee on Social Policy and Legal Affairs, Parliament of Commonwealth of Australia, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=spla/bill%20sex%20discrimination/report.htm](https://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=spla/bill%20sex%20discrimination/report.htm)

<sup>78</sup> <https://www.prideinsport.com.au/governance-by-sport/>

In privileging *SDA* s5B over s5, favourably interpreting s 42 to the unilateral benefit of gender identity, and ignoring CEDAW sports articles (discussed below), it results in sports policies where biological males are allowed to compete in the female sports category based on nothing more than a self-declaration of “gender”, biological males are granted access to places where women and children are vulnerable (toilets, change rooms and overnight accommodation), the inherent biological and sociological advantages of males are dismissed, and the resulting impact on women is completely ignored.

The Commonwealth legislation has only been considered in light of the unilateral protected attribute of “*gender identity*” as per s 5B, and has not considered the competing characteristic of sex as per s5 at all, let alone in good faith. On that basis, policies and guidelines that are being promulgated by government departments, institutions and private bodies are arguably unlawful because it offends the principles of statutory interpretation to read a section in isolation without considering the context of the Act.<sup>79</sup>

### ***CEDAW and Other International Convention Obligations***

*UN Convention for the Elimination of All Forms of Discrimination Against Women* is an international convention to which Australia became a signatory in 1983. The Convention has been wholly adopted into Commonwealth legislation as the Schedule of the *SDA* and as the first object of the *SDA* s3(1). It is empowered as a legislative instrument equal to all other Commonwealth statutes:

*“to give effect to certain provisions of the Convention on the Elimination of All Forms of Discrimination Against Women and to provisions of other relevant international instruments”*

By virtue of this treaty, Australia has statutory and international obligations to pursue by all appropriate means and without delay a policy of eliminating discrimination against women.

The express and explicit object and purpose of CEDAW is to eliminate sex-based discrimination against women so as to achieve equality between the sexes in the enjoyment of human rights<sup>80</sup>. States are obligated to take measures to transform patterns of behaviour of both sexes in order to eliminate stereotyped roles and harmful practices<sup>81</sup>.

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<sup>79</sup> *K&S Lake City Freighters v Gordon & Gotch* (1985) 60 ALR 509 at [514]

<sup>80</sup> *Female Autonomy vs Gender Identity: A Critical Analysis of Gender Identity in CEDAW jurisprudence and the Yogyakarta Principles* Tina Elaine Minkowitz, 2016 University of Oslo

<sup>81</sup> CEDAW Article 5(a).

The term “*discrimination against women*” means any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field<sup>82</sup>.

Article 10 (g)

*States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women: **same opportunities to participate actively in sports and physical education.***

Article 13 (c)

*States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular: the right to participate in recreational activities, **sports** and all aspects of cultural life.*

Interpretations of treaties are codified in articles 31 and 32 of the *Vienna Convention on the Law of Treaties* (1969), and treaties shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose (art. 31). It is clear that the purpose of CEDAW is to eliminate discrimination towards women on the basis of sex, specifically in the realm of sport, by taking appropriate measures to ensure that women have the same rights and opportunities to participate.

Yet in practicality, the category of “*gender identity*” is privileged over sex in direct contravention of these obligations. Gender identity is a social construct that stands in contradistinction to sex. The biological reality of sex is not a stereotype or social construct, whereas the definition for “*gender identity*” under the *SDA* is nothing more than allowing biological males with nothing more than a self-declared “*gender identity*” of “female” to compete against females.

This is arguably discrimination because it denies women and girls an equal playing field due to being forced to compete against or with another player that enjoys the biological and sociological advantages of being a male. Women already face many barriers to inclusion in sports<sup>83</sup>; it is acknowledged that there is very high attrition rate of girls from sports at the time of puberty<sup>84</sup>, some females may not be able to participate due to religious and cultural restrictions, the safety risks involved in

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<sup>82</sup> CEDAW Article (1)

<sup>83</sup>

[https://www.clearinghouseforsport.gov.au/knowledge\\_base/organised\\_sport/sport\\_and\\_government\\_policy\\_objectives/womens\\_sport](https://www.clearinghouseforsport.gov.au/knowledge_base/organised_sport/sport_and_government_policy_objectives/womens_sport)

<sup>84</sup> <https://www.womenssportsfoundation.org/do-you-know-the-factors-influencing-girls-participation-in-sports/>

competing with male bodies which are, on average, significantly faster, stronger and larger, the inherent unfairness of competing against others who enjoy those physical advantages, the co-opting of already scarce resources<sup>85</sup>, and the right to socialise and enjoy community free from the male gaze in an androcentric society.

CEDAW does not address gender identity. A reference is made to gender identity in General Recommendation 28 in 2010<sup>86</sup> whereby it is acknowledged at Article. 18 that *“the discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways to men. States parties must legally recognise such interesting forms of discrimination and their compounded negative impact on the women concerned and prohibit them.”*

Article 5 in the General Recommendation expressly says that the *“term “sex” here refers to biological differences between men and women. The term “gender” refers to socially constructed identities, attributes and roles for women and men and society’s social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women”*.

On this basis, it is clear that CEDAW pertains only to biological women and the discrimination they face on the basis of their biological sex and gender as it pertains to their female biological sex, including their experience of gender identity. Furthermore, biological men cannot assume the CEDAW protections provided to biological women, whether they have a gender identity or not. By extension, it begs the question as to the lawfulness of the application of SDA s 5 and s 5B to biological males, given the paramount purpose of the SDA is to give efficacy to CEDAW.

The obligations of non-discrimination are to include elimination of sex-based discrimination that is directly related to biological differences between men and women. The meaning of woman and man, male and female, as relevant to CEDAW are understood to be by their plain meaning<sup>87</sup>: woman being *“a member of the female sex irrespective of age”*.

If the interpretation is anything other than woman in the ordinary sense, it makes it manifestly absurd and unreasonable because it seeks to dismantle the very rights it purports to protect, by presuming that woman now includes “anyone who identifies

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<sup>85</sup> <https://www.reuters.com/article/us-health-coronavirus-sport-women/womens-sport-must-not-bear-brunt-of-covid-19-cutbacks-steggall-idUSKBN22Q19E>

<sup>86</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/472/60/PDF/G1047260.pdf?OpenElement>

<sup>87</sup> Christine Chinkin and Martha A. Freeman, 'Introduction,' in *The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary*, ed. Marsha A. Freeman, Christine Chinkin and Beate Rudolf (Oxford: Oxford University Press, 2012), 14-16. Redef reports no discussion of the meaning of *women* in his *Guide to the Travaux*.

as a woman” i.e. a biological male with a self-declared “female” gender identity, it gives the absurd result that “woman” now includes both women and men, and renders ineffective the entire purpose of CEDAW and the *SDA*.

Core obligations and foundational principles of CEDAW underlie women’s rights, with the text of the Convention given primacy<sup>88</sup>. The Convention and statutory obligations to promote and protect the interests of women in relation to sport are abundantly clear.

Sport is not expressly protected legally as a universal human right, there is no specific legal right to sport. There is no existing right that allows anyone the right to compete wherever and with whomever they choose.

Equal rights between the sexes are explicitly enshrined in the *International Covenant on Civil and Political Rights* Art. 2 and Art. 3<sup>89</sup>, the *International Covenant on Economic, Social and Cultural Rights* Art. 2<sup>90</sup> which explicitly removes discrimination on the basis of sex, and the *Convention on the Rights of the Child* requires States to ‘respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind’ and specifically refers to sex<sup>91</sup>.

Therefore, in consideration of the obligation of signatory countries to these conventions, the evidence in relation to female participation in sports, male biological and sociological advantages, and differences between the sexes in relation to anthropometric, physiological and performance measures<sup>92</sup>, allowing biological males to compete in the female category is discrimination because forcing women and girls to accommodate men and boys in their sports confers demonstrable and observable disadvantage.

## **NSW Legislation**

### **Anti-Discrimination Act 1977 (NSW) 38P Sport**

*(1) Nothing in this Part renders unlawful the exclusion of a transgender person from participation in any sporting activity for members of the sex with which the transgender person identifies.*

The NSW statute clearly states that it is not unlawful to exclude a male from the female category if he identifies as a woman, by living or seeking to live, as the opposite sex (as per definition of “transgender person *ADA* s 38A).

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<sup>88</sup> *Applicant A v Minister for Immigration and Ethnic Affairs* (1997) 190 CLR 225 – context, object and purpose *McHugh J* 251-6; 349-52

<sup>89</sup> <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

<sup>90</sup> <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

<sup>91</sup> [https://www.unicef.org.uk/wp-content/uploads/2010/05/UNCRC\\_united\\_nations\\_convention\\_on\\_the\\_rights\\_of\\_the\\_child.pdf](https://www.unicef.org.uk/wp-content/uploads/2010/05/UNCRC_united_nations_convention_on_the_rights_of_the_child.pdf)

<sup>92</sup> <https://fairplayforwomen.com/biological-sex-differences/>

The question arises as to what this means in practicality, how does one “live like a woman” or “seek to live like a woman”, and how that could be objectively determined? Does it relate to pronouns, a feminine name, stereotypically feminine grooming or clothing, or mannerisms? If that is the case, does it mean that a man could register to play in the female sports category on nothing more than pronouns, name or clothing?

Nevertheless, the legislation does provide for the exclusion of trans-identified males from the female category. However, in Bulletin 55 and other relevant sports guidelines, the s 38P statutory provision is not mentioned.

### ***Opaque Consultation Process for Sports Policies***

When these sports policies are drafted, using the example of the AHRC Sports Guidelines or Pride in Sport influenced sports organisations, the consultation process occurs in stealth without parliamentary oversight, media scrutiny.

Senator Claire Chandler has questioned AHRC Sex Discrimination Commissioner Kate Jenkins<sup>93</sup> and Acting CEO of Sport Australia at the time, Robert Dalton, in Senate Estimate Committee<sup>94</sup>. They both declined to answer questions as to the consultation process, and names of the parties who were involved. An FOI request put in by Fair Go for QLD Women did not secure the disclosure of any information.

Many sports organisations have been influenced by Pride in Sport to implement trans and gender inclusion policies<sup>95</sup>. It is unknown whether organisations other than those who promote the interests of people with trans identities were consulted, or whether due weight or fair consideration was given to their positions if they were consulted. To the best of our knowledge, the consultation parties, process or outcomes have not been made available to the public.

### ***What could be done to fortify the integrity of women’s sports?***

The statutes need to be redrafted to expressly state that biological males are excluded from the female sports category. The statutes need to reflect that access to sex-specific spaces where women and girls are vulnerable, in a state of undress, sleeping or showering, is on the basis of female natal sex as recorded at birth, not self-declared gender identity or on the basis of identity documents that have been altered to reflect the sex opposite a person’s natal sex as recorded at birth.

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<sup>93</sup> <https://www.youtube.com/watch?v=LC4nvWze2U8>

<sup>94</sup> <https://www.youtube.com/watch?v=PlbB49vm3PQ>; <https://www.youtube.com/watch?v=A3-zjq3gDQQ>;  
<https://www.youtube.com/watch?v=igcgx0FPeCk>

<sup>95</sup> <https://www.prideinsport.com.au/national-sporting-organisations-commit-to-landmark-trans-and-gender-diverse-inclusion-measures/>; <https://www.prideinsport.com.au/governance-by-sport/>

Specifically in the SDA s 42 the qualifier that “strength, stamina and physique” must be removed because those are relevant to all sports competition, as demonstrated by the inherent male biological advantage. The definitions of “man” and “woman” that were removed with the 2013 amendments must be reinserted.

Our state and federal governments need to publish advice and guidelines that expressly explain the existence and meaning of the statutory sports protections to educate our institutions, sports organisations and the general public. This should be supported by a campaign to raise awareness and education.

AHRC and Sport Australia released *Trans and Gender Diverse Inclusion Guidelines*<sup>96</sup> in June 2019 that displace “sex” as the basis for competitive categories in favour of the concept of “gender identity”. The practical implication being that a person can register to play in either the “male” or “female” on the basis of their gender identity rather than their biological sex.

Thus, institutions such as AHRC and Sport Australia and private bodies such as Pride in Sport that are interpreting the legislation in favour of gender identity, and prioritising inclusion on that basis, to detriment of sex and the paramount sporting principles of fair competition and player safety and welfare, must be prevented from disseminating and promoting that interpretation, their published articles and guidelines must be withdrawn, and it must be clearly communicated that excluding males on the basis of their sex from the female sports category and from toilets, change rooms and accommodation is not unlawful or discriminatory.

### ***What could be done to acknowledge these existing statutes?***

A clear and concise commitment by the Federal and State governments to protect the female sports category for women and girls is necessary.

Appropriate consideration must be given to the existing statutes when drafting policy and guidelines that relate to the legislation. It is repugnant to democratic process that the only stakeholders being considered when statutes are being enacted in their favour are consulted, and the group being most adversely affected are excluded from the process.

Save Women’s Sport Australasia asserts that policies that have such grave and far-reaching implications for women and girls should be conducted with transparent parliamentary oversight, broad community consultation for all stakeholders, due weight given to the positions of affected parties, fair consideration of all available evidence, and media scrutiny.

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<sup>96</sup> [https://www.sportaus.gov.au/integrity\\_in\\_sport/transgender\\_and\\_gender\\_diverse\\_people\\_in\\_sport](https://www.sportaus.gov.au/integrity_in_sport/transgender_and_gender_diverse_people_in_sport)

Fair, inclusive and transparent consultation processes must be conducted when policies that impact women and girls, particularly when the impact arises from the inclusion of transgender or gender identity in existing sex-based protections or for novel policies that protect gender identity, are implemented. These consultations processes cannot be conducted by stealth, confidentially or withheld from the general public, as the AHRC and Sport Australia have done with the *Trans and Gender Inclusion Guidelines* in relation to sport. Private organisations, such as Pride in Sport, should not be empowered to influence guidelines and policy that have such broad community impact, without appropriate oversight, transparency, consultancy or accountability.

Peak bodies, groups and organisations, such as the Australian Academy of Science<sup>97</sup>, the AHRC, Sport Australia, now regard males with a trans identity to be considered women and girls for the purpose of female-specific policy and spaces, and the Australian Labour Party even “promotes options beyond that of the binary choice of being male or female”<sup>98</sup>, meaning that they regard sex as a “choice” and there are more than two sexes.

The obfuscation around definitions and language in relation to “sex” and “gender” creates significant issues for women<sup>99</sup>, and overwhelmingly rejected by the general public, as evinced by a motion upheld by the Australian federal Senate<sup>100</sup>. The adoption of ideologically informed language must cease due to the significant impacts on the rights of women<sup>101</sup>. The government must issue clear and unequivocal advice to the public and to institutions that language must reflect objective and observable reality as based on ordinary, common-usage words. Ideologically informed language cannot take precedence in matters where biological sex is relevant.

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<sup>97</sup> <https://www.science.org.au/supporting-science/diversity-and-inclusion/gender-equity>

<sup>98</sup> Chapter 5: An Equal and Inclusive Nation: Equal Rights for LGBTIQ Australians 30(f) pg. 54  
[https://www.alp.org.au/media/2355/alp\\_national\\_platform\\_final\\_draft.pdf](https://www.alp.org.au/media/2355/alp_national_platform_final_draft.pdf)

<sup>99</sup> <https://fairplayforwomen.com/language/>; <https://link.springer.com/article/10.1007/s11845-020-02464-4>

<sup>100</sup> <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=CHAMBER;id=chamber%2Fhansards%2Feach2bb0-e95e-4447-ba5b-6b0859b9f756%2F0090;query=AuthorId%3AE5X%7C%7C%7CReporterId%3AE5X>

<sup>101</sup> <https://uncommongroundmedia.com/the-renewed-objectification-of-women-part-i-language/>



5. You mentioned a conflict of rights between women’s sex-based rights and “gender identity” statutory protection provisions. What do you mean by this? Could you elaborate on how this can be acknowledged and addressed?

### ***The removal of women’s rights***

Unlike any other social justice movement in history, the push for Gender Identity Ideology in law is unique in that it has involved eliminating the sex-based rights and protections of women and girls. In particular the introduction of legislation requiring mandatory affirmation of gender through body modification via drugs and surgery impact most homosexual females and males and young people on the autistic spectrum.

[Research](#) suggests that many, and sometimes the majority, of young dysphoric trans-identified children or adolescents grow up into lesbian, gay or bisexual adults who have re-identified with their natal sex; provided were not pushed down the medical pathway of puberty blockers and cross-sex hormones. Former clinicians from the NHS Tavistock, one of the largest gender clinics in the world, has stated that the clinic “*feels like conversion therapy for gay kids*”. It has been deeply disturbing that we are seeing legislation that mandates conversion practices via “transing away the gay” as a result of legislation that is touted as prohibiting conversion practices (i.e. the Victorian Conversion and Suppression Act in Australia, and similarly, Bill C6 in Canada, which is worded to suggest it will be illegal to assist detransitioners should they cease in a trans-identity).

These practices censure allied health professionals who may challenge these experimental practices on the basis that they bring about irreversible damage, and ban therapeutic practices which are shown to be as or more effective than the affirmation model in reducing distress and addressing dysphoria - practices such as watchful waiting.

Gallus Mag, a blogger and writer in the women’s community prepared a list of the Human Rights of Women that Gender Identity ideology is eliminating or eroding around the world. As we review that list, we are seeing the loss of most of these rights in Australia as by stealth ‘gender’ has replaced ‘sex’ in press council guidelines, sporting guidelines, government style guides. All this with little to no public discussion or involvement, other than with government sponsored LGBTQIA groups. Implications include (noting that the use of the term “women” in the following also applies to “girls” i.e., all biologically female people):

- Removing the legal right of women to assemble outside the presence of men.
- Eliminating athletic programs and sports competition for women and girls only.

- Removing the legal right of women and girls to be free from the presence of males in areas of public accommodation where nudity occurs.
- Elimination of grants, scholarships, board and trustee designations, representative positions, and affirmative programs specific for women.
- Removing the legal right of women to refuse males in reproductive clinics, rape crisis services, support groups, or any organizations that were formerly for females only.
- Removal of the right of journalists to report the sex, and history, of subjects, leading to the false report of female committed crimes.
- Eliminating the legal right of lesbians to congregate publicly.
- Elimination of the patient right of dependent females to hospital/facility bed assignments separate from males.
- Elimination of the right of dependent females to prefer female providers for their intimate personal care requirements.
- Elimination of the human right of female prisoners under state confinement to be housed separately from male prisoners.
- Eliminating data collection of sex-based inequalities in areas where females are underrepresented.
- Refusal to collect data on the impact of legislation that impacts the rights and protections of women in single spaces such as women's prisons.
- Obscurification and lack of transparency on the impact of transwomen in female single sex spaces such as women prisons
- Eliminating female specific language in media and all public discourse.
- Removing the legal right of women to educational programs created for women outside the presence of men.
- Removing the legal right of women to organize politically against sex-based oppression by males.
- Elimination of sex-based crime statistics.
- Elimination of lesbian-specific organizations and advocacy groups.
- Removing the legal right of women to free speech related to sex roles and gender.
- Elimination of the legal right of women to protection from state-enforced sex-roles (appearance/behaviour/thought).

- Elimination of the right for females to have single-sex hospital wards or facility bed assignments separate from males.

### ***Gender Identity Protection Provisions***

The inclusion of gender identity protection provisions has created conflicts for the interpretation and implementation of laws, guidelines and policies, the provision of services, and certain rights, privileges and protections granted to women under the law on the basis of sex.

Highly contentious circumstances between biological women and those claiming protection under a gender identity<sup>102</sup> have arisen in consideration of whether the category of sex or gender identity prevails in particular circumstances.

Analysis of the relevant extrinsic materials of the *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status Bill)* in 2013 reveal that the impact of the new protections for gender identity on the existing protections for women on the basis of sex were not considered at all<sup>103</sup>. In the Explanatory Memorandum, women as a biological sex and protected category under the affected Act are not mentioned once, despite the original purpose and objective of the affected Act, *Sex Discrimination Act 1984*<sup>104</sup>, was to give effect to UN Convention for the Elimination of all Forms of Discrimination Against Women (CEDAW as per Schedule 1 of the Act) which seeks to end discrimination against women (in the ordinary biological sense) by implementing policies and appropriate measures to achieve equality with men in political, social, economic and cultural fields.

Professor Sheila Jeffreys objected to the amendment bill on that basis that inclusion of gender identity could “create a clash of rights between male-bodied transgenders and those disadvantaged on the basis of sex, namely women”<sup>105</sup>. Professor Jeffreys referenced legal challenges where trans-identified males successfully sought access to spaces previously reserved for women, including prisons.

The co-interpretation principle<sup>106</sup> for statutory interpretation declares that amending acts to an existing, or affected act are to be regarded and read together as one connected and combined statement of the will of parliament and may change the context of the affected Act<sup>107</sup>. However, the amending Act is statutorily precluded from affecting any right, privilege, obligation or liability acquired, accrued or incurred under the affected Act.<sup>108</sup>

<sup>102</sup> Women Speak TAS “Women’s Rights and Transgender Law Reform”

[https://parliament.nt.gov.au/\\_\\_data/assets/pdf\\_file/0011/597557/Submission-3a-Women-Speak-Tasmania-Attachments.pdf](https://parliament.nt.gov.au/__data/assets/pdf_file/0011/597557/Submission-3a-Women-Speak-Tasmania-Attachments.pdf)

<sup>103</sup> [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=r5026](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r5026)

<sup>104</sup> <https://www.legislation.gov.au/Details/C2014C00002>

<sup>105</sup> Professor Sheila Jeffreys, *Submission to Public Consultation on HRAD Bill 21 December 2012*

<sup>106</sup> *Bainbridge v Minister for Immigration and Citizenship* [2010] FCAFC2

<sup>107</sup> *Commissioner of Stamps (SA) v Telegraph Investment* (1995) 184 CLR 453 [14]

<sup>108</sup> SDA s7(2)(c)

Despite this, in practicality, Australian institutions and government departments are choosing to favour a pro-gender identity interpretation over one which considers women's sex-based rights<sup>109</sup>, and which explicitly fail to consider the statutory rights and protections expressly created for women by the SDA<sup>110</sup>. This could be argued to be contrary to statutory interpretation obligations<sup>111</sup> as the objects, purpose and constructions of the statutes of the sex-based protections remain undisturbed, and there is no evidence in the extrinsic materials that the legislature intended to reform the Act so broadly it would extinguish women's sex-based rights.

Inclusion protections for the protected category of "gender identity", as based on a definition that does not stand up to scrutiny, circular reasoning and subjective, fluid feelings, are coming at the cost of the other protected category of "sex", without any consideration for the affected existing group, or any acknowledgment of existing statutory and treaty obligations that pertain to their interests.

Women have been historically discriminated against on the basis of possessing a female reproductive system, not upon their subjective identities, mitigating this discrimination is the objective of the SDA.

Trans-inclusive guidelines have already deprived women and girls of opportunities and spaces. Governments are implementing these dramatic policies without providing for mechanisms to assess their efficacy, or any unintended consequences. Women are having to rely on themselves to collate this data and research. The Save Women's Sport movement is regularly contacted directly by girls, women and parents who are being affected. Women are setting up websites to collate their stories, such as No Conflict They Said<sup>112</sup> or GC Academia Network<sup>113</sup>, they are disclosing privately or anonymously on social media. The backlash can be ferocious, and costly to reputation and livelihood<sup>114</sup>.

The impact of all of this is that a transgendered person, who outwardly has the appearance of a male but identifies as a woman, is more protected than a woman who is born-female and raised as a girl. The irony is now that women and girls are sanctioned or punished for talking about it.

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<sup>109</sup> Lane B "Transgender Goals Risk Alienating Female Players" 22 June 2020 The Weekend Australian <https://www.theaustralian.com.au/nation/transgender-goals-risk-alienating-female-players/news-story/e17db287e77164babd64e4ae8f1a6355>; Whitehall J "Guidelines for the Destruction of Female Sport" 3 October 2019 Quadrant Online <https://quadrant.org.au/magazine/2019/09/guidelines-for-the-destruction-of-female-sport/>

<sup>110</sup> Senate Legal and Constitutional Affairs Legislation Committee – AHRC March 2 2020 [https://www.youtube.com/watch?time\\_continue=2&v=KXZGN6cONog&feature=emb\\_logo](https://www.youtube.com/watch?time_continue=2&v=KXZGN6cONog&feature=emb_logo)

<sup>111</sup> *Acts Interpretation Act 1901* (NSW) s15AA

<sup>112</sup> <https://www.noconflicttheysaid.org>

<sup>113</sup> <https://www.gcacademianetwork.org>

<sup>114</sup> <https://4w.pub/women-united-states-fired-for-talking-about-feminism/>

***“Gender identity” infringes lesbian and gay sex-based rights***

When put into legislation, sexual orientation conflated with gender identity, the sex-based rights of homosexual people are not protected. Lesbians and gay men are attracted to persons of the same sex, and that attraction has nothing to do with gender identity. Lesbian rights are seriously violated when men with female ‘gender identities’ pretend to be lesbians and invade lesbian spaces, such as dating apps, and pressure lesbians to allow these men sexual access. Male gay rights are violated when they are pressured to engage sexually with women who have male ‘gender identities’.

***Could you elaborate on how this can be acknowledged and addressed?***

Women’s rights, as is clear in CEDAW, are based on women’s biology, and women’s role in reproductive rights. Girls are selectively aborted and murdered because of their biology. All the violence and discrimination targeting women is based on their biology. Any attempt to underplay the importance of biological sex is an assault on women’s rights.

In particular, women have a right to their own sport, their own prisons, their own rape shelters, their own hospital wards and so on. A person born male who identifies as a woman is still male. The only way to be a transwoman is to be male. The notion that a person’s self-definition can override the differences between the sexes is an egregious assault on women’s rights. That is why women’s groups not just in Australia but worldwide are rising up and opposing it.

All these issues need to be aired and discussed without attracting hysterical and inappropriate cries of bigotry. We all care about human rights. We all possess human rights. We are all entitled to defend our human rights.

**6. You mentioned that women are being attacked for raising these issues, and there is a potential risk of attack on livelihood and reputation, even threats. Could you please provide some context around that claim?**

Women who have publicly spoken about these issues have been sanctioned, fired, deplatformed and threatened. Women and their supporters are routinely banned from social media platforms for refusing to go along with gender identity ideology, “misgendering” (using natal sex pronouns rather than preferred pronouns), stating basic biological facts, or advocating for women’s sex based rights<sup>115</sup>.

Women have set up their own platforms and websites to collate their stories such as No Conflict They Said<sup>116</sup>, GC Academia Network<sup>117</sup>, 4W Cancelled Women<sup>118</sup>, and Women are Human – Pressure/Bullying<sup>119</sup>.

*Associate Professor Dr. Holly Lawford-Smith*

Dr. Holly Lawford Smith, an Associate Professor at University of Melbourne, was concerned about the lack of data being collated by governments in relation to the impact of the implementation of legislation and policies that displace, or replace, sex in favour of gender identity.

Dr. Lawford-Smith launched the website *No Conflict They Said*<sup>120</sup> as platform for women to anonymously submit their stories as to how they have been affected by males being able to access formerly women-only spaces such as changing rooms, fitting rooms, bathrooms, shelters, rape and domestic violence refuges, gyms, spas, sports, schools, accommodations, hospital wards, shortlists, prizes, quotas, political groups, prisons, clubs, events, festivals, dating apps, and language.

Dr. Lawford-Smith endured an extraordinary attack on her reputation with fellow Melbourne academics, the National Tertiary Education Union and the University of Melbourne Student Union writing an open letter to the Vice-Chancellor Professor Duncan Maskell, the Dean of Arts Professor Russell Goulbourne and the Office of Research Ethics and Integrity and Inclusion and Diversity Steering Committee to complain about the website.<sup>121</sup> Dr. Lawford-Smith is currently the subject of an internal investigation in relation to these complaints.

Dr. Lawford-Smith’s secure office area was entered and papered with pro-transgender flags. Students held a protest against Dr. Lawford-Smith where

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<sup>115</sup> <https://4w.pub/tag/cancelled-women/>

<sup>116</sup> <https://www.noconflicttheysaid.org>

<sup>117</sup> <https://www.gcacademianetwork.org>

<sup>118</sup> <https://4w.pub/tag/cancelled-women/>

<sup>119</sup> <https://www.womenarehuman.com/category/social/bullying/>

<sup>120</sup> <https://www.noconflicttheysaid.org>

<sup>121</sup> <https://docs.google.com/document/d/1sDbh6iO9bYvStZyeil4We5Z9EgxEfK1UhvjtO1zJyMI/edit>

defamatory comments were made about her<sup>122</sup>, and her supporters were intimidated, harassed and assaulted<sup>123</sup>.

### *Professor Dr. Donna Hughes*

Dr. Hughes is the Endowed Chair of Gender and Women's Studies at the University of Rhode Island, renowned for her work on sex trafficking, mail order bride abuse and exploitation of women for prostitution<sup>124</sup>.

In February 2021, Dr. Hughes published an article on feminist website 4W.pub expressing concerns about the effects of the gender identity movement on women's sex-based rights specifically defending the category of biological sex, and raising concerns about irreversible medical interventions being practised on children presenting at gender clinics<sup>125</sup>.

Dr. Hughes was subsequently denounced by members of her faculty in a letter to the university administration, several petitions were circulated demanding she be fired or disciplined<sup>126</sup>, and the University released a media statement stating that they did not support Dr. Hughes exercising her academic freedom and First Amendment rights<sup>127</sup>.

British Academics in particular have been targeted:<sup>128</sup>

### *Professor Selina Todd*

Lecturer in Modern British History at the University of Oxford, her research focuses on the history of the working class, women and feminism. Professor Todd was excluded from speaking at the Oxford International Women's Festival because of pressure from transactivists<sup>129</sup> on the basis that she supports Women's Place UK<sup>130</sup>, a group that was formed to oppose changes to the UK Gender Recognition Act<sup>131</sup>. University of Oxford had to provide security to Professor Todd due to threats made against her by transactivists<sup>132</sup>.

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<sup>122</sup>

[https://www.heraldsun.com.au/subscribe/news/1/?sourceCode=HSWEB\\_WRE170\\_a\\_GGL&dest=https%3A%2F%2Fwww.heraldsun.com.au%2Fnews%2Fvictoria%2Fwomen-doused-in-water-at-university-of-melbourne-protest-over-transphobic-website%2Fnews-story%2Fdadaabbb19c804fd41277ec4a1798b2e&mementype=anonymous&mode=premium](https://www.heraldsun.com.au/subscribe/news/1/?sourceCode=HSWEB_WRE170_a_GGL&dest=https%3A%2F%2Fwww.heraldsun.com.au%2Fnews%2Fvictoria%2Fwomen-doused-in-water-at-university-of-melbourne-protest-over-transphobic-website%2Fnews-story%2Fdadaabbb19c804fd41277ec4a1798b2e&mementype=anonymous&mode=premium)

<sup>123</sup> [https://www.skynews.com.au/details/\\_6246474790001](https://www.skynews.com.au/details/_6246474790001)

<sup>124</sup> <https://scholar.google.com/citations?user=qf8cFgAAAAJ&hl=en>

<sup>125</sup> <https://4w.pub/fantasy-worlds-on-the-political-right-and-left-qanon-and-trans-sex-beliefs-2/>

<sup>126</sup> <https://www.feministcurrent.com/2021/04/08/podcast-donna-hughes-was-denounced-by-her-university-for-questioning-gender-identity/>

<sup>127</sup> <https://today.uri.edu/news/university-response-to-anti-transgender-statements/>

<sup>128</sup> <http://users.ox.ac.uk/~sfos0060/GCtargets.shtml>

<sup>129</sup> <https://www.bbc.com/news/uk-england-oxfordshire-51737206>

<sup>130</sup> <https://www.thetimes.co.uk/article/professor-selina-todd-barred-from-event-celebrating-womens-lib-is-backed-by-free-speech-campaign-7r98m5j9p>

<sup>131</sup> <https://womansplaceuk.org>

<sup>132</sup> <https://www.bbc.com/news/education-51248684>

It should be noted that the proposed reform to the Gender Recognition Act, which would have allowed for sex self-id, was rejected by the UK parliament<sup>133</sup> on the basis of a broad community consultation that reflected consensus within the community that people cannot change sex, medical gatekeeping should be retained for changing legal documents, no public support for sex self-id, no support for males identifying as women being able to access women's changing rooms, and that males should be excluded from the female sports category<sup>134</sup>.

### *Professor Rosa Freedman*

Professor Freedman is a professor of law, conflict and global development at the University of Reading, specialising in activities of the United Nations as they relate to human rights<sup>135</sup>.

Professor Freedman presented to a government consultation on the issue of sex self-id and how those changes may affect women's rights. In response, she received rape threats, was called a Nazi (even though she is Jewish herself) and had urine poured under her office door by transactivists<sup>136</sup>. She has further been "*subjected to online and in-person abuse on university campuses, including threats, intimidation, and attempts to no-platform me and to close down events where I am speaking*".

Despite providing support to the UN Special Rapporteur on Freedom of Religion or Belief to write the first UN human rights report on antisemitism she was disinvited by a panel on antisemitism for an Essex University Holocaust memorial event.<sup>137</sup>

### *Maya Forstarter*

Maya Forstarter was a tax policy adviser who lost her job for tweeting in favour of women's sex based rights<sup>138</sup>. At first instance, Ms. Forstarter took her former employer to the UK Employment Tribunal for discrimination on the grounds of belief, but did not succeed on the basis she should not have lost her job simply for expressing her beliefs about sex and gender on her personal Twitter account<sup>139</sup>.

Ms. Forstarter appealed this decision<sup>140</sup>, the EHRC intervened in the process in her favour<sup>141</sup>, and decision is pending at the time of writing. Ms. Forstarter is a cofounder of Sex Matters<sup>142</sup>, a UK campaign to undo the damage done to institutions

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<sup>133</sup> <https://www.gov.uk/government/news/government-responds-to-gender-recognition-act-consultation>

<sup>134</sup> <https://fairplayforwomen.com/polldata/>

<sup>135</sup> <https://scholar.google.com/citations?user=I8RAs0MAAAAJ&hl=en>

<sup>136</sup> <https://www.thetimes.co.uk/article/trans-lobby-has-sent-me-death-threats-says-professor-rosa-freedman-0bl8cpcqh>

<sup>137</sup> <https://www.thejc.com/news/uk/human-rights-and-antisemitism-expert-disinvited-from-holocaust-memorial-event-1.495936>

<sup>138</sup> <https://www.crowdjustice.com/case/lost-job-speaking-out/>

<sup>139</sup>

[https://assets.publishing.service.gov.uk/media/5e15e7f8e5274a06b555b8b0/Maya\\_Forstarter\\_vs\\_CGD\\_Europe\\_Centre\\_for\\_Global\\_Development\\_and\\_Masood\\_Ahmed\\_-\\_Judgment.pdf](https://assets.publishing.service.gov.uk/media/5e15e7f8e5274a06b555b8b0/Maya_Forstarter_vs_CGD_Europe_Centre_for_Global_Development_and_Masood_Ahmed_-_Judgment.pdf)

<sup>140</sup> <https://www.theaustralian.com.au/world/the-times/trans-ruling-was-orwellian-uk-employment-tribunal-hears/news-story/1f300e201d6605e2b2e508171e9fe301>

<sup>141</sup> <https://legal.equalityhumanrights.com/en/case/upholding-right-freedom-religion-or-belief>

<sup>142</sup> <https://sex-matters.org>



across society by the encroachment of gender identity into language, policy and law, to ensure everyone's human rights are protected, and to foster fair, civil and transparent debate on this issue.

*Sall Grover*<sup>143</sup>

Sall set up Giggle as a female only online platform in response to the sexual abuse, harassment and sexual assault she endured as a working screenwriter in Hollywood. Sall set up her platform as a refuge from the online abuse and harassment that women experience at shocking rates. She continued to experience discrimination as young female tech start-up entrepreneur, receiving a slew of hate mail and death threats.<sup>144</sup>

Giggle uses AI facial bone structure technology to determine the sex of the person signing up for the platform. Initially, males with a trans identity were welcome on the site, however Sall realised that some of them were setting up groups that discussed women in a disparaging and degrading way. She made the choice to exclude them from the platform, allowing natal females only. The backlash and threats towards her escalated, including threats of rape and murder, exhortations to kill herself, indecent videos and pictures of genitals. Giggle has now been banned from advertising on Facebook and Google due to their natal female only policy.<sup>145</sup>

*Senator Claire Chandler*

A complaint was made to the Tasmanian discrimination tribunal on the basis of an email sent to male citizen who objected to her stating "*women's sports, women's toilets and women's changerooms are designed for people of the female sex (women) and should remain that way*"<sup>146</sup>. It was withdrawn by the complainant when Senator Chandler declined to sign a confidentiality agreement.<sup>147</sup>

*Women attacked at protests*

Paisley Semrau, a disabled woman, was attacked and injured by a transactivist at Melbourne's international Women's Day rally on March 8, 2021<sup>148</sup> for carrying a sign that supported Dr. Holly Lawford-Smith and her right to academic freedom.

Supporters of Dr. Lawford-Smith were attacked at a protest on University of Melbourne campus. Profanity and slurs were shouted at them, a visibly aggressive

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<sup>143</sup> <https://sallceo.medium.com/an-open-letter-to-the-media-53883dc71599>

<sup>144</sup> <https://4w.pub/giggle-founder-sall-grover-has-faced-misogyny-at-every-turn/>

<sup>145</sup> <https://4w.pub/female-only-app-giggle-launches-giggle-talk/>

<sup>146</sup> <https://www.theaustralian.com.au/nation/politics/senator-supporters-face-extraordinary-threat-of-fines-for-insulting-antidiscrimination-commissioner/news-story/c64fd64a123f58c9ecb9fb3aad5cbd1f>

<sup>147</sup> <https://senatorchandler.com.au/complaint-dropped-but-questions-for-commissioner-remain/>

<sup>148</sup> [https://www.binary.org.au/disabled\\_woman\\_assaulted\\_by\\_trans\\_activist](https://www.binary.org.au/disabled_woman_assaulted_by_trans_activist)

and intimidating male threw water over them, another aggressive male used a loud-hailer centimetres from their faces to demand the women be thrown off campus<sup>149</sup>.

Women's Human Rights Declaration Campaign<sup>150</sup> was launched in Australia at University of Sydney on 21<sup>st</sup> February 2020; the Campaign is an international movement that seeks to reaffirm women and girls' sex-based rights as set out in the UN's CEDAW<sup>151</sup>, and to challenge discrimination faced by females from the replacement of the category of sex with that of gender identity. The launch event was interrupted by transactivist protesters who broke into the lecture theatre, stole various items, shouted profanity, slurs and insults, and only left when the police were called<sup>152</sup>.

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<sup>149</sup> [https://www.youtube.com/watch?v=QOhvNbQg2nU&feature=emb\\_title](https://www.youtube.com/watch?v=QOhvNbQg2nU&feature=emb_title); <https://www.youtube.com/watch?v=QOhvNbQg2nU>

<sup>150</sup> <https://www.womensdeclaration.com/en/>

<sup>151</sup> <https://www.womensdeclaration.com/en/declaration-womens-sex-based-rights-full-text/>

<sup>152</sup> Personal testimony of Katherine Deves, Save Women's Sports Australia, footage available upon request

7. You mentioned ACON, Pride in Sport and their funding and that questions should be asked. What do you mean by this? Where do the concerns arise from?

1. ***ACON – Conflict of interest with activities that support health of LGB funded by NSW Health and activities that do harm to youth (predominantly LGB) funded by pharmaceutical, medical and surgical industries.***

ACON Health Limited, formerly known as the AIDS Council Trust of NSW, trading under ACON, is a charity whose stated primary purpose that changed from ending HIV transmission among gay and homosexually active men in 2019<sup>153</sup> to programs for helping sexuality and gender diverse people, and people with HIV in regional NSW, HIV prevention amongst the general Australian community for the “Thank You HIV Prevention Campaign”, and broad community mental health care under “Say it Out Loud” campaign for LGBTI people in 2020<sup>154</sup>.

- Charity established in 1980s to combat the AIDS crisis
- Repositioned themselves as lobbyists for Trans and gender diverse ([transhub.org](http://transhub.org) and the [Pride In](#) franchise.)
- Nearly \$14 million of their annual budget of approximately \$20 million is provided by government grants<sup>155</sup>
- \$11 million coming directly from the NSW Minister for Health’s office
- Receives sponsorship and funding from pharmaceutical industry

**a) *Ties to the Pharmaceutical Industry***

From the [Pride in Inclusion member list](#). ACON’s pharmaceutical company sponsors are:

- [AstraZeneca Pty Ltd](#)
- [Eli Lilly](#)
- [Johnson & Johnson Family of Companies, Australia](#)
- [Novartis](#)
- [Pfizer](#)
- [Roche Products Pty Ltd](#)
- [Sanofi Aventis Australia](#)

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<sup>153</sup> <https://www.acnc.gov.au/charity/ea3e2025288ac857075be2a07be4cd90#ais-ed885302b5b2566c60605c8e0e4c94bc>

<sup>154</sup> <https://www.acnc.gov.au/charity/ea3e2025288ac857075be2a07be4cd90#ais-a241e478fb52a92fcde3d6f08c9bf518>

<sup>155</sup> <https://www.acnc.gov.au/charity/ea3e2025288ac857075be2a07be4cd90#financials-documents>

ACON runs [Transhub](#), a site aimed at transitioning [minors](#).

The pharmaceutical industries profit from sponsoring ACON's promotion of gender transitioning as they offer a range of products that transition youth to the appearance of the opposite sex, such as puberty blockers, cross-sex hormones, castration, double mastectomies, facial reconstructions, and neo-genitalia fashioned from skin grafts.

For example, AstraZeneca produces [Goserelin](#), it is also known as Zoladex and is used off label in minors to 'suppress' normal puberty. Northside Clinic, a Melbourne centre for medically altering minors' bodies, name it in [their patient information](#). You can read the PBS discussion about Goserelin [here](#).

***b) Transhub.org in effect acts as a marketing arm of the Pharmaceutical and Medical industry in promoting gender transitioning for youth, products and services despite the risk to the physical and mental well-being of youth. Where is the funding coming from for Transhub?***

The traditional solution for children was a 'watchful waiting' approach a form of 'talk therapy' that reconciled the youth with their sex. The outcome for this solution according to the analysis by Transgender Trend<sup>156</sup> of over 10 studies shows that the majority of children treated for gender dysphoria, between 73 and 88 percent were observed to cease a transgender identity and reconcile with their biological sex. In other words, they grew out of gender dysphoria<sup>157</sup>.

From a Pharmaceutical business' point of view a 'watchful waiting' approach only benefits a small number of trained psychologists and there is no recurrent or residual revenue when cured patients exit the market. However, if youth are encouraged to take a transition pathway they are worth approximately \$150K<sup>158</sup> per person over their lifetime in order to create and maintain the appearance of the opposite sex. Not just from initial surgeries, but from medical products and procedures that provide the pharmaceutical industry an annual recurring revenue stream.

Puberty blocker drugs given to stop the natural development of transgender-identifying children are "experimental", suffer from a weak evidence base, and potentially lock-in the bodily distress they are claimed to remedy, High Court judges in the UK have said<sup>159</sup>. It is why after the Tavistock vs Bell case<sup>160</sup>, the sale of

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<sup>156</sup> <https://www.transgendertrend.com/children-change-minds/>

<sup>157</sup> [http://www.sexologytoday.org/2016/01/do-trans-kids-stay-trans-when-they-grow\\_99.html](http://www.sexologytoday.org/2016/01/do-trans-kids-stay-trans-when-they-grow_99.html)

<sup>158</sup> [https://www.abc.net.au/news/2018-03-02/the-hidden-\\$100,000-price-tag-on-being-transgender/9498918](https://www.abc.net.au/news/2018-03-02/the-hidden-$100,000-price-tag-on-being-transgender/9498918)

<sup>159</sup> <https://www.theaustralian.com.au/exclusives/judges-give-verdict-for-caution-on-experimental-transgender-drugs/news-story/620b214548686e1442bc1541a452a4fd>

<https://www.bbc.com/news/health-56601386> , <https://arms.nice.org.uk/resources/hub/1070871/attachment>

<sup>160</sup> <https://www.judiciary.uk/wp-content/uploads/2020/12/Bell-v-Tavistock-Judgment.pdf>

puberty blockers were banned. The impact of cross sex hormones, which for example change a girl's voice, make her develop facial hair etc. is irreversible. ACON's push for youth to medically transform their bodies, means that, that 73-88%<sup>161</sup> that normally would exit the system will instead follow a path that results in irreversible damage to healthy bodies and become lifelong patients.

In addition, ACON's information on suppressing normal puberty<sup>162</sup> is misleading and false<sup>163</sup>.

Additionally, transhub's provision of advice about bathrooms on their website is making factually untrue statements about the *Sex Discrimination Act 1984 (Cth)*<sup>164</sup>:

*"The Sex Discrimination Act (2013) makes it unlawful to discriminate against someone because of their gender identity, including when accessing bathrooms. The Act states that "requiring a person who is transgender to use a toilet that does not align with their gender identity is discrimination."*

The Sex Discrimination Act is not 2013, but 1984 and by using quotation marks it implies that statement is what the text of the Act, when it does not state that at all, in fact the Act is entirely silent on "transgender" and bathrooms. The only reference to facilities is found in the Schedule of CEDAW Article 14(2)(h) where women in rural areas must have the right "to enjoy adequate living conditions, particularly in relation to...sanitation".

The link on the webpage leads to a document entitled "*Getting to know the Sex Discrimination Act: A guide for young women*" which is completely silent on the issue of transgender or bathrooms<sup>165</sup>, but which does discuss the sex-based exemption for sport. This is contrary to the position the website<sup>166</sup> takes which fails to mention that lawful exclusions exist whereby people can be excluded from a sport on the basis of their sex.

*Sex Discrimination Act 1984 (Cth)* s42 states that it is NOT unlawful to discriminate on the basis of sex, gender identity or intersex status by excluding persons from participation in any competitive sporting activity in which the "strength, stamina or physique of competitors is relevant".

This exemption is expressly stated in *Anti-Discrimination Act 1977 (NSW)* s 38P, without the requirements of "strength, stamina and physique" and says "*Nothing in this Part renders unlawful the exclusion of a transgender person from participation in*

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<sup>161</sup> [http://www.sexologytoday.org/2016/01/do-trans-kids-stay-trans-when-they-grow\\_99.html](http://www.sexologytoday.org/2016/01/do-trans-kids-stay-trans-when-they-grow_99.html)

<sup>162</sup> <https://www.transhub.org.au/puberty-blockers>

<sup>163</sup> <https://arms.nice.org.uk/resources/hub/1070905/attachment>

<sup>164</sup> <https://www.transhub.org.au/allies/bathrooms>

<sup>165</sup> [https://humanrights.gov.au/sites/default/files/content/pdf/sex\\_discrim/getting\\_to\\_know.pdf](https://humanrights.gov.au/sites/default/files/content/pdf/sex_discrim/getting_to_know.pdf)

<sup>166</sup> <https://www.transhub.org.au/sport>

*any sporting activity for members of the sex with which the transgender person identifies.”* However, the website does not even mention these relevant provisions in their guide to the law pertaining to sport.

This website is presenting themselves authority on legal issues as they pertain to people who claim a trans and/or gender identity. Yet, they are either erroneously or wilfully misinterpreting and misrepresenting the law, and outright failing to mention law relevant to the issue at hand.

This dissemination of false information as it pertains to the law has adverse consequences for women’s lawful sex-based rights. Firstly, it is failing to acknowledge women’s right to a female-only sports category on the basis of the inarguable position that males do enjoy a significant biological advantage over females, and females have a substantially elevated risk of injury should they compete against males in sport. Secondly, implying that failing to allow biological males into bathrooms – a space where women and girls are vulnerable and in a state of undress – is in violation of discrimination law is a misrepresentation of the law, and it also raises the broader issue of the encroachment on the right of females to have a space free from males when they are vulnerable.

***2. The major target market for transitioning products are lesbian, gay and bisexual youth, given ACON is a charity set up to provide health services to the LGB community is a major dis-service to the LGB community.***

ACON is a strong advocate for mandatory affirmation of gender identity (bodily modification to present an appearance of the opposite sex to the one the youth was born as, preferred over ‘watchful waiting’ practices that reconcile a youth to their sex), they promote assumptions that gender non-conforming children to be their ‘authentic selves’ need to modify their body to be consistent with their ‘gender identity’; those social norms or stereotypes associated in a culture with being male or female.

In the UK, the promotion of mandatory affirmation policy has shown that homosexual and bisexual children are vastly overrepresented amongst children presenting to the Gender Identity Disorder Service (GIDS) through the Portman and Tavistock Trust. In “*Sex, gender, and gender identity: A re-evaluation of the evidence*”<sup>167</sup>, the authors report that in 2012 for instance, only 8.5% of girls referred to the service described themselves as heterosexual. Given that the overall percentage of lesbian and bisexual women and girls in the UK is less than 5%, the underlying causes for this overrepresentation should have been urgently investigated. Although empirical

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<sup>167</sup> Griffin, L., Clyde, K., Byng, R., & Bewley, S. (2020).

evidence<sup>168</sup> has shown that a cross-sex identification is a better predictor of a child growing up to be bisexual, gay, or lesbian rather than growing up to identify as trans, these children were immediately put on the medical pathway. This happened to such an extent that clinicians at Tavistock raised concerns they were practising a form of gay conversion therapy.

In 2019, staff interviews conducted as part of an internal review confirmed that homophobia was an underlying issue in many cases of children seeking to transition but children were referred onto the medical pathway to transition anyway. The Times of London reported<sup>169</sup>:

*So many potentially gay children were being sent down the pathway to change gender, two of the clinicians said there was a dark joke among staff that “there would be no gay people left”.*

*“It feels like conversion therapy for gay children,” one male clinician said. “I frequently had cases where people started identifying as Trans after months of horrendous bullying for being gay,” he told The Times.*

*“Young lesbians considered at the bottom of the heap suddenly found they were really popular when they said they were Trans.”*

*Another female clinician said: “We heard a lot of homophobia which we felt nobody was challenging. A lot of the girls would come in and say, ‘I’m not a lesbian. I fell in love with my best girlfriend but then I went online and realised I’m not a lesbian, I’m a boy. Phew.’*

Mandatory affirmation is in effect homophobic and another form of conversion practice based on sexual orientation. In countries such as Iran where homosexuality is a crime punishable by death, this affirmation policy is followed through with surgical sex reassignment to rid Iran of homosexuals and other gender non-conforming individuals.

The new conversion therapies in the ACT and Queensland follow this homophobic trend. In 2020 as reported in *The Australian*<sup>170</sup>, the Medical Association Queensland took a stand against these transition practices based on the safety and ethics of transgender drugs and surgery for children, calling for a host of practitioner groups to come together and devise new national treatment guidelines. The organisation covering more than 9600 doctors said it “strongly supports” the concerns of branch member Philip Morris, a leading psychiatrist, who questioned the capacity of under-

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<sup>168</sup> Childhood Gender-Typed Behaviour and Adolescent Sexual Orientation: A Longitudinal Population-Based Study.

<sup>169</sup> It feels like conversion therapy for gay children says clinicians” Bannerman, Lucy. The Times, 8 April 2019.

<sup>170</sup> <https://www.theaustralian.com.au/nation/ama-lends-weight-to-fears-on-trans-kids-medicine/news-story/f4b4a1d6e16080d3cc08966833879300>

18s to make decisions about life-altering hormonal treatment or surgery “now shown to be not without harm”.

In medicine the rule is ‘do no harm’ which means, which if there’s a choice between no harm or risk, the path to take is no harm. The number of detransitioners now number over 19,000, young people who reaching their early twenties now face the gravity of permanent harm done to them in their youth.

*It needs to be investigated whether as a charity ACON is not putting possible funding revenue from vested interests over the care and well-being of youth.*

**3. From the findings drawn from an analysis of ACON’s Pride in Sport <sup>171</sup>(PIS) Audit tool designed to promote ‘diversity and inclusion’ it is arguable whether the Pride Inclusion<sup>172</sup> franchise that ACON runs is driven by altruistic motives.**

Of the Audit Tool, Pride in Sport Index (PiSi) it’s stated:

*“The Pride in Sport Index™ is the first and only benchmarking instrument specifically designed to assess the inclusion of people with diverse sexualities and genders within Australian sporting organisations and codes more broadly. Participating in the index will allow Australian sporting organisations to not only assess their own practice, but determine that which constitutes good practice, along with the ability to benchmark their own initiatives against an external measure and other sporting organisations.”*

In the executive summary of [‘Concerns about the ‘Pride in Sport Index’](#):

“The Pride in Sport Index tool (PiSi) has serious problems that make it unsuitable for use by local sporting clubs, which are the very organizations that this tool purports to serve. I have come to this assessment through a combination of testing and analysis, leading to the evidence detailed in this document.

PiSi benefits, if anyone, large sporting organisations, which are capable of meeting PiSi’s demand of time and money. Larger sporting and corporate organisations can meet the burdensome Corporate Social Responsibility requirements and have a greater need for the publicity benefits of virtue signalling and exposure.

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<sup>171</sup> [Concerns about the ‘Pride in Sport Index’ by Catherine Anderson-Karena. Test-Ed.](#)

<sup>172</sup> <https://www.prideinclusionprograms.com.au/about-pid/>



Bear in mind that the motives of Pride in Sport (PiS) may not be altruistic. It gets prestige by being associated with prominent sporting organisations, as well as revenue for its training & consultancy services. Plus, publicity benefits— **as it's a requirement of 11 out of 18 sections of the PiSi is to publicize PiS and its ideology.**

I have identified several likely risks to the government, sporting clubs and to society, they can be found under the Discussion of Risks section. However, I wish to highlight one of the most serious concerns in Section 1: Governance & Strategy Point 5 “We have a Zero Tolerance Policy specifically addressing [homophobia](#), [biphobia](#), and [transphobia](#) within our sport.” and Point 6. “Our Zero Tolerance Policy (as evidenced in Q10) has been communicated to our staff/volunteers/members within the calendar year.” Compliance to these two points means, compliance to males entering female toilets and changing rooms.

**With these two points Pride in Sport departs from the legal framework established around single-sex exceptions** contained in the Sex Discrimination Act 1984 (Cth). If they are talking about males playing against girls it disregards the rights of teenage girls to compete in sports on a level playing field as per Sex Discrimination Act 1984 (Cth) s42, Anti-Discrimination Act 1977 NSW s38 and CEDAW Art. 10(g). It fails to meet basic safeguarding requirements by promoting mixed sex changing rooms and residential accommodation. It disregards the rights of all pupils to safety, privacy, and dignity in single-sex spaces.”

*Should government support a disrespect for the law? Should the government be placing these risks on small volunteer community organisations?*