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Free speech and human rights of women undermined by ACAT decision

In a far-reaching decision published on Tuesday, the ACT Civil & Administrative Tribunal (ACAT) has ordered journalist, Beth Rep, to remove social media posts which have been found to constitute unlawful vilification on the ground of gender identity.

After 2 years defending litigation, Rep has also been ordered to pay the complainant, Bridget Clinch, \$10,000 in compensation.

The offending comments were posted in the context of discussion about the abrogation of women's rights, and raised issues like those recently canvassed by JK Rowling, amidst great controversy. Rep is similarly "supportive of gender non-conformity" but "concerned about the impact of trans activism on women's spaces, services and opportunities."

In their reasons for the decision, Senior Member B Meagher SC (Presiding) and Senior Member K Katavic indicate that comments referring to the complainant Clinch as male were to be regarded as vilification on the ground of gender identity.

The Tribunal found Rep responsible not only for her own posts on her Facebook page but also for comments made by third parties, most of whom she does not know. Rep was held liable for having "liked" some of the offending posts by others and also for not removing many others. In this way this decision by ACAT creates a new onus on individuals to moderate and censor their Facebook pages.

This decision will effectively close down public debate on this topic within Australian social media and drive feminist protest further underground. It is intended to appeal the decision.

A copy of the decision can be accessed at:

<https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/act/ACAT/2020/68.html>.

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Feminist Legal Clinic Incorporated is a new community legal service that works to advance the human rights of women and girls.