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Free speech ‘in play’ over women’s sport



Hobart-based Senator Claire Chandler says free speech is in trouble if defence of women’s sport leads to an anti-discrimination complaint. Picture: MATHEW FARRELL

• **EXCLUSIVE**

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A demand that Senator Claire Chandler front up to an anti-discrimination tribunal over her defence of women’s sport from pro-transgender policy may breach the Constitution’s guarantee of political free speech, according to law professor Anne Twomey.

The Tasmanian Liberal senator has been [ordered](#) to attend an October 1 conciliation conference with an unnamed complainant over a possible anti-trans “hate speech” offence punishable with coercive orders and unlimited damages.

The Hobart man took umbrage at a newspaper opinion article in which Senator Chandler [championed](#) free speech in the face of “views which ordinary people, whether on the left or right, find absurd and completely lacking in evidence”.

“You don’t have to be a bigot to recognise the differences between the male and female sexes and understand why women’s sports, single sex changerooms and toilets are important,” she wrote in The Mercury in July.

In parliament, Senator Chandler has [challenged](#) the country’s top sport agency Sport Australia, the Australian Human Rights Commission and major sporting codes over their 2019 trans-inclusion guideline, which would pit biological males who identify as female against women and girls.

The guideline appears to have been influenced by trans activists during private consultations, and has come under international criticism from sports scientists for playing down the role of biology and testosterone in sporting performance and safety.

Tasmania’s anti-discrimination commissioner Sarah Bolt allowed the local man’s complaint to go ahead, even though it turned out he was not trans, and she saw a possible offence not in the article but in Senator Chandler’s reply to an email from him objecting to the article.

Exchanges like this about public policy between a Senator and a constituent “go to the core” of the Constitution’s implied freedom of political communication, said [Professor Twomey](#) of Sydney University.

But before the High Court struck down any part of Tasmania’s anti-discrimination statute as unconstitutional, it would have to consider whether the law had a legitimate purpose such as “protecting individual dignity” and went about serving that purpose in a proportionate way compatible with Australia’s democracy, Professor Twomey said.

In a decision taking the man’s complaint forward Ms Bolt says the email shows the senator “considers people who are born male and then seek to live as a female, should not have access to female toilets, facilities or sport”.

Ms Bolt says excluding transwomen like this is “problematic (and) potentially direct discrimination” against them on the basis of their female “gender identity”.

She suggested it was “no longer necessary to have separate toilets based on gender or sex”, given the shift towards unisex toilets. (Her organisation would not tell The Australian what toilets it uses.)

Ms Bolt raises the question whether the Hobart man “should be subjected” to this material which she says is arguably offensive to trans people.

In part of her email, Senator Chandler replied to the constituent’s question whether she understood the difference between sex and gender, saying she did and “that’s why I’ve made the point in my article that women’s sports, women’s toilets and women’s changerooms are designed for people of the female sex and should remain that way.”

Senator Chandler, who is taking legal advice, said she would not be silenced, and it would be “a very troubling precedent” if members of parliament could not do their job without having private correspondence “effectively vetted to determine whether or not it’s offensive”.

“There’s also a broader free speech issue at play here,” she told The Australian.

“If defending something as fundamental as a woman’s right to compete fairly in sport is subject to an anti-discrimination complaint, it is abundantly evident that there is an issue with free speech in this country.

“It’s hardly controversial to [point out](#) that women’s sport was designed for females and that it’s important for women and girls to be able to play sport on a level playing field — this is an issue that has been raised with me by many, many Australians.”

Gender identity, an inner feeling independent of biological sex, has gained traction in law, health and education across the country following a [pro-trans change](#) to the federal Sex Discrimination Act in 2013 under Australia’s first female prime minister Julia Gillard. Her office declined to comment on the effect of this change on women’s interests.

Like Victoria, Tasmania has adopted a trans-friendly law allowing people to replace their biological sex on a birth certificate with a self-identified gender identity, and this can be changed once a year. The stated rationale is to allow trans people to give expression to their authentic selves.

Almost half of 54,000 people in a recent ABC Australia Talks survey said they [believed](#) there were more than two genders.

Inclusion: Pride in Sport is an arm of the pro-trans group ACON

Meanwhile, Australians may have to begin censoring comments on their social media accounts after an ACT anti-discrimination tribunal ordered Canberra radio announcer Beth Rep [to pay \\$10,000 compensation](#) for liking other people's posts on her Facebook page which were found to vilify trans people, according to Ms Rep's lawyer Anna Kerr.

Ms Kerr said Ms Rep had vigorously defended the vilification complaint brought by transwoman Bridget Clinch, and was considering an appeal.

She said her client supported people with atypical gender roles but was concerned about the effect of trans activism on women's spaces, such as toilets, as well as services and opportunities. Many transwomen choose not to modify their male bodies with hormones or surgery.

Ms Kerr said the tribunal held Ms Rep liable not only for her comments on her Facebook page but also for those of third parties, some strangers. The tribunal claimed its jurisdiction reached beyond the ACT. Ms Clinch, who transitioned as a soldier, is in Brisbane.



Transwoman Bridget Clinch complained about vilification.

“This decision will effectively close down public debate on this topic within Australian social media and drive feminist protest further underground,” said Ms Kerr, of the Sydney-based Feminist Legal Clinic.

The online conflict dates back some years to an [International Women’s Day March](#) in Brisbane when the Greens, with Ms Clinch as a candidate, withdrew support for the event because some women marched with signs critical of biological males identifying as female. One sign read “Ovaries before Brovaries”.

This mirrors global debate — with the author [JK Rowling](#) among the ranks of “gender critical” feminists — about how to balance the competing rights of women and girls with the self-declared female identity of those born male.

One offending Facebook post by Ms Rep posed a choice for society in relation to transwomen — “encourage males to embrace their feminine side OR put them on dangerous drugs for life and a long, painful journey of plastic surgery experiments while perpetuating the myth that sex change is actually possible”.

After an earlier mediation, Ms Rep had apologised to Ms Clench, and it was Facebook commentary on the apology that led to the award of \$10,000 to Ms Clench.

Ms Rep and Ms Clench both complained of harassment, with Ms Rep saying she had been “calling out misogyny and the (bullshit) woke bloke culture that permeates the (Green) party these days”.

Ms Clinch told The Australian Ms Rep had “agreed to stop vilifying trans peeps (and) then she just kept going”.

The online war of words was reignited on Wednesday by news of the tribunal’s ruling, and Ms Rep’s supporters complained she had been slurred as a “TERF” with impunity.

TERF stands for “trans-exclusionary radical feminist”. Some trans activists use the term with death threats against women.

Asked about this, Ms Clench said anyone being threatened was free to take action under existing law.

On Twitter she said: “TERF is a descriptor much like bigot, homophobe, racist, sexist, etc. No court has — nor will they — deem it to be an offensive term”.

University of Melbourne philosopher Holly Lawford-Smith, a radical feminist who has been attacked as a TERF, said it was “a derogatory term used to refer to people, mostly women, who insist on the importance of biological sex.

“It is regularly used together with abusive language and threats of violence, largely against women,” she told The Australian.

“The Economist [banned it as a slur](#) in 2018, a UK district court judge agreed that it was a derogatory term, and several philosophers objected to its publication in a journal in 2018.”



Violent anti-TERF slogans proliferate online.

In 2019, the Medical Journal of Australia’s Twitter account shut down critical commentary on a trans medicine article as a “TERF war”, with the journal’s editor-in-chief Professor Nick Talley later apologising “unreservedly for (use of) the derogatory term”.

Last year in the UK Parliament, MP Joanna Cherry asked Twitter executive Katy Minshall about complaints the platform terminated the accounts of women stating the facts of biological sex, while leaving online violent anti-TERF material.

Ms Cherry showed her tweets of a cartoon figure holding a pointed gun with the caption “shut the f*ck up terf”. Another had a video game clip of a man chopping a non-trans woman in the neck which had been attached to a tweet saying “what I do to terfs”, Techcrunch.com [reported](#).

The Australian sought comment from the pro-trans Roberta Perkins Law Project and the ACT Human Rights Commission.