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Dear Ms Alsalem

**Input for SR VAWG's report on violence against women and girls in sport**

Feminist Legal Clinic Inc. is a community legal service based in Sydney that works to advance the human rights of women and girls. We are also the Australian country contact for the Women's Declaration International, which has at the time of writing almost 38,000 signatures from 160 countries.

We welcome the opportunity to make this submission. We will focus on a specific area of concern, namely the safety risks that arise when males who identify as women or girls participate in female sport.

Our casework and advocacy are specifically focused on defending women from male violence and abuse as well as discrimination and human rights cases more generally. We have assisted several clients with cases involving male violence in the context of women's sport and have included two anonymised case studies at the end of this letter.

Aside from our casework, our service also provides a news digest blog. Relevant links to media coverage on sport can be accessed [here](#). Media articles posted over the last few years document the process undertaken in Australia to undermine fairness and safety in women's sport.

Despite the efforts of conservative women politicians and campaigners including Claire Chandler, Kath Deves, Moira Deeming and Kirralie Smith, it was nevertheless Australia's right wing coalition government that oversaw the launch of '[Guidelines for the inclusion of transgender and gender diverse people in sport](#)' ('the Guidelines') by the Australian Human Rights Commission (AHRC) in June 2019.

[Section 42 of the Sex Discrimination Act 1984](#) contains a permanent exception that clearly provides for single sex sport. According to this provision, nothing *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*. The operation of this exception is undermined by the Guidelines which effectively urge the inclusion of males in women's sport and gloss over this specific provision.

The Guidelines are significantly misleading and were formulated without adequate public consultation and under the influence of powerful trans lobby groups.<sup>1</sup> The Guidelines are not only unfair but directly result in sporting organisations putting women and girls at significantly increased risk of injury. Even one of Australia's highest profile members of the trans community, Cate McGregor, opposed the AHRC's process on trans inclusion in sport saying that 'trans activists are dangerous'.<sup>2</sup>

The Australian newspaper has reported:

*Senator Chandler, who has been pursuing the agencies over the policy process, said it was now conceded "that the guidelines have no scientific basis, no consideration of safety, no consideration of fairness in women's sport".*

*A legal opinion from Melbourne QC Stuart Wood to Senator Chandler says the 2019 trans-inclusion document created by the human rights experts is an inaccurate and misleading guide to anti-discrimination law and sport, with potentially "dangerous practical effects" if sporting bodies rely on it.*<sup>3</sup>

Despite being a member of the Liberal Government, Senator Chandler's concerns fell on deaf ears.

Women from across the political spectrum who have protested the failure of this government policy to prioritise women's safety have been at best sidelined, and in many cases sacked, expelled, defamed and forced to defend legal and professional disciplinary proceedings. One campaigner was served with an application for a restraining order for her efforts campaigning to keep males out of women's sport.<sup>4</sup> Although this application was ultimately defeated, the misuse of laws to curtail freedom of speech has a silencing effect on the many others who read about this experience and are intimidated.

On 29 August 2019, Feminist Legal Clinic Inc. wrote a letter to the Hon. Marise Payne, Minister for Women in which we expressed our concerns about the Guidelines and other measures responsible for undermining women's safety. Her office responded - *'We are not aware of evidence that suggests transgender women pose an*

<sup>1</sup> <https://ladykitkowska.wordpress.com/2022/04/25/did-acon-cook-the-books-on-sport-inclusion-guidelines/>

<sup>2</sup> <https://www.facebook.com/watch/?v=542382023218443>

<sup>3</sup> <https://feministlegal.org/transgender-sport-policy-has-no-scientific-basis-the-australian/>

<sup>4</sup> <https://www.dailymail.co.uk/news/article-12040505/Transwomen-female-sport-critic-Kirralie-Smith-hit-AVO-protect-trans-activist-player.html>

*inherent risk to others in women's only spaces*'.<sup>5</sup> Our further correspondence was ignored.

However, media coverage in recent years clearly demonstrates that the inclusion of males who claim to be women is decimating Australian women's sport. In the last month it has been reported that an amateur women's football team, featuring five transgender players, has ignited controversy after absolutely dominating a women's competition in Sydney.<sup>6</sup> It is unlikely that injuries suffered by women on the sporting field when playing these oversized opponents will be reported in the media, let alone acknowledged as constituting male violence, as this would inevitably result in complaints to the Australian Press Council by the well-resourced trans lobby groups.<sup>7</sup>

For example, Hannah Mouncey reported as 190cm tall, weighing 100 kilos and litigious, has played in the Australian Football League for Women and has represented Australia in women's handball.<sup>8</sup> Earlier reports that Mouncey was involved in another female player suffering a broken leg have since been removed from public view.<sup>9</sup>

Despite the pressure to keep silent some brave sportswomen have spoken out about not only the unfairness, but also the risk of injury of including males in women's competitions.<sup>10</sup> We are also aware that other women have written to Local Council's raising safety concerns relating to the loss of single sex toilets and changerooms at sporting fields, which not only decreases the privacy and comfort of these facilities but also increases the vulnerability of women and girls to sexual assault.<sup>11</sup>

Unfortunately, despite these efforts, women and girls are continuing to pay the price on the sporting field and beyond. Despite copious evidence that Australia is currently experiencing an epidemic of male violence against women and girls, the demands of the trans lobby have been prioritised over the safety of the female population.

## Case Study 1

Less than a month after the Guidelines were launched, a middle-aged nurse and mother, Lisa\*<sup>12</sup> approached Feminist Legal Clinic for assistance with a matter that was ultimately heard by a regional sporting tribunal. Lisa was playing amateur

<sup>5</sup> <https://feministlegal.org/wp-content/uploads/2022/03/Letter-from-Marise-Paynes-office.pdf>

<sup>6</sup> <https://www.news.com.au/sport/football/womens-team-with-five-trans-players-dominates-womens-football-tournament/news-story/481e3242bb1d570de599a38e1f33a7cf>

<sup>7</sup> [https://www.theaustralian.com.au/subscribe/news/1/?sourceCode=TAWEB\\_WRE170\\_a\\_GGL&dest=https%3A%2F%2Fwww.theaustralian.com.au%2Fbusiness%2Fmedia%2Ftransgender-lobby-group-rainbow-rights-watch-swamps-press-council-with-complaints%2Fnews-story%2F2f613b1ff7f7e46dfaacb1a7cb70cf71&mementype=anonymous&mode=premium&v21=LOW-Segment-2-SCORE&V21spcbehaviour=append](https://www.theaustralian.com.au/subscribe/news/1/?sourceCode=TAWEB_WRE170_a_GGL&dest=https%3A%2F%2Fwww.theaustralian.com.au%2Fbusiness%2Fmedia%2Ftransgender-lobby-group-rainbow-rights-watch-swamps-press-council-with-complaints%2Fnews-story%2F2f613b1ff7f7e46dfaacb1a7cb70cf71&mementype=anonymous&mode=premium&v21=LOW-Segment-2-SCORE&V21spcbehaviour=append)

<sup>8</sup> <https://www.foxsports.com.au/afl/afl-2021-hannah-mouncey-transgender-footballer-legal-action-against-afl-wants-to-play-local-footy-trans-rights-latest-news/news-story/065ac248ba9b497f13caa0c75aacc0aa>

<sup>9</sup> [https://www.mumsnet.com/talk/womens\\_rights/3059263-190cm-100kg-size-15-feet-transwoman-tries-to-join-womens-Aussie-Rules-football](https://www.mumsnet.com/talk/womens_rights/3059263-190cm-100kg-size-15-feet-transwoman-tries-to-join-womens-Aussie-Rules-football)

<sup>10</sup> <https://archive.md/2021.09.27-082218/https://amp.dailytelegraph.com.au/news/nsw/transgender-sport-safety-and-fairness-concerns-raised-by-female-volleyball-players/news-story/e7c4388e8a8b7e6be11bce510803f401>

<sup>11</sup> <https://www.thetimes.co.uk/article/unisex-changing-rooms-put-women-in-danger-81wbp8kgk>

<sup>12</sup> \*This case study has been anonymised. These are not the real names of the parties involved.

women's soccer in a regional club when she had a terrifying encounter with a high profile trans identifying male on the opposing team. This individual, Jenny\*<sup>13</sup>, had reacted violently when Lisa used soccer jargon to call 'man on' to warn her team mates of the approach of this large and aggressive player. According to multiple witness accounts Jenny then began swearing and making violent threats against Lisa saying:

*'I am going to fucking smash her face in'*  
*'It's OK I am going to bash her head in after the game'*  
*'I am going to punch that bitch in the face'*

Lisa's coach removed her from the field for the rest of play for her own safety while Jenny continued to play. The teenage referee eventually issued a yellow card against Jenny identifying him as 'fuelling disagreement', but both the referee and Jenny's coach were clearly too intimidated to ask Jenny to leave the field and admitted difficulty calming him down after the game. Directly following the game there was a further display of aggression when Jenny approached Lisa in a threatening manner and bystanders needed to physically intervene to ensure Lisa's safety.

Bizarrely it was Lisa who was refused registration by the club the following season and was required to defend charges before a disciplinary sporting tribunal hearing. Lisa was charged with 'Bringing the Game into Disrepute' pursuant to provisions of the Football Australia's Code of Conduct which protect against Gender Identity Discrimination and Harassment. Ultimately, the matter was finalized at the conclusion of the proceedings by way of a confidential mediated settlement that enabled Lisa to return to playing. However, before reaching that point Lisa was subjected to what can best be described as a kangaroo court, with multiple breaches of the principles of procedural fairness and natural justice.

Jenny's oral evidence was received by the Tribunal while Lisa and her legal representatives were required to wait outside. Meanwhile the Tribunal members refused to hear any submissions in relation to the serious threats of violence by Jenny, which were widely witnessed and largely admitted and clearly provided Jenny with a motive for providing an embellished account of what Lisa had said on the field. However, there was a refusal by the Tribunal to receive submissions relating to Jenny's conduct and therefore a failure to properly weigh her credibility as a witness. Furthermore, the Tribunal did not allow any witnesses to be called or cross-examined in the hearing and although Lisa had indicated on her application that she required the match official to be available for questioning, the referee was not called by the Tribunal.

Lisa had also reported the matter to the local police, who were very slow to investigate and repeatedly claimed to be short staffed. In view of this Lisa took the step of instructing a solicitor to bring a private application for Apprehended Violence Orders (AVO) for her protection. Unfortunately, the court proceedings were also subject to extreme delays and Lisa ultimately discontinued them under the weight of her legal costs. Throughout this process Jenny enjoyed pro bono representation.

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<sup>13</sup> \*This case study has been anonymised. These are not the real names of the parties involved.

Lisa feels she has been left vulnerable and unfairly punished by a community intimidated by Jenny and her threats to go to the media if anyone crosses her. Lisa and other team mates have addressed their concerns for their safety by deciding not to participate in sporting competitions where Jenny is registered to play. Others have given up playing soccer altogether directly as a result of these events. Lisa has been unwilling to go public with her story for fear of further reprisals within her small regional community.

## Case Study 2

ML Baths\* is an ocean pool carved out of the sandstone rocks at the bottom of the cliffs in 1866 and which has historically been exclusively used by women. Prior to colonisation the natural pools were frequented by Aboriginal women who used the waters for bathing and as a sacred birthing place. It is the only remaining pool catering exclusively to women and children in the area.

Vulnerable groups of women, who feel unable to access other swimming facilities where males are present, frequent the pool. This includes observant Muslim and Jewish women, survivors of sexual assault and other male violence, lesbian women and women with disabilities.

Following an earlier challenge to their status as a female only swimming facility, certification was obtained from the relevant Minister to allow the baths to be operated for the exclusive use of women and girls and boys up to the age of 13 years. However, a year after the certificate was obtained, amendments to the legislation introduced discrimination on transgender grounds.

Since then there have been incidents with males, claiming to be transitioning although visibly male (bare chested, with beards etc) seeking access to the pool. To clarify matters the management posted a statement on its website stating that only trans women who had undergone gender affirmation surgery could enter the space. This action resulted in a strong backlash against the pool with trans activists demanding an apology and access for all males identifying as trans. The Local Council then pressured the management of the pool to acquiesce.

Please do not hesitate to contact the writer if further details of these case studies are required or if you would like us to expand on any point raised in this submission. We recommend that the Australian Government prioritise the safety of women and girls in sport and withdraw the ill-considered AHRC Guidelines and take steps to reinstate single sex sport and facilities. Thank you again for your important efforts to ensure the safety of women and girls.



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*Organization in Special Consultative Status with the Economic and Social Council  
(ECOSOC) since 2023.*