



Call for input to the report of the Special Rapporteur on violence against women and girls to the UN General Assembly on violence against women and girls in sport

30 April 2024

The Affiliation of Australian Women's Action Alliances (AAWAA) brings together women's liberation groups from across Australia, is secular, independent, and unaligned with any political party. Our membership includes women currently competing in organised sport in Australia and those who take part in informal sporting activities.

We advocate for women and girls, especially in domains where we face discrimination or vulnerability because of our sex, and we campaign against discrimination and stereotyping in all areas of women's experience, including sport.

We value inclusion in sport but not at the expense of safety, fairness, or the right to privacy and dignity in changerooms for women and girls. At the core of our concern is failure of our public institutions to uphold sex-based separation in sport, forcing state and local sporting bodies to accommodate 'sex self-identification' leading to harm, abuse, exposure to violence, and disadvantage.

### **Sex self-identification compromises safety, fairness, dignity, and participation for Australian women and girls in sports**

Sex self-ID is now law or practice in Australia. Males who self-identify as females are competing in and winning<sup>1</sup> women's sporting events and accessing women's

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<sup>1</sup> [Breanna Gill causes transgender debate after winning an Australian Women's Tour](#), *Golf Monthly*, 4 April 2023; [Aussie trans surfer makes history by winning title as a woman three years after taking out the same competition as a man](#), *Daily Mail*, 20 May 2022. See, also, [Thousands of complaints filed after trans Youtuber allowed to play on women's football league reportedly injured players](#), *Reduxx*, 1 April 2023.

changerooms.<sup>2</sup> Male physiques are preponderantly stronger, faster, heavier, and taller than female physiques, and supposedly inclusive policies that allow males to self-identify as females on the basis of gender identity actually deny opportunities for women and girls to compete on a level playing field. In addition to this, sharing changerooms with males is impacting female safety, dignity, and privacy. These factors discourage participation, especially for already marginalised Muslim women and girls.

On paper, Australia's *Sex Discrimination Act 1984* (SDA), and most state and territory anti-discrimination laws, allow for female-only sport and spaces. Consistent with CEDAW Article 10, the SDA includes a permanent exemption for sport to exclude on the basis of sex, gender identity, or intersex<sup>3</sup> where physiological advantage would otherwise compromise the right of women and girls to the same opportunities to participate in sport as males. It also gives force to the basic human right to participate in sport as noted by UNESCO, the UDHR, and the Olympic Charter.<sup>4</sup>

Unfortunately, Australian government-funded human rights and sporting bodies actively discourage use of this exemption on the basis of a consultative process that did not seek the views of women's groups. Despite global developments in many sports to ensure that males are removed from participating in the female-only category at the international level, Australia still refuses to protect the rights of women and girls in sport. Consequently, men self-identifying as women are dominating women's club-level competitions.<sup>5</sup>

### **The Australian Human Rights Commission and the increasing risk of abuse and harm against women and girls in sport**

Bodies in Australia charged with protecting women's human rights are perversely undermining and eroding them. Most significant in this regard is the Australian Human Rights Commission (AHRC), which, through its disputable interpretation of the SDA, is failing in its positive duty to ensure government and sporting institutions understand and implement the permanent sporting exemption in the SDA.

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<sup>2</sup> See, for example, [Hockey ACT inclusion position statement](#); [Trans and Gender Diverse Inclusion. Australian Sports Commission](#).

<sup>3</sup> *Sex Discrimination Act 1984*, Part II, Div 4, Section 42.

<sup>4</sup> [International Charter of Physical Education, Physical Activity and Sport](#); [Sport and human rights. OHCHR](#); [Introduction to the IOC human rights strategic framework](#).

<sup>5</sup> [Women's soccer team featuring FIVE trans players destroys opposition 10-0 on way to winning grand final - with one biological male scoring SIX goals in one](#), Daily Mail, 27 March 2024.

The AHRC worked with the Australian Sports Commission and the Coalition of Major Professional and Participation Sports to produce guidelines for the administration of sports in relation to transgender and gender-diverse persons.<sup>6</sup> The guidelines emphasise and prioritise inclusion over the use of the permanent exemption to allow women and girls to participate on a level playing field against only females. There is no advice in these guidelines on how to use the exemption, and its hectoring tone intimidates sports administrators, stressing that they need to “maximise the inclusion of transgender and gender diverse people in sport” and must “comply with their legal obligations under the Act.”

They provide little practical help for organisations that need to draw lines around female-only sporting categories. The Victorian Equal Opportunity and Human Rights Commission has produced a similarly overbearing set of guidelines.<sup>7</sup> Unfortunately, these interpretations of the SDA leave women and girls with few avenues through which to uphold our protections and rights, as litigation is costly and time-consuming.

This unfortunate and unnecessary situation would have been avoided had the AHRC and others properly engaged in preparation of these guidelines through a public process. The AHRC unfortunately conducted only targetted consultations with a selected group of activists.<sup>8</sup> This approach is a clear breach of article 7 (b) of CEDAW, which includes the right of women to participate in the formulation of government policy.

### **Australian sports administrators contributing to increasing risk of harm against women and girls in sport**

The actions of the AHRC discourage sports administrators from adopting evolving best international practice. Furthermore, sporting organisations reliant on government funds and/or managed by volunteers cannot risk overtly challenging AHRC guidelines, even when the safety of women and girls on the sporting field and our safety, dignity, and privacy in changerooms is at risk.

Outside Australia, international sporting bodies have begun to mandate participation in single-sex categories in their sport on the basis of sex rather than gender or gender

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<sup>6</sup> [Guidelines - Including transgender and gender diverse people in sport.](#)

<sup>7</sup> [Guideline: Trans and gender diverse inclusion in sport – Complying with the Equal Opportunity Act 2010 – May 2017](#)

<sup>8</sup> [Did ACON cook the books on sport inclusion guidelines?](#), Lady Kit Kowalski, 25 April 2022.

identity. These decisions have been made with careful consideration of empirical scientific evidence that demonstrates that, with few exceptions, males have significant physical advantages in sport. The International Cricket Council, World Aquatics, Union Cycliste Internationale, World Rugby and others have taken steps to require those who have undergone male puberty to participate only in male sporting categories where single-sex categories exist.

These recent decisions could have provided individual sporting organisations in Australia with an incentive to revisit policies, rules, and guidelines and bring them into consistency with their international bodies. Instead, we find national associations putting out explicit statements against their international body<sup>9</sup> or ignoring their international body's position and continuing to allow males to compete in female-only categories.<sup>10</sup>

### **Concerns are being suppressed about sex-based violence in sport**

Even in advance of the above, we were beginning to see more and more instances of women losing rights to express views on matters of biological sex and its importance to our protections and rights, including our protections and rights in sport. Expression of 'gender critical' concerns about sex-based violence and discrimination in sport has seen whistle-blowers de-platformed, losing their jobs or philanthropic positions, investigated, and fined.

Australia's eSafety Commissioner reportedly<sup>11</sup> had the founder of Binary.org's Facebook page removed after the founder made posts that reported on injuries allegedly caused by a transgender male playing in the female category of a Football NSW competition. The founder, Ms Kirralie Smith, was then visited by NSW Police and presented with an apprehended violence order (AVO) that was taken out against her by the male player.<sup>12</sup>

Our group has also experienced marginalisation and silencing related to our views on how the conflation of sex and gender is exacerbating discrimination. In June 2023, our

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<sup>9</sup> [Rules for transgender international cricketers narrowed](#); [Rugby Australia holds firm on transgender inclusion](#)

<sup>10</sup> [Swimming Australia - diversity and inclusion](#); [Gender diverse and transgender inclusion guidelines](#), Rowing Australia. Sporting associations are neglecting even to record participation data on the basis of sex, not only for players but also for volunteers, managers, and coaches (e.g., [Hockey ACT](#)).

<sup>11</sup> Although the E-Safety Commissioner denies censoring Ms Smith, we understand there are two sworn affidavits that prove otherwise.

<sup>12</sup> [Row over trans women playing in female soccer leagues gets ugly as campaigner fighting to 'keep blokes out of women's sport' is hit with restraining order to 'protect' trans player](#), *Daily Mail Online*, 4 May 2023.

group made a submission to Australia's Parliamentary Joint Committee on Human Rights (PJCHR) in relation to their inquiry into Australia's Human Rights Framework.<sup>13</sup> Despite the committee holding public hearings through to October 2023, they failed to call witnesses who raised the concerns about how redefining sex in law and practice was weakening safeguards for women and girls.

### **Female-only toilets and changing rooms are disappearing**

From around 2018, but accelerating since 2021, we have seen sporting bodies adjust their operational models to accommodate males (whether men or boys) who identify as females. Most have made these adjustments in as low-key a manner as possible, quietly updating their webpages and policy documents with no consultation with the women taking part in their sport and who might be concerned about the implications.

### **Recommendations**

1. **Protect CEDAW from sex self-ID.** In the very first instance, CEDAW must be protected and the CEDAW Committee must not accept the legal recognition of sex self-ID in the Convention on the Elimination of Discrimination against Women. We have heard that the CEDAW Committee is, indeed, considering this matter and believe the Australian experience demonstrates the very real risks of legally recognising sex self-ID to the human rights and protections of women and girls. Any considerations the CEDAW Committee might have on this issue must be open and transparent and actively seek out the perspectives of women who have been directly impacted by sex self-ID, including women and girls involved in sport.
2. **Return female-only sporting categories and spaces to females only.** Only by removing males from female sporting categories and spaces will we minimise violence and the risk of male violence (including harm and abuse) against women and girls in sport. By simple virtue of strength, speed, height, weight, and other physical factors, males outstrip females in terms of competition, and pose a risk to females' physical safety on the sporting field.
3. **Ask Australian authorities to promote use of the permanent exemption under the *Sex Discrimination Act*.** Australia's ninth periodic review to the CEDAW Committee is due in 2024. We recommend that the UN Special Rapporteur ask the CEDAW Committee to question Australian authorities on how

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<sup>13</sup> [Submission no. 138. Affiliation of Australian Women's Action Alliances \(AAWAA\)](#) to Australia's Parliamentary Joint Committee on Human Rights (PJCHR), [Inquiry into Australia's Human Rights Framework](#), 30 June 2023.

those authorities are promoting the understanding, use, and acceptance of the SDA's permanent exemption by sporting clubs and associations for the protection women and girls from male abuse, harm, and violence in sport particularly in relation to sex self-ID.

## **Conclusion**

We acknowledge that an individual's sense of their own gender is a sensitive matter, and a person's gender identity should not prevent them from pursuing the benefits that participation in sport can bring the individual and their community. Those who identify as transgender or gender-diverse should not be barred from participating in sport; however, separation on the basis of sex – rather than gender identity – is vital for female-only sporting categories to safeguard female participants' physical safety as well as for the preservation of fairness, integrity, and dignity in competitive sport.