

The Guidelines.

### **Introduction.**

The ideology of gender fluidity, in which there are no such things as boys and girls, merely unfixed loci on a rainbow of gender fluidity, may secure a major victory through the release of 'The guidelines for the inclusion of transgender and gender diverse people in sport' by The Australian Human Rights Commission in partnership with the Coalition of Major Professional and Participation Sports (COMPPS) and Sport Australia<sup>1</sup>. COMPPS comprises the Australian Football League, Cricket Australia, Football Federation Australia, National Rugby League, Netball Australia, Rugby Australia and Tennis Australia in which it declares over '9 million people participate... through 16,000 clubs'<sup>2</sup>. The victory will lie in the imposition of the ideology and its practices on almost a third of the Australian population.

Euphemistically, in its letter of endorsement, COMPPS proclaims the Guidelines 'provide a significant opportunity for all of those involved in Australian sports... from grassroots participants and clubs to governing bodies...to reflect on how they can facilitate diversity and inclusion'. But, from the first line of the actual Introduction to the Guidelines, the concept of 'reflection' is replaced by that of physical obedience to the dictates of the Sex Discrimination Act (Cth) 1984 which, though intended in 1984 to protect biological females, was Amended in 2013 to include the gender diverse. Thus, in Orwellian under-speak, the Guidelines provide 'practical guidance' for inclusion of the gender diverse in all codes, at all ages, on the field and in the dressing rooms across the nation. Lack of compliance with the Guidelines will, of course, incur penalties.

The so-called Safe Schools Programmes taught the ideology of gender fluidity to children in schools under the camouflage of anti-bullying. Under the banner of anti-discrimination, the doctrines of the ideology will be imposed by legal force on all the Mums and Dads, and their children, and all the teachers, officials, volunteers and workers responsible for the running of competitions across the nation.

One of the victory's most significant victims will be that half of the population the original Act sought to protect from discrimination: the biological females of Australia now facing discrimination on the sporting field from transgendering males whose Nature's endowed strengths belie any psychological claim for parity.

Women's sport is a recent phenomenon, barely 100 years old. It was only in 1900 that a few women participated in the Olympic Games<sup>3</sup>. In the 1928 Games, their number had increased to 2.2% of participants and, by 2016 to 45%. This emancipation from male dominated culture has been rightly welcomed and, by promoting naturally unfair competition, it is hard to comprehend that society could, one way or another, submit to the return of male domination, if not by men in trousers, by natal males in skirts.

### **The Guidelines.**

The Guidelines are addressed to everyone involved in sport: 'from management committees, to coaches, staff and volunteers, umpires and officials...and to

members of the public, including parents and care givers of players'. More to the point, to anyone 'interested in the legal obligations of sporting organisations' with regard to those whose gender identity is in discord with their chromosomes.

The Guidelines define 'gender related identity' as including the 'appearance, 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'. And they explain gender diversity is an 'umbrella term that includes all the different ways gender can be experienced and perceived...including trans/transgender, genderqueer, non-binary, gender non-conforming and many more'.

The Guidelines declare 'it is against the law' to discriminate against such people in regard to membership, on-field participation and off field facilities, and to ask for personal information that might lead to discrimination. However, the details of what might actually comprise discrimination are not clear and clubs are warned 'The Guidelines do not provide a definitive legal answer to all of the issues of discrimination...(and) an organisation or individual will not be protected from a finding of unlawful discrimination if they claim that they complied with, or relied on, these Guidelines'. Implementation of the Guidelines will merely 'minimise the likelihood of a successful discrimination claim being made'.

The Guidelines, however, do make it clear that both an individual or an organisation which has been found to discriminate, and a person who aids and permits that discrimination can be held liable under the Act. The Guidelines declare it is 'important to note that a sporting organisation can be vicariously liable for the actions of their employees or agents' who are discriminating, or making 'an unlawful request for information'. And, to make things even more intimidating, under the Act a person is guilty until innocence can be proven.

### **Guidelines for the new religion.**

The Guidelines are imposing a new world view on society with a hell to shun (trans and other phobias), a heaven to be gained (a sexually fluid and free society): a vision that has all the hallmarks of a religion, if not a cult. To demonstrate dedication to the this state-imposed ideology, sporting clubs will be obliged to nail their theses of commitment on the doors of public record. There, in prepared texts, or policies, they will attest to their belief that 'participation in sport should be based on a person's affirmed gender identity and not on the sex they were assigned at birth, to the fullest extent possible'...So help me, Alfred Kinsey. Warned that faith without works is dead, clubs must demonstrate belief by active 'promotion of inclusion of transgender and diverse people', and by the propagation of the doctrines through 'active steps' of education of all the sheep in their fold. Pastoral workers will be appointed to 'champion' the cause by supporting seekers and believers. Inquisitors, nicely known as 'inclusion officers' will be appointed to ensure compliance with the received text, and to facilitate complaints of other people's shortcomings, particularly those made by suffering children. The sporting fellowship will share all things in common: from lockers, toilets and dressing rooms, to 'an appropriate range of uniform styles and sizes that cater to different body shapes'. Excluding someone from a dressing room will be a venal sin. Submission to the ideology can be expected to ensure continuation of beneficence from the state and the media. 'Cargo cult' believers are certain to emerge. Legal crucifixion will be too horrible to contemplate.

Acts of creation can be expected from supplicant clubs. Gender neutral teams will emerge from the mud of binary competition and, if that proves too distant, in the meantime teams may be created by allocation on percentages: 40% sheep, 40% goats, with the remaining 20% comprised of goats thinking they are sheep, sheep thinking they are goats, animals thinking they are both sheep and goat, and others claiming they are moving from one to the other. If traditional rules render the game unruly, they can be creatively altered so everyone has a good time because no animal, in the coming kingdom will really want to win.

A miracle within that miracle should not be overlooked. The prevalence of gender dysphoria in adults is reported by the Diagnostic and Scientific Manual of Mental Health (DSM) to range from 0.005% to 0.04% in males, and from 0.002% to 0.003% in females in 2013. The Guidelines of 2019 suggest the numbers can now be expected to fill an allocation of 20% in sporting teams. The new religion has its own loaves and fishes.

To this creative nonsense, the Guidelines assure that the effect of the male hormone, the demon, testosterone, is over-estimated in the sporting prowess of natal men transgendered to women. The Guidelines declare there is 'limited research' on its impact 'on the sporting performance of transwomen'. In the new religion, the mind transcends the carnal. Moreover, the Guidelines seek to allay fears of chaos in female sport by declaring there is 'no evidence' of anyone 'transitioning in order to gain a competitive advantage'. Human nature is already being transformed.

### **Testosterone.**

There are, in fact, volumes of literature on the impact of testosterone on the physical prowess of a male. On the basis of many studies, 'evidence makes it highly likely that the sex difference in circulating testosterone of adults explains most, if not all, the sex differences in sporting performance'<sup>4</sup>. The relative limitation of investigation on its relationship with sporting ability of natal males transgendering to females under the effect of oestrogen and testosterone blocking drugs reflects the paucity of subjects, the relative newness of the phenomenon, developments in techniques of measurement of testosterone, and the prolonged period for its deprivation to have final effect. Indeed, its effect on bone structure and function which contribute to male sporting prowess may be permanent.

Nevertheless, it is known that a gene on the Y chromosome on a male instils production of testosterone in a foetus from about 6 weeks after conception, and that testosterone and other hormones direct masculinisation of as yet indeterminate genitalia, and induce the development of male specific changes in the brain<sup>5</sup>. In the prepubertal male, testosterone is synergistic with other hormones such as Growth Hormone which, under the influence of chromosomes, induce linear growth, and muscle and organ development<sup>6</sup>.

From puberty, testosterone induces secondary sex characteristics, and such development in muscle, bone and oxygen carrying haemoglobin that causes males, on average, to be taller, stronger, and faster, and possess more physical endurance than females. This effect of testosterone is predictable and dose related and, one way or another, results in an 8-12% ergonomic advantage in males, beginning with puberty, from around 12 years of age<sup>7</sup>. Unpopularly, investigators report the

continued, dose related, effect of testosterone on the brain with Huang et al declaring 'prominent mental motivational effects in the effort-dependent tests of muscle strength' after investigation of the hormone's effects on post-menopausal women<sup>8</sup>. Other investigators report mental or psychological effects of testosterone<sup>9</sup> but its precise contribution to the superiority of male performance in elite sports is not known<sup>10</sup>. Interestingly, the DSM includes 'rough and tumble play' as a typical manifestation of childhood masculinity!

**Male prowess, even in children.**

Whatever the combination of chromosomes with male sex and other hormones, the effect is sex specific. In most tests of athletic prowess, males exceed females at most ages. From 4-12 years, except for 4 year olds, males have been found to be significantly faster in an Athletic Skills Track of 5-7 fundamental tests of movement<sup>11</sup>. Aerobic fitness, strength, speed, and agility were greater in boys than girls with an average age of 10.8 years, though balance and flexibility were greater in girls<sup>12</sup>. Gender differences were greater in the explosive strength of upper and lower limbs.

Wondering why girls are more prone to ligamentous knee damage than boys, a significant gender specific difference was found in the ratio of the strengths of hamstring to quadriceps muscles in the legs in children from 7-12 years<sup>13</sup>. Boys had greater hamstring strengths at all ages, while girls had higher quadriceps strengths at 7,9,10 and 12 years of age. Given a gender difference in the anatomy of the knee and its components, it was suggested muscle strength was not sufficient to produce instability and girls should begin preventive exercises at the earlier ages.

In another study with an average age of 9.5 years, boys outperformed girls in cardio-respiratory fitness and lower body power<sup>14</sup>. An Australian study revealed girls at 8 years of age had 18% lower cardio-respiratory fitness and 44% lower eye hand coordination than boys<sup>15</sup>. Another Australian author reviewed sex difference in athletic performance in children from 10-18 as reported from Norway and Poland, and hand-grip strength in non-athletic children in US and Canada<sup>16</sup>. In track and field, he reported a 3% superiority in pre-pubertal males which increased to 10.1% with puberty. In jumping, the prepubertal superiority of 5.8% increased to 19.4%. In swimming, the superiority of males was, at most, less than 2%, exceeding that level at the beginning of puberty, reaching around 6% by age 13-14, and around 10% by 17-18. Interestingly, he reported 'no narrowing in the gender gap in swimming...over more than three decades'. Hand-grip strength was marginally greater in pre-pubertal males, becoming significant after puberty, suggesting gender divergences 'are a feature of normal male puberty' rather than one manifesting itself in elite athletes and, given their co-incidence with the pubertal rise in testosterone point to that hormone's causative effect. Other authors concur with a fundamental effect of testosterone but emphasise the contribution of other hormones to muscle size and strength<sup>17</sup>.

And, in Australia, whatever the underlying chromosomal, hormonal, behavioural or psychological causes, boys almost always perform better at sport. Though the difference is least, if non-existent, in certain sports in earliest years, through puberty the difference between males and females rapidly approaches adult levels. Analysis of 175 track, field and swimming records published by the NSW

Department of Education reveal only 6 to have been secured by females in age specific events from 8 to 17 years. With regards to sex differences in times, lengths or heights of performances, at age 8, there was an average of 2% superiority of males (0.2% in swimming, 3.2% in athletics). At 9, it was 1% (0.3%, 2.2%). At 10, 2% (-0.6% and 3.8%). At 11, it was 4% (0.6 and 6.2%). At 12, it was 4% (1.9% and 5.4%). At 13, it was 10% (6.3% and 13.3%). At 14, it was 11% (6.3% and 14.6%). At 15, it was 13% (7.35 and 16.4%). At 16, it was 13% (9.7% and 14.5%). At 17, it was 17%.

In general, boys aged 4-12 years are typically more active than girls<sup>18</sup>, participating in nearly twice as much moderate and vigorous activity<sup>19</sup>. Pooled data from Europe suggest girls from 4-18 years perform on average 17% less total daily activity<sup>20</sup>. And studies from Australia, confirmed 19% less activity in girls from 8-12 years<sup>21</sup>. NEW REFERENCE

### **Female complaints.**

Given a 'push' in Australia, for gender free sporting activities<sup>22</sup> and the demonstration of greater levels of activity and prowess of boys in most sports at most ages, it should be asked if there are any studies on girl's attitudes to mixed sport? Literature is scarce but Lyu and Gill examined the perceptions of Korean students regarding their own physical competence, their enjoyment and their effort in same-sex compared with mixed physical education classes<sup>23</sup>. They concluded female students in same-sex classes had 'notably higher scores' in all areas, pointing to other work which concluded girls were concerned about boys evaluating their performance and appearance, with one girl declaring she was 'Ashamed (embarrassed)...I am not good at sports and I just don't like anyone watching it'<sup>24</sup>.

Opposition by biological females to competition with transgender females, is however, becoming public in the United States. In June, three high school girls filed a complaint of discrimination to the Department of Education against the Connecticut Interscholastic Athletic Conference, asserting the inclusion of transgender athletes creates unfair advantage and violates Federal laws.<sup>25</sup> According to their legal team from the Alliance Defending Freedom, the Conference has 'allowed boys to compete without limitation in girls' athletic competitions if they claim a female gender identity'. As a result, two 17 year old transgendered female athletes 'have dominated the field, setting meet records in 15 events that were previously held by 10 different Connecticut girls'. Thus the policy has created 'an unfair playing field for female athletes' in which highly competitive girls 'are systematically being deprived of a fair and equal opportunity to experience the thrill of victory'. The policy 'reverses nearly 50 years of advances for women'.<sup>26</sup> The girls claim the majority of female athletes feel as they do, but are too scared to protest publicly.

The complainants declare participation of transgenders in sport contradicts the intention of the 1972 Amendments to the Higher Education Act which sought to prevent discrimination against women. In 2014, the federal Department of Education extended its brief to include transgender students and in 2016 that Department and the Department of Justice issued a joint statement summarising the obligations of schools 'to treat students in accordance with their expressed

gender identity even if official documents indicate a different sex, to allow these students to participate in sex-segregated activities and access sex-segregated facilities consistent with their expressed identity, and to protect student's privacy on these matters'<sup>27</sup>.

Connecticut is not the only state to accept testimony of gender identity without evidence of hormonal or surgical intervention. According to the trans promoting organisation, TransAthlete, 18 other states are reported to accept expressions of gender identity as sole authority for inclusion in High School events; 15 treat admission on a case by case basis; and 9 are derided as discriminatory for requiring evidence of hormone therapy or surgery, plus a waiting time for the effects of hormones to stabilise. The others have no policy<sup>28</sup>. In February 2017, President Trump rescinded the federal obligation to permit entry to bathroom and locker facilities on the basis of expressed gender identity<sup>2930</sup>. Unsurprisingly, there was defiance. For example, the University of Hawaii declared it had no intention of retreating from the progress it had made in protecting the right of transgender people to enter locker and bathrooms consistent with their gender identity<sup>31</sup>.

Problems for the clubs.

More than threaten, the Guidelines promise legal trouble if the sporting clubs are not obedient. They will have to draft and publish policies, provide education, establish 'champions', provide channels for complaints, organise bathrooms, and welcome, if not seek participation by the gender diverse if they want to avoid litigation, let alone continue to receive whatever support they receive from government.

Though many of the commandments of the Guidelines are clear, others are not, and the Guidelines, themselves, declare mere obedience to their written word may not be sufficient. This imprecision will be difficult for any club, perhaps especially for a sporting one used to painted boundaries, circumscribed rules and static goal posts. Embracing litigious parents of a child confused over gender could be a traumatic exercise.

Perhaps the greatest confusion will lie in the interpretation of the exemption from discrimination on the grounds of gender identity in 'any competitive sporting activity in which the strength, stamina or physique of competitors is relevant' as declared in the SDA. Unhelpfully, but perhaps predictably, the above words are not defined in the Act, nor been settled by the Federal Court of Australia. The Guidelines refer to an equivalent exemption in the Victorian legislation and the declaration by the Victorian Civil and Administration Tribunal that the exemption will 'operate if, when both sexes competed against each other, the competition would be uneven because of the disparity between the relative strength, stamina and physique of male and female competitors'. The Guidelines state this 'reasoning is likely to extend to people of different gender identities'. The aim is to ensure 'a level playing field'.

Given the superiority of physical prowess of males from earliest years, in which mixed sports will the participation of males transgenerating to females not render the field uneven? Which sport controlled by COMPPS does not involve strength, stamina and physique? In which of their sports do men not yet dominate? I can only think of netball.

The secretion of a transgendering young male child into the ranks of a female soccer team is not likely, by itself, to produce seismic distortion of a suburban field on any Saturday afternoon, but the precedent will be important. It is not far from the back row of a soccer team to the front row in an athletic event and, as Australian records attest, males hold almost all the records, and exceed the performance of females. The 'safe space' of female sport will have been invaded. What will be the point of trying hard or even participating if transgendered females can employ Nature's sporting gifts to dominate the events?

Providing access of transgendering people to the changes rooms of their desire will also be a major invasion of 'safe space'. As it is at least naïve, if not dissembling, of the Guidelines to attest there is no evidence of any transgender person competing against his or her desired gender for any 'competitive advantage, it is naïve to think common temptations will not result in the seizing of opportunities for 'sexual advantage' in the previously 'safe space' of female change rooms. It is a confrontation with the spirit of the original Act to unsettle the confidence of parents, children and adolescents that such spaces exist and that no undue vigilance needs to be undertaken to protect female privacy if not safety. Will the sporting clubs have to employ security officers? Who will be liable if sexual offence occurs in common change rooms?

The Guidelines threaten the 'safe space' for females that was intended to be protected by the original Sex Discrimination Act. Their implementation will weaken female sport by depriving females of that special sense of victory, and its various rewards. Admission of natal men into dressing rooms will be an invasion of female sanctity. Uncircumscribed legal threat will burden volunteers and officials of 16,000 clubs that provide all the benefits of sport to our young people. Someone will have to build gender neutral facilities, and then police them for perverts.

Overall, the Guidelines are a threat to Australian sport. The question must be asked: does this matter to those seeking to impose the ideology of gender fluidity? As that ideology would subordinate the body to the mind, is sport to be a tool for the imposition of the new idea?

That is not to say there is no such thing as a young person confused over gender identity. The social contagion is afflicting an increasing number of young people and their families, and they deserve our compassion and care. Such compassion can be extended through family and individual psychological help, intended to render the child more comfortable in the lot Nature has bequeathed. The young person is not helped by the sporting society colluding with their confusion, especially when such collusion threatens the sporting wellbeing of females.

<sup>1</sup> Guidelines for the inclusion of transgender and gender diverse people in sport. Australian Human Rights Commission 2019

<sup>2</sup> Guidelines *ibid.* COMPPS: p 9.

<sup>3</sup> <https://www.olympic.org/women-in-sport/background/key-dates> Accessed July 27, 2019

<sup>4</sup> Handelsman D, Hirschberg A, Bermon S. Circulating testosterone as the hormonal basis of sex differences in athletic performance. *Endocrine Rev.* 2018.39(5):803-829.

- <sup>5</sup> Bakker J. The Sexual Differentiation of the Human Brain: Role of Sex Hormones Versus Sex Chromosomes. *Curr Top Behav Neurosci*. 2019 Jan 1. doi: 10.1007/7854\_2018\_70 <http://hdl.handle.net/2268/234696>.
- <sup>6</sup> Mauras N, Rini A, Sager B et al. Synergistic effects of testosterone and growth hormone on protein metabolism and body composition in prepubertal boys. *Metabolism*. 2003. 52(8):964-969. [https://doi.org/10.1016/S0026-0495\(03\)00163-X](https://doi.org/10.1016/S0026-0495(03)00163-X)
- <sup>7</sup> Handelsman D, Hirschberg A, Bermon S. Circulating testosterone as the hormonal basis of sex differences in athletic performance. *Endocrine Rev*. 2018.39(5):803-829.
- <sup>8</sup> Huang G, Basaria S, Travison T et al. Testosterone dose-response relationships in hysterectomised women with or without oophorectomy: effects on sexual function, body composition, muscle performance and physical and functional performance in a randomised trial. *Menopause*. 2014;21(6):612-623.
- <sup>9</sup> Celec P, Ostatnikova D, Hodosy J. On the effects of testosterone on brain behavioural functions. *Front Neurosci*. 2015;9:12.
- <sup>10</sup> Handelsman DJ. Sex differences in athletic performance emerge coinciding with the onset of male puberty. *Clin Endocrinol*. 2017;87:68-72.
- <sup>11</sup> Hoeber J, Ongena G, Krijger-Hombergen M et al. The Athletic Skills Track: age and gender related normative values of a motor skills test for 4 to 12 year old children. *J Science and Medicine in Sport*.2018;21: 975-979.
- <sup>12</sup> Marta CC, Marinho D, Barbossa T et al Physical fitness differences between prepubescent boys and girls. *J Strength Cond Res*. 2012.26(7):1756-66.
- <sup>13</sup> Holm I, Vollestadt N. Significant effect of gender on hamstring-to-quadriceps strength ration and static balance in prepubescent children from 7-12 years of age. *Am J Sports Medicine*. 2008;36(10):2007-2013.
- <sup>14</sup> Flanagan S, Dunn-Lewis C, Hatfield D et al. Developmental differences between boys and girls result in sex-specific physical fitness changes from fourth to fifth Grade. *J Strength Cond Res*.2015.29(1):175-180.
- <sup>15</sup> Telford RM, Telford RD, Olive L et al. Why are girls less physically active than boys? Findings from the LOOK Longitudinal Study. *PLOS 1*. 2016;11(3).
- <sup>16</sup> Handelsman D. Sex differences in athletic performance emerge coinciding with the onset of male puberty. *Clin Endocrinol*. 2017;87:68-72.
- <sup>17</sup> Round J, Jones D, Honour J et al. Hormonal factors in the development of differences in strength between boys and girls during adolescence: a longitudinal study. *Annals of Human Biol*. 1999;26(1):49-62.
- <sup>18</sup> Sallis J, Prochaska J, Taylor W. A review of correlates of physical activity of children and adolescents. *Med Sc Sports Exerc*. 2000. 32:963-975.
- <sup>19</sup> Trost S, Pate R, Dowda M et al. Gender differences in physical activity and determinants of physical activity in rural fifth grade children. *J Sch Health*. 1996.66:145-150.
- <sup>20</sup> Ekelund U, Luan J, Sherar L et al. Moderate to vigorous physical activity and sedentary time and cardiometabolic risk factors in children and adolescents. *JAMA* 2012; 307:704-12.
- <sup>21</sup> Telford RM, Telford RD, Olive L et al. Why are girls less physically active than boys? Findings from the LOOK Longitudinal Study. *PLOS 1*. 2016;11(3)



<sup>22</sup> McKay M, Burns J. When it comes to sport, boys ‘play like a girl’. The Conversation. Aug 4, 2017. <https://theconversation.com/when-it-comes-to-sport-boys-play-like-a-girl-80328>.

<sup>23</sup> Lyu M, Gill D. Perceived physical competence, enjoyment and effort in same-sex and co-educational physical education classes. Educational Psychology. 2011;31(2):247-260.

<sup>24</sup> Evans B. ‘I’d feel ashamed’: girls bodies and sports participation. Gender, Place and Culture. 2006;134(5):547-561.

<sup>25</sup> <https://www.washingtontimes.com/news/2019/feb/24/terry-miller-andraya-yearwood-transgender-sprinter/>

<sup>26</sup> [https://adflegal.blob.core.windows.net/mainsite-new/docs/default-source/documents/resources/media-resources/cases/title-ix-complaint-against-connecticut-interscholastic-athletic-conference/title-ix-complaint-against-connecticut-interscholastic-athletic-conference---one-page-summary.pdf?sfvrsn=955913f8\\_6](https://adflegal.blob.core.windows.net/mainsite-new/docs/default-source/documents/resources/media-resources/cases/title-ix-complaint-against-connecticut-interscholastic-athletic-conference/title-ix-complaint-against-connecticut-interscholastic-athletic-conference---one-page-summary.pdf?sfvrsn=955913f8_6)

<sup>27</sup> <https://www.ed.gov/news/press-releases/us-secretary-education-betsy-devos-issues-statement-new-title-ix-guidance>

<sup>28</sup> <https://www.transathlete.com/about>

<sup>29</sup> <https://education.findlaw.com/discrimination-harassment-at-school/title-ix-protections-for-transgender-students.html>

<sup>30</sup> <https://www.huffpost.com/entry/reactions-trump-administration-rescinds-title-ix...>

<sup>31</sup> <https://www.bigislandvideonews.com/2017/02/25/video-uh-president-responds-to-trumps...>