

# SAVE WOMEN'S SPORT AUSTRALASIA

Keeping it fair for women and girls

## Submission to Sport NZ's Draft Guiding Principles For Transgender Participation

**Note:** Save Women's Sports Australasia notes that on 14 June 2021 we requested from NZ Sport via an email to Raelene Castle the evidence that Allen + Clarke have relied on in order to reach their determination in the draft principles that the science around transgender athletes is "unsettled". We note that that evidence, along with the other information requested, had not been received as of 20 June and that this submission has had to be completed in its absence.

In the absence of this evidence being provided for scrutiny, Save Women's Sports Australasia reaffirms our support for the ground breaking process undertaken by World Rugby in 2019 and 2020 and for the evidence based findings of that process. Specifically, that the inclusion of transgender athletes in women's rugby (and by default other contact sports) poses significant safety and fairness concerns for female athletes.

## Content of Submission

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### 1. Overview

Should Sport NZ's Draft Guiding Principles for Transgender Participation be finalised in their current form, it will put the participation levels, the health, the safety, and the opportunities of females of all ages in Aotearoa New Zealand at risk. It will also see female players/athletes displaced from their own class of sport by male-bodied players/athletes, particularly in the highly competitive grades seeking selection for representative teams.

It is very clear that throughout the development of these guiding principles, Sport NZ's primary focus has been the prioritisation of the inclusion of the transgender community in sport. We share unequivocal support for universal participation in sport for well-established benefits to mental and physical health, as much as we celebrate the spirit of inclusivity espoused by the collective of the Rainbow Community. However, having what are seemingly pre-determined outcomes, has led your consultants Allen + Clarke to deliberately ignore all research provided,

and concerns raised, over the health, safety, opportunities and the feelings, of females participating in sport at all community levels in the first round of consultation.

Most concerning, is that no research has been undertaken to gain an understanding of the following potential impacts should these guidelines be implemented into sporting policies:

- The implications on female participation levels in sport should they not feel comfortable playing alongside, against, or sharing changing rooms with male bodies;
- The impact on female participation levels should the opportunity of winning become an unattainable feat, due to competitors in their division having a biological advantage that increased training could never overcome;
- How the losing of opportunities to male bodies at community levels will impact the numbers of females participating, and able to gain accolades, at the professional and elite level of sport;
- The displacement of female athletes from their own class of sport by physiologically advantaged male-bodied athletes, in particular where competing for selection for representative teams or pathways leading to elite/professional opportunities; and
- The mental health consequences for females especially in their teenage years should even more decide not to be actively engaged in sport, given research shows that their overall rates of mental health disorders tend to be around 20-40% higher than males<sup>1</sup>. Females are also more likely to suffer from psychological problems to self-harm, and to experience suicidal thoughts and attempt suicide. Research also shows that both depression and high instances of self-harm decline through physical activity<sup>2</sup>, hence the importance of continuing to invest in increasing female participation rates in sport, and not to implement policies that threaten the current levels.

By prioritising the inclusion of biological males who identify as women, females will be displaced and excluded from a protected category set up specifically to give them the same opportunities to compete and achieve in sport. We must find a better solution.

## 2. Terminology

Throughout this submission we use the term sex, where Sport NZ & Allen + Clarke ordinarily uses gender. This is in order to reflect the reality that some sport is segregated by sex, not gender, and referring to people as playing in their identified gender obfuscates the very real issues that are at stake here. Gender is a social construct based on regressive sex stereotypes (e.g. blue is for boys, pink is for girls, netball is for girls, rugby is for boys). Many of our pioneering sportswomen fought valiantly against sex stereotypes in order to succeed.

Secondly, Save Women's Sports Australasia have heard from many New Zealanders over the past few weeks, as well as having had the opportunity to review thousands of comments on social media posts, both our own and various media organisations.

One thing has stood out for us out of all of those interactions. That is this: the definition of transgender based on self-ID that Sport NZ is supporting is completely at odds with what the New Zealand public understand a transgender player to be. For most New Zealanders, a

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<sup>1</sup> <https://www.theguardian.com/science/2015/jan/21/suicide-gender-men-women-mental-health-nick-clegg>

<sup>2</sup> <https://digitalcommons.wku.edu/cgi/viewcontent.cgi?article=2448&context=theses>

transgender player is a person who has undertaken specific and significant medical steps to alter their body (either hormonally and/or physically) in order to take on some of the physical and/or physiological characteristics of the opposite sex.

People have been stunned when we have told them that Sport NZ's definition of transgender is anyone who proclaims that they identify as the opposite sex to their birth. In fact, as stated in the draft principles, not only is a medical transition not required to exercise the "right" to play as the opposite sex but *"An inclusive transgender policy would allow for players to compete in the gender with which they identify... it would not ask people to prove or otherwise justify their gender."*

So below, in order keep faith with the New Zealand public as to what constitutes a transgender player and to accurately reflect Sport NZ's draft principles of self-ID, we use the term "male-bodied athlete/player who self-identifies as a woman" (or similar) where appropriate.

### 3. The Consultation Process

When Save Women's Sport were invited to participate in the process of developing these guidelines, we raised our concerns about the scope of the consultation, most specifically the lack of engagement with female players, to which we received the response:

- *Consultation with athletes will occur via the sporting bodies themselves and via relevant players associations that have been included. Once first drafts of principles and any policy are created, we will encourage these to be shared with athletes in some way for further feedback as well.*

Sport NZ continues to obfuscate about whether or not all sports organisations, female athletes, and other stakeholders will have the opportunity to provide feedback prior to the guidelines being finalised, and their communication to stakeholders continues to be unclear and contradictory.

In a letter to Save Women's Sport from Raelene Castle, CEO of Sport NZ, of 8 June stated:

- *Once we considered the feedback from the consultation process, we will review the draft Guiding Principles; their alignment with our other policies and guidance; and consult with the wider sports sector on how it may apply to their work and fit with their current policies.*

This does not specify whether the wider sports sector will be consulted before or after the guiding principles are finalised and could be interpreted either way.

An email from Raelene Castle to stakeholders on 8 June states:

- *Firstly, the guiding principles are not yet final and will be subject to further consultation.*
- *The consultation to date has been with a representative group of experts, including academics, sports, the rainbow community, and advocates for women's sport, to help us develop the draft guiding principles. We are currently sharing the draft with this group before a much broader consultation process is undertaken.*
- *Once the guiding principles are final, they will be shared with each of you and we will work with you to explore the development of policies for individual codes.*

- *Once we receive the final draft guiding principles from Allen + Clarke we will consult with the wider sports sector (including yourselves, athletes, and their representatives) on the guidelines and how they may apply to individual sports and fit with their current policies.*

Again, it is not clear if broader consultation will be held before the guiding principles are finalised and if any future consultation will provide a genuine opportunity to stakeholders to influence the guidelines, or whether the “consultation” will be after they are finalised and simply present stakeholders with a fait accompli that they are then required to work through in relation to their individual codes.

It is also not clear what the difference is (if any) between the “final draft” guiding principles and the final guiding principles, what the process will be for going from a “final draft” to “final” and who holds the accountability for making the decision.

We also find it deeply disappointing that you have chosen to include in the consultation a number of overseas parties (England Rugby, Pride in Sport Australia, North Melbourne Football Club, Rugby Australia Integrity Unit, Sport England, International Gay Rugby) and yet:

- a) have excluded many New Zealand sporting organisations from this process; and
- b) have not taken the opportunity to consult some of the international experts, such as Dr Ross Tucker, Dr Emma Hilton, Fair Play for Women, or even New Zealand’s own Dr Deb Robinson who participated in World Rugby’s groundbreaking process.

Failure to do so, suggests a clear pre-determination on the part of Sport NZ and Allen + Clarke as to what the principles and findings would be before the work had been done.

Finally, the online feedback form supplied by Allen + Clarke is both an insufficient and limiting mechanism to providing robust feedback on such important guidelines.

#### **4. “Inclusion” and Sport NZ’s Changing Definition**

It is very clear in the draft principles what Sport NZ’s definition of inclusion is. Page 9 and 12 of the draft principles both state:

*Inclusion. Inclusion of transgender players in community sport is paramount. Transgender players have the right to play in the gender that they identify with.*

However, in an email that Raelene Castle sent to stakeholders on Tuesday, 8 July at 4.45pm to “clarify some inaccuracies in the coverage” a completely different definition of inclusion was provided other than that found in the consultation document. This one is:

*Inclusion – the opportunity to participate in sport should be available for everyone in the community*

For someone at Sport NZ to change the definition of the key principle, and the one that is most contested, in an email to the very stakeholders that have been excluded from consultation is deeply concerning.

Save Women's Sports Australasia agrees that the opportunity to participate should be available for everyone in the community. That has never been contested. Sport offers significant physical, social, emotional, and community benefits for all involved, however they identify.

However, we strongly disagree that the inclusion of male-bodied players who self-identify as girls/women is paramount over the rights of girls and women to fair competition and safety. We also strongly object to the idea that male-bodied players who self-identify as girls/women should have the "right" to play in teams of, or as, the opposite sex to their birth.

It is also important to note that the opportunity to participate in sport currently exists for every person in Aotearoa New Zealand. The real issues as to why our transgender community don't participate in sport are many and varied, but may be due to the lack of acceptance within their own sex, along with their expectation that they should be accepted as the opposite sex in all areas.

It is important to establish that while a person may identify with a sex other than that which they are born, a person cannot change biological sex. There are over 6,000 genetic differences between men and women<sup>3</sup>, of which artificial cross sex hormones target approximately 200-500 (4-8%).

## 5. "Unsettled" Science

The draft guiding principles refer repeatedly to "unsettled" science.

*(Page 10) Research into the physiology of transgender sports players and impact of transitioning (for those going through a medical transition) is currently unsettled. The Guiding Principles accept that further research is continuing to be established and that any guidance will need to be regularly updated to reflect this.*

*(Page 11) These Guiding Principles are based on the premise that unsettled science around the physiology of transgender players at the community level creates no legitimate exception to a duty of meaningful inclusion of every individual in the community sport of their choosing. To support diversity and inclusion in the broader community, the transgender community needs inclusion in sport to be actively fostered. The foundation of these Guiding Principles is therefore one of inclusivity.*

*(Page 25) The hormone testosterone is produced by the body with males generally producing more testosterone than females. There is some research relating to the impact of testosterone on the sporting performance of transgender women. The research is unsettled. There are a diverse and varied range of factors that impact on sporting ability and prowess.*

Both Save Women's Sports Australasia and Professor Alison Heather of Otago University provided evidence during the first round of consultation about the likely physiological advantage and safety risks that male-bodied athletes/players who self-identify as a women have when

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<sup>3</sup> [Researchers identify 6,500 genes that are expressed differently in men and women: ScienceDaily](#)

participating in women's sports. The information about all World Rugby's ground breaking research that led them to the decision that male-bodied athletes/players who self-identify as a woman are not allowed to play in women's international rugby teams were ignored by Sport NZ and Allan + Clarke.

There is no mention in the guiding principles that there is a potential conflict between inclusion of transgender players in women's sport, and known conflict of including male-bodied athletes who identify as women and have not undertaken any medical transition.

The science is clear, convincing and well settled that male bodied players, regardless of how they identify, undermines the fair competition and safety of women's sports. That is why women's sports exists. It is accepted in the same way as gravity, as the pull of the moon on the tides, as the existence of four seasons, that without sex-segregation of some sports women would not be able to compete fairly or safely.

If the science is "unsettled" as is claimed and given that women's sports exist as sex-segregated categories for fair competition and safety, then the only reasonable response is to keep women's sports as for female only OR impose strict requirements so that only transgender athletes who have undertaken a medical transition and can prove that their participation in women's sports does not pose any fairness or safety issues. It is neither proportionate nor justifiable to reach the position to change women's sports from a sex segregated category to a "any body that identifies as a woman" category.

It is also offensive to female athletes the world over to hear consultation and academics assert that the science is not settled when we have decades of sporting records which clearly show the performance advantage that male bodies have over female bodies. Here are but a few examples:

- In 2017 over 15,000 men and boys ran faster than the women's world record for the 100 metres and 400 metres.
- In the 2016 US school track and field championships for boys 23 out of 24 beat the female gold medallist comparatively to the 2016 Olympics track and field events.
- Valarie Adams personal best throw of 21.24m may not sound much different to that of Tom Walsh's record of 22.90m, until you realise that Tom's shot weighs 3.26kg's more.
- The World Cup winning US women's football team were convincingly beaten 5-2 by a team of U15 school boys.

In nearly every sport, and across every age from 5 years upwards, the male performance advantage is clear<sup>4</sup>.

## **6. "Community" Sports and male acceptance of diversity**

Over the last few weeks Sport NZ, Minister Robertson's, and the Green Party's comments about our petition and the open letter have included continual references to how these principles "only" apply to community sports.

What has failed to be specified is that community sport is not the same as "social" sport. Community sport includes competitive sport at all levels up to professional level, including the

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<sup>4</sup> <http://age-records.125mb.com>

highly competitive grades from which athletes are selected for representative and professional teams. Community sport at all levels **is** competitive sport. It would be hard to find a single sports game in New Zealand where a score is not kept and at the end of the game no one knows or cares who won.

Save Women's Sports Australasia does not accept that there is any justification for the levels of sport that sit beneath professional levels to be discriminated against in terms of the right of female athletes to fair competition and safety – or the opportunity to win! Female athletes/players are entitled to all of those things at every level.

Additionally, there's no magical machine that spits out a perfectly formed athlete into professional or elite level sport. Community sport is the pipeline. Our future Silver and Black Ferns are right now in school and club netball and rugby.

We also find it concerning that the most problematic area of inclusion in our society is being ignored, and that is male acceptance of diversity. As the Out On The Fields Study demonstrated, gay men are far more likely to experience homophobic discrimination and they hold a much less positive view of their acceptance in sport than their lesbian counterparts experience. Their findings also suggested that it may be easier for women to find mainstream female sports teams that are supportive of diversity while men need to join gay identified teams in order to find this kind of supportive team culture.<sup>5</sup> We have a clear example of this happening with our Minister for Sport and Recreation, Hon Grant Robertson.

The Counting Ourselves 2019 study also clearly demonstrated this, as it showed that 81% of female-bodied athletes/players who self-identify as men were worried about how they would be treated in competitive sport, as opposed to 42% of male-bodied athletes/players who self-identify as women.

*Trans men were more likely to have been told they were using the wrong bathroom – particularly young trans men. They were more likely to have worried about how they would be treated in competitive sport and to have avoided services because of fears of mistreatment (including sports clubs, gyms and pools, driver licensing services, Work and Income or banking services).*<sup>6</sup>

Finally, we find the insinuation that females only want to participate in community sport condescending to female players/athletes. It infers that at lower than professional/elite level female athletes aren't competitive and don't play to win, but rather they are involved in sport primarily as a social activity, and so requiring them to accept male-bodied players somehow matters less.

There are plenty of opportunities for mixed sex sport in social grades. If women want to play on a mixed sex team then they do. Those who are playing on a sex-segregated team are doing so for a reason.

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<sup>5</sup> <https://outonthefields.com/wp-content/uploads/2020/11/Out-on-the-Fields-Final-Report-1.pdf>

<sup>6</sup> <https://countingourselves.nz/wp-content/uploads/2020/01/Counting-Ourselves-Report-Dec-19-Online.pdf>

## **7. Importance of fair competition for female players/athletes**

Sex segregated sports are enshrined in New Zealand law. Section 49(1) of the Human Rights Act 1993 states: (1) nothing in [section 44](#) shall prevent the exclusion of persons of one sex from participation in any competitive sporting activity in which the strength, stamina, or physique of competitors is relevant.

Women's sport is a protected class for good reason so let's start with the fundamental principle. Why does women's sport exist at all? Why do we crown a Fraser-Pryce and a Bolt at the Olympic Games? The obvious answer is that it is a protected category that gives those who will not get the benefit of testosterone during puberty and adolescence the opportunity to compete in sport in which the strength, stamina, or physique of competitors is relevant.

Without it, the best 3000 athletes in track and field would be male, in pretty much every event, and in some events even more. What testosterone does to males does not guarantee that every male will be faster and stronger than every female (the best women are still faster than most men, for instance), but it does give them such a huge head start and advantage that when we compare "like for like", namely a group of humans competing for similar prestige at similar levels, men will totally outperform women.

In 100 athletes competing for university scholarships, the 100 best will be men. In 100 athletes racing for Olympic places and medals, 100 will be men. In 100 players vying for sports in their country's regional or national rugby team, 100 would be men. At any level, across any range, at least the top 1000 in an open competition between all humans would be won, without any exception, by those who benefit from testosterone's effects on muscle, skeleton, heart, blood and fat.

Which is why women's sport is protected. It's protective over performance integrity for women, and for safety in sports where that is a concern, as it is in rugby. For the former, the categories in Paralympic sports achieve the same outcome. Those who are more affected by a given disability are not required to compete against those less affected. For the latter, weight classes in combat sports do the same – heavyweights don't fight against middleweights because it is both unfair and unsafe.

Given that women's sport has historically been discriminated against (and indeed, women in wider society have been too), it is worth recognising that our insistence to defend our category has historical merit that may go even beyond fairness and safety.

But purely for physiological reasons, it makes sense to defend the line that separates the classes. Without it, or with a broken line, almost half the world's population lose their valued space in sport, and if females are unable to ever attain reaching the pinnacle of their sport, then a loss of participation by females in sport becomes a real issue.

## **8. Lack of consideration for the safety of female players/athletes**

While the guiding principles stipulate that the health, safety and wellbeing of all players must be supported, this is totally undermined by your statements such as the following in italics lifted from page 26 of the draft Guiding Principles:



*“The gender identity of a player does not create a danger or risk to safety.”*

Gender is a social construct so therefore creates no risk to safety, however biological sex most definitely does! In contact sports like rugby, it places females at a 30% greater risk of injury when playing biological males. The New Zealand Rugby Union already recognises and acknowledges the safety issues involved in having men play against women, in this policy on its website<sup>7</sup>:

### **MIXED TEAMS AND OPPOSITION**

*For safety reasons, both physical and emotional, it is required that there is an age limit for when males and females cease to play in the same team and on opposing sides.*

*Are there any dispensations to allow for mixed teams?*

*There are no dispensations to allow for mixed teams above Small Blacks. This is to ensure the safety of males and females.*

But even in supposed non-contact sports like netball, when females play male bodies the risk of injury increases. As described by the Australian Diamonds coach, Lisa Alexander, in 2019 when discussing the Diamonds playing male teams as practice for international competitions: “I think people understand men in general are stronger because of their musculature and strength; that’s just logical, so there’s always a risk of injury. It’s part of what you have to weigh up; it’s a risk versus reward consideration.”<sup>8</sup>

***“Transgender players, as with all cisgender players, are diverse and varied in their height, weight, strength, and stamina.”***

This statement is deliberately misleading as it ignores the significant sex-based differences between male and female players. None of which are altered by someone self-identifying into a “gender identity” that is different to their biological sex and may only be moderately impacted by someone who has undertaken or is in the process of undertaking a medical transition.

Take for example, basketball since this is used as an example in the draft principles. The current tallest player in the Tall Blacks (males) is 214cm, the shortest player is 189cm. A height differential of 25cm.

The current tallest player in the Tall Ferns (females) is 193cm, the shortest player is 174cm. A height differential of 19cm.

The tallest Tall Black is 21cm taller than the tallest Tall Fern, the shortest Tall Black is 15cm taller than the shortest Tall Fern.

When you move to height differential between the sexes the tallest Tall Black is **40cm taller** than the shortest Tall Fern.

Trying to obfuscate the issue by referring to diversity and variety by gender identity instead of the known and proven significantly larger variances that exists between sexes than within sexes

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<sup>7</sup> <https://www.nzrugby.co.nz/get-involved/national-rugby-policies/mixed-teams-and-opposition/>

<sup>8</sup> <https://www.theguardian.com/sport/2019/mar/22/why-playing-mens-netball-teams-can-be-a-double-edged-sword>

is disingenuous and beneath being seriously engaged with. The fact that the draft principles even tried to use this as a basis for arguing for male-bodied athletes/players to be able to self ID into women's sport brings the legitimacy of this process and the evidence relied on (that has not been made available to submitters) into disrepute.

Whether someone is transgender or cisgender is utterly irrelevant. What is relevant is what biological sex a person is and, where they are male, the physiological and athletic advantages this confers on them as well as the increased safety risk that inclusion of male-bodied players in women's contact and some "non-contact" sports pose for female players.

Additionally, if Sport NZ truly believed the overlap of traits argument has any legitimacy, then why are you not advocating for just one category in NZ sport?

***Depending on the sport, mismatches or significant disparities among players may contribute to a risk to safety.***

The logical extension of this is the Guidelines propose to increase the range of the attributes and add greater safety risks to female athletes. If Sport NZ applied the same logic to youth sport, it would quickly realise the valid reasons 13 year olds don't play against or compete with 16 year olds. If players are meant to accept mismatches and disparities that are inherent and unavoidable, then why the need for two categories based upon sex, or even age or weight grading?

***Various sports have age and weight restrictions to reduce mismatches and any subsequent injuries that may arise.***

Would it be fair to say that age and weights restrictions are necessary categories to ensure safety and fairness for those who lack the advantages that are created by things like age and weight? If so, then how does Sport NZ consider it ok to enable greater mismatches and significant disparities? Clearly, it recognises the implications of these mismatches, and deems it both appropriate and necessary to minimise them through protected categories. Why do this for age and weight, but not sex? Do women not deserve that minimised risk, but children and athletes in weight influenced sports do?

***In some sporting codes, there is a long-established acceptance of physical mismatches, such as basketball.***

While this has already been covered earlier in this section, it is interesting to note that the NBA is an open league, yet there are no female players in it – even though males as short as 5'3" have played in it, and the average female basketball player in the WNBA is 6".

***All players must know the rules of the game, and participate in the sport with informed consent knowing that injury is an inherent risk when playing sport.***

How can a female provide consent, especially in a contact or collision sport, for participating against a male-bodied opponent when the disparity in strength is potentially far larger than anything they'd encounter within their own sex category? Female's currently give consent to play sport against other females. Will they simply have to accept the increased risk of playing male bodies now?

***If rough conduct or unsafe play occurs, the code of conduct or rules of the relevant sporting code should be enacted, and players should be penalised appropriately to ensure the safety of all players.***

Anyone with the slightest knowledge of contact sports like rugby knows that injury doesn't happen only through foul play. It happens as a result of the nature of the sport. The minimisation of risk obviously requires that laws be created and applied. In fact, the premise of laws is to ensure that risk is reduced to an acceptable level. What this inclusion policy does, either in the absence of evidence for safety, or in the presence of evidence for risk (depending on which direction you want the burden of proof to fall), is add risk from a legal form of play, and then expect people to consent to it because they've already consented to a non-zero risk.

The male performance advantage is much more than just height and weight, and trying to simplify it down to this level for community sport is insulting to athletes of both sexes, who clearly understand the biological differences between the sexes. It also creates a minefield for sporting organisations to manage in terms of ensuring they are not unduly putting their female players at increased risk of injury.

People participate in sport in Aotearoa New Zealand believing that the risk of injury has been mitigated as much as possible. Who will ultimately be held responsible for the increased injuries to female players? Sport NZ? Or the Sporting Association whose felt obligated to prioritise inclusion over the health and safety of their female competitors due to these guiding principles?

## **9. Participation and displacement of female players/athletes**

If you are an athlete who strives for excellence, but you understand the odds are stacked against you, you may not even bother to participate. Alternatively, you may find yourself displaced in podium finishes, placings, and the opportunity to compete at the highest level of your sport by a male-bodied competitor with all the advantages that a male puberty has conferred on them.

We have evidence of this happening here in NZ in downhill mountain biking, where male-bodied athlete who self-identifies as a woman, Kate Weatherly, moved from the male to female category and went from being an average male mountain biker to winning female downhill races. When it came to the NZ Nationals, only five females turned up to compete.

Rugby already has to deal with parents who won't allow their children to play due to the perceived risk of injury in the sport. If you knowingly further increase that risk, how many young girls will be talked out of even starting to play the game by their parents, in favour of a less risky sport, or perhaps won't bother to play any sport at all?

And if a coach wants to win a tournament, they are going to pick the team that will give them the greatest chance of achieving that. If you have a male-bodied athlete who self-identifies as a woman in that selection, then given their known male performance advantage, combined with the fact that male players have significantly more money invested in development programmes and their pathways from primary school level upwards, they are highly likely to take the position

off a female player. And with that loss of position, comes the loss of pathways, representative and podium opportunities.

Finally, being forced to share intimate spaces where females are vulnerable or in state of undress with a male bodied person is something many females will be incredibly uncomfortable with.

This could be due to being:

- self-conscious about their bodies, as a huge number of women are; and/or
- the survivor of a rape or sexual assault, as one in four women will in their lifetime; and/or
- a women who holds cultural or religious beliefs that preclude her from sharing intimate spaces with a male (regardless of how he identifies); and/or
- simply not wanting to be subjected to the male gaze in an intimate space

Anyone who says this isn't an issue or will never happen is doing so from a position of privilege and wilful ignorance. For example, the case of Australian handball player Hannah Mouncey who demanded that their female teammates be required to share open changing and showering spaces, despite being male bodied<sup>9</sup>. In all other instances a male-bodied person demanding the right to shower and change with females without their consent would be deemed to be deeply inappropriate and a form of sexual harassment.

## 10. Allen + Clarke Online Consultation Questionnaire Further Responses

*Do you agree with the 7 proposed Guiding Principles?*

*Are there any principles missing or any that are unsuitable?*

*Are there any in particular that you agree/disagree with?*

While we agree with some aspects within each of the guiding principles, we do not agree with all of: 1, 2, 3, 4, 6 & 7.

Specifically, we strongly disagree with guiding principles #1: *Inclusion of transgender players in community sport is paramount. Transgender players have the right to play in the gender that they identify with.*

- The draft principles prioritise the inclusion of male-bodied people who identify as women over the right of female players to fair competition
- The draft principles prioritising the inclusion of male-bodied people who identify as women will increase the risk of harm and injury to female players in both contact and some non-contact sports
- The guiding principle asserts the "right" of male-bodied players to play as the sex that they identify with, yet nowhere in the document does it state what this right is derived from
- The principle as worded undermines the right to sex segregated sport as set out in Section 49(1) of the Human Rights Act 1993
- The principle also ignores the commitment to removing barriers to the participation of girls and women in sport as set out in the Government's Women and Girls in Sport and Active Recreation Strategy 2018

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<sup>9</sup> [https://www.dailymail.co.uk/news/article-7811843/Transgender-AFL-player-vents-fury-kicked-Australias-womens-handball-team.html?fbclid=IwAR3vfRok09Yij9LXqRBK-z7ADP0ka4ZavdlZZy3KeU6HVFMFUjdp5k5\\_IUA](https://www.dailymail.co.uk/news/article-7811843/Transgender-AFL-player-vents-fury-kicked-Australias-womens-handball-team.html?fbclid=IwAR3vfRok09Yij9LXqRBK-z7ADP0ka4ZavdlZZy3KeU6HVFMFUjdp5k5_IUA)

We propose an alternative guiding principle of: *As with all people, the inclusion of transgender players in community sport is important for their physical, emotional and mental wellbeing. The inclusion of transgender players must be balanced with the right of female players to fair and safe competition.*

*Are the examples and scenarios provided in the draft Guiding Principles Paper appropriate? If no, please explain which examples and scenarios could be improved and how.*

The scenarios flow from guiding principles #1 and as such only come from the position of the inclusion of transgender players being paramount. They are not appropriate as you have only considered each example or scenario through the lens of a transgender participant in sport, thus ignoring the impacts of these guidelines on over half of our population. In particular, they ignore the impact on the physical and emotional safety of female players being required to accept male-bodied players into their sex-segregated sport.

If the draft guiding principles were at all balanced they would acknowledge the need to find a compromise between inclusion for transgender players and fairness and safety for female players and consider a range of scenarios from both of those positions, as long as providing guidance as to how a decision could be reached.

Example #1, Mandy a transgender player wishes to share an open changing area with female hockey teammates. A number of female teammates express discomfort with this including one who is not able to share intimate spaces with males for religious reasons. She expresses that if she is required to share changing space with Mandy then she will have to withdraw from the hockey team. Officials consider Mandy's expressed wish for inclusion with the right of female players under the Human Rights Act 1993 to sex segregated spaces for the purposes of privacy and dignity. Mandy is advised that a separate changing space will be made available.

Example #2, Adam a transgender player wishes to join a men's rugby team. Some team members and officials express concern for Adam's safety given his small stature and the weight differential between Adam and many other players. Officials consider Adam's request and determine that while small in stature there are other men on other teams of a similar build. Adam is allowed to join the team upon the signing of a liability waiver stating that he understands that he may be at greater risk of injury as a result of playing in a men's rugby team and that he accepts that risk.

***How do you see the draft Guiding Principles being used to guide actions at community sports level? Are they practical? If not, please explain how they could be improved.***

We understand that "The Guiding Principles are intended to be an overarching guidance document for all sporting codes to consider when looking at supporting the inclusive safe and fair participation of all participants. *It is intended that the Guiding Principles will be used by sporting codes as the basis for the development of their own policies specific to the particular features of their sport.*"

However, an email from Raelene Castle on the 8<sup>th</sup> of June to other stakeholders states: "Whether you wish to make a policy change and what this looks like will be your decision to make, however Sport NZ will be here to help you work through the guiding principles and **what they mean** for your organisation."

Therefore we believe it is important to clarify:

- 1) Whether it will be mandatory for sporting codes to demonstrate that they have taken into account the Sport NZ guidelines when developing their own policies.
- 2) That where sporting codes reach a different view than Sport NZ and decide to prioritise the safety of, and fairness to, female athletes over the inclusion of male-bodied athletes who self-identify as women in women's sports that these codes will not lose Sport NZ funding or be penalized via any other mechanism; and
- 3) Clarification at what is meant by the phrase "*Sport NZ will be here to help you work through the guiding principles and **what they mean** for your organization*" as it infers that determining the principles are not fit for purpose for a particular sport is not an option.

### ***Are there any final comments you would like to make?***

Yes, as below:

#### Other Possible Solutions

While we understand the overriding priority in developing these guidelines was to ensure that our transgender community felt welcome and included in sport, we find it concerning that other possible options for inclusion were seemingly not considered, including:

- changing men's sports to an "open" category,
- creating a new transgender category (which non trans identifying people could opt into to assist with numbers while the category grows, but never at the cost of a transgender participant),
- or putting in place measures to deal with the toxic masculinity in some men's sports that discriminate and alienate male-bodied athletes who do not fit within stereotypical gender norms, so that everyone can feel welcome and included in the category of their biological sex.

## **11. Conclusion**

Save Women's Sports Australasia:

- Firmly supports the inclusion of all people in community sport for the known physical and mental benefits participation in sport provides;
- Strongly opposes to the definition of transgender used in the draft principles that would allow any male-bodied player to demand access to women's sports on the basis of their own stated "gender identity" and without the requirements for any form of medical transition;
- Strongly opposes the draft principles intent to prioritise the inclusion of male-bodied players who self-identify as women over the rights of female players to fair competition and the safety afforded by sex segregated competition;
- Notes that "community sport" is also competitive sport and asserts that female players have the right to fair competition and safety provided by sex segregation at all levels of play;
- Continues to seek the evidence that Allen + Clark have relied on in calling the science around transgender players "unsettled";

- In the absence of any robust evidence from Sport NZ and/or Allen + Clark, reaffirms our support for the groundbreaking and transparent process undertaken by World Rugby in 2019 and 2020 and their conclusions;
- Continues to seek extended consultation on these guidelines. This includes all sporting clubs and associations with time for them to gather feedback from their stakeholders, their officials, volunteers, and most especially their female athletes and/or the parents or whanau of girls in sport; and
- Continues to advocate for Sport NZ commissioning independent and robust research on how opening up girls and women's sports to male-bodied players via self ID could impact on female participation in sport.

The coverage and feedback from New Zealanders over the past few weeks shows that they want to have a conversation about this issue and that what Sport NZ has proposed might not be the best.

We believe if Sport NZ involve all the sporting community in this consultation process we can reach the best possible outcome that respects and includes our trans-community while ensuring fairness, safety and opportunities for females in all sporting environments.