Sport, Gender and Law

Should sports that require strength, stamina and physique be allowed to exclude women from participating on the basis of their sex?

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All anti-discrimination legislation in Australia provides an exception that allows sporting organisations to exclude participants on the basis of their sex where the strength, stamina and physique of the athletes are relevant.¹ This essay will examine why such a discriminatory provision has been enacted and the beliefs justifying its existence. It will also look at the effect that such a law has on maintaining gendered attitudes in society at large.

It is important to gain an understanding of the theoretical framework in which this argument will be presented. To do so, this essay will begin by exploring feminist legal theory and applying these arguments to sport. It will also examine a post-structuralist approach, drawing on the work of Foucault, which will consider the implications arising from sport itself being a cultural institution. This theoretical framework is important in gaining a true understanding of the gendered hierarchy inherent in sport. The discrimination that results from this gendered hierarchy will then be analysed, along with the aforementioned exclusionary provision in light of the recent decision in Taylor v Moorabbin Saints Football League² (“Taylor”) which considered the exclusion of 13, 14 and 15 year old girls from playing junior Australian Rules football.

This essay will then critically discuss the inherently gendered notions that contribute to the justification of this legislation, including the belief that girls will get hurt, boys will modify their behaviour, it is unnatural for women to compete, women are weaker, women are inferior and the feministic notion of female body image. It will also put forward an argument as to how change at an amateur level in sport will not only filter through to the elite level, but have an effect on society at large. The possible interpretation of this exclusionary provision as a one-way exception that only excludes males from female sport will be considered and the applicability of Taylor to other sports will be examined.

It is concluded that, to achieve true equality, it is necessary to amend this provision to only provide for a one-way exception that prevents males from competing against females in sports where the relative strength, stamina and physique of the participants is relevant.

¹ Section 42 Sex Discrimination Act 1984 (Cth); s.66(1) Equal Opportunity Act 1995 (Vic); s.111 Anti-Discrimination Act 1991 (Qld); s.38 Anti-Discrimination Act 1977 (NSW); s.29 Anti-Discrimination Act 1998 (Tas); s.56 Anti-Discrimination Act 1992 (NT); s.41(1) Anti-Discrimination Act 1991 (ACT); s.48 Equal Opportunity Act 1984 (SA); s.35(1) Equal Opportunity Act 1984 (WA).
Theoretical Framework – Gender, Law and Sport

Feminist tradition

Many feminists have argued that the law oppresses and marginalises the experiences of women. McArdle argues that, in conjunction with the law, organised sport remains fundamental to the maintenance of a patriarchal society that subordinates women. Bourdieu also draws this comparison, suggesting that although sport is one of the most patriarchal fields in popular culture, the juridical field is not far behind. In fact, MacKinnon has stated that issues which adversely affect women, in particular women’s sexuality, connect directly with issues of athletics and sport. This resemblance and likeness is borne out in the application of feminist legal discourse to the principles of sporting culture.

Liberalistic feminism would argue that an equal sporting society would consist of one where a person’s competitive achievements determine their status, power and opportunity. It would contend that women have an equal right to compete in the same sports as men and the rules of the game must be the same for everybody. This approach seeks formal equality, but it has become evident that pure formal equality does not address the systemic biases present in society, in the legal system and presumably in sport as well.

The Marxist feminist on the other hand, would advocate that women are a class of persons who are oppressed by those in power and in control of sporting organisations. In order for there to be equality, a distinction should not be made between the classes of men and women. As Costa and Guthrie argue, Marxist feminists believe that the right of women to participate in sport is a natural extension of the right of all persons to participate in the workforce. However, gender distinctions are imposed on women through the masculine

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hierarchies that are maintained by the dominant class, those in positions of power in sporting organisations, which thereby limit women’s opportunities in sport.

The theory of radical feminism states that the patriarchy which has existed in most societies and economies is the primary force of domination of women. This approach focuses on the central aspect of the woman, rather than advocating for a reform of the traditional model or emphasising class distinctions. Radical feminists would believe that the organisation of sport has allowed men to retain a systemic power over women and that these systems have constructed ideologies which legitimise the subordination of women. Rather than subscribing to the Marxist belief that there is a false female consciousness, MacKinnon advocates that female consciousness is buried beneath the gender hierarchy that inherently dominates society. As such, it is only by deconstructing the existing systems that true change can be effected to provide women with the same opportunities as men to compete in sport.

Foucauldian perspective

It is also useful to examine power relations in sport in a post-structural sense, so that the cultural nature of gender relations in sport can be conceptualised. Foucault argues that power is seen to exist through discourse and as such it takes effect through the regulation of sexuality, which is normalised through cultural institutions. It is argued that sport is a key cultural institution in Australia and therefore the gender bias present in sport does not merely reflect that which occurs in society at large, sport itself is an instrument that creates and legitimises inherently gendered norms and ideologies.

For example, Foucault stated that ‘the legitimate and procreative couple laid down the law. The couple imposed itself as model [which] enforced the norm’. This model, views women as having a reproductive role and does not accommodate the concept of a woman participating in a highly competitive contact sport. As such, the law has legislated to restrict such an event from occurring. Radical feminists condemn gender constructs as they assume

that certain characteristics ‘naturally’ belong to women. Foucault agrees with this post-modern thought, arguing that perceptions of the body are not ‘natural’; rather they are produced through power and thus are a cultural product.¹³

**Sex Discrimination in Sport**

Although anti-discrimination legislation focuses upon differences in sex, amongst other attributes, it is the construct of gender that perpetuates division in sport. Gender encompasses the stereotypes and attitudes about the characteristics, attributes and behaviours that are appropriate for members of each sex. Research has shown that not only are these gender beliefs consistent, but that children develop and form attitudes about gender from a very early age.¹⁴

The effect of gender constructs is particularly relevant in sport. Whilst advances in gender equality have been made in areas such as employment and education, women still face considerable barriers to attaining true equality in sports. Although resources have been increased in sport, women are still subordinate to men at both the amateur and elite level in the provision of sporting facilities, financial remuneration, media coverage and corporate sponsorship.¹⁵

There is a profoundly gendered inflection in Australian sport through which ascendant forms of masculinity are asserted, promoted and defended against competing notions of femininity.¹⁶ However not only do women experience oppression in sport, but the sporting culture actually contributes to and maintains the differentiation between genders in other aspects of life.

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¹⁶ McKay, J. et al. (2001). As above, see n15.
The Law

One particular way in which the State has intervened in sport is through anti-discrimination legislation. This essay is concerned with the fact that although sex discrimination in sport is prohibited, there is an exception that legitimises discrimination on the basis of sex in sports that require physical strength.

The Victorian Civil and Administrative Tribunal recently gave a landmark decision in *Taylor* when it ruled that a 13 year old girl could not be excluded from competing in a junior Australian Rules football league, but that 14 and 15 year old girls could be excluded. The football league relied on the provision in the *Equal Opportunity Act 1995* (Vic) which allows the exclusion of people of one sex from a ‘*competitive sporting activity in which the strength, stamina or physique of competitors is relevant*’. Whilst Morris J held that that this discriminatory law was valid, he did not consider there to be a relative difference between the strength, stamina or physique of boys and girls playing Australian Rules football until the age of 14, therefore this section could not be used to exclude a girl aged 13 years old. Similar provisions are reflected in the relevant anti-discrimination laws for all States, Territories and the Commonwealth.

It appears from this case and several other recent decisions that the previously discriminatory view of the judiciary towards issues of gender in sport is slowly changing from earlier notions, such as that of Lord Denning MR who responded to the suggestion that sex discrimination laws applied to football by stating ‘*football is not within the Sex Discrimination Act, and I think most people would agree with that .... If the law supposes*’.

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17 Only Victoria specifically prohibits discrimination in sport: s.65 *Equal Opportunity Act 1995* (Vic). In all other jurisdictions, it is implied through prohibitions on discrimination in the provision of goods and services, clubs, education, etc.
18 Section 66(1) *Equal Opportunity Act 1995* (Vic). Note that s.66(3) states that this exception does not apply to sporting activities for children who are less than 12 years of age.
19 Section 42 *Sex Discrimination Act 1984* (Cth); s.111 *Anti-Discrimination Act 1991* (Qld); s.38 *Anti-Discrimination Act 1977* (NSW); s.29 *Anti-Discrimination Act 1998* (Tas); s.56 *Anti-Discrimination Act 1992* (NT); s.41(1) *Anti-Discrimination Act 1991* (ACT); s.48 *Equal Opportunity Act 1984* (SA); s.35(1) *Equal Opportunity Act 1984* (WA).
20 The decision makers stressed that they did not agree with the discriminatory and patriarchal nature of the particular law. See also *South v Royal Victorian Bowls Association Inc* [2001] VCRT 207; *Ferneley v Boxing Authority of New South Wales* [2001] FCA 1740; *Robertson v Australian Ice Hockey Federation* [1998] VADT 112.
that, the law is an ass’. However, the influence of the judiciary is limited as they do not have the power to alter legislation that it is validly enacted.

**Why are women discriminated against in sport?**

It is necessary therefore to examine why governments have legislated to allow the exclusion of women from sports on the basis of gender. There are a number of arguments premised on socially constructed norms of femininity and masculinity that have been put forward to justify such discriminatory provisions.

*Girls will get hurt*

One argument that has been advanced and was relied upon by the respondents in *Taylor* is that females would be physically hurt if they were to compete with males, who are inherently stronger. Morris J dismissed this argument, relying on empirical evidence that showed that girls were not more prone to injury than boys when participating in mixed contact sports. However, even if there was such evidence, it should be disregarded as being irrelevant. Smaller, weaker males are not prevented from playing sports with stronger males, so there is no logic for preventing females.

The High Court has noted that although there are many risks inherent in competitive sports, people have a right to voluntarily assume these risks and participate in the sport. Consequently, females should be allowed to decide whether they risk being injured as a result of participating in competitive sport. Furthermore, the notion of liberty would dictate that everyone should have the right to choose what they do in their leisure time, provided that it does not harm another person or constrain another’s liberty. There may be a paternalistic

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22 ‘If the result is thought to be unsatisfactory, it can be rectified by either the New South Wales Parliament or the Commonwealth Parliament . As a matter of policy is involved, it is appropriate for any change in the law to be made by a body directly answerable to the electorate’: Wilcox J in *Ferneley v Boxing Authority of New South Wales* [2001] FCA 1740, p 1767.


argument that minors do not have the requisite capacity to voluntarily consent to the possible risks. However, this could be addressed by obtaining permission from the child’s parents or legal guardians.

Accordingly, females should not be prevented from exercising their autonomy and participating in sport with males on the basis that they may get hurt and the patriarchal notion that such discrimination is actually for the benefit of women needs to be reformed.

Boys will modify their behaviour

The second argument advanced by the respondents in Taylor was that the participation of girls would cause the boys to modify their behaviour, which would be detrimental to the competitive nature that is the essence of sport. Although Morris J did not find any evidence to support this,\(^{25}\) he stated that if such a change in behaviour did occur, it is foreseeable that the same effect would be found in relation to smaller, weaker male competitors.\(^{26}\)

However, if there is empirical evidence which shows that males do modify their behaviour in contact sports that involve females, and that this modification is detrimental to the sport, then there may be a justification for such discrimination. In such an instance, the competing interests of women who want to participate would have to be balanced against the libertarian right of the males to determine who they want to compete with and against. Nevertheless, if a woman genuinely has the ability to compete with men, then it is more than likely that she will be treated the same as other competitors. Also, by increasing the number of women who compete in men’s sports, this problem will be less likely to occur as it will become the norm.

Unnatural for women to compete

There appears to be a further reason as to why such an exemption has been legislated. The assumptions about either sex that arise from conceptions of gender have deemed that it is

\(^{25}\) Morris J actually concluded that, if anything, the evidence was to the contrary: [2004] VCAT 158, para 49.  
\(^{26}\) [2004] VCAT 158, para 55.
inconsistent with notions of femininity that females can participate in highly competitive
sports, particularly where physical aggression is involved. In *Ferneley v Boxing Authority of
New South Wales*\(^{27}\) the law that stated only males were eligible for boxing licenses\(^{28}\) was
challenged. Although the application was eventually dismissed on the ground that it was
brought in the incorrect jurisdiction, the Court examined the policy behind such a
discriminatory provision. In his decision, Wilcox J referred to the parliamentary speech
given by the relevant Minister when introducing the Bill. The rationale behind the exclusion
of females from obtaining a licence was, *inter alia*, that ‘the spectacle of women attacking
each other is simply not acceptable to a majority of people in our community … [there is a]
risk of [women] becoming freaks in some sort of Roman circus disguised as a sporting
contest’.\(^{29}\) These comments clearly show the extent to which gendered assumptions of
appropriate behaviours have worked to discriminate against females.\(^{30}\)

Accordingly, there should be no justification for a law that prevents women from
competing in sports on the basis that it is ‘unnatural’ and that it does not fit into the type of
feminine behaviour that society expects of females.

*Women are weaker*

The marginalisation of women in sport on the basis that they are weaker than men
generally relies on medical evidence that reflects the popular cultural beliefs about the nature
of women, their biological purpose and their social role.\(^{31}\) This medicalisation of the female
body ‘*stirs up people’s fears*’\(^{32}\) and causes them to lose sight of real issues; namely that
women should have the right to choose how they behave and the fact that women are simply
different to men, rather than weaker. Women are resultanty viewed as the deviation from the
male body, which is considered the norm. Although there is a significant difference between
the average muscle mass of men and women, the within group differences amongst men are
actually higher than the between group differences.\textsuperscript{33} This means that the weakest males are actually weaker than the average female; therefore any difference based on physiology should be applied to weaker males as well as females.

However, it would be difficult to implement such a system without using extreme methods such as measuring each individual’s strength, speed, etc. One option may be to follow the practice used in New South Wales rugby union competitions where teams are determined by age, but competitors whose weight is one standard deviation below the mean for their age may participate in a younger age group.\textsuperscript{34} Furthermore, as highlighted by Morris J in \textit{Taylor},\textsuperscript{35} there is likely to be a significant element of self-selection and those females who desire to compete against men would undoubtedly be those who are stronger than the average female.

McArdle\textsuperscript{36} observes how female athletes are often warned that by competing in physical sports they may damage their potential to have children and how it is automatically assumed that pregnancy is a more important goal for female athletes. However, there is very little conclusive evidence that competing in sport actually harms a woman’s chances of getting pregnant,\textsuperscript{37} or that competing when pregnant harms the foetus,\textsuperscript{38} which is another issue that women face in sport.

Furthermore, there is medical evidence that women are stronger today than they were in the past and that they are evolving at a faster rate than men.\textsuperscript{39} This has occurred over the last 30 years when barriers faced by women in society have been broken down and women have been given more equal opportunities. This may mean that the exception on the grounds of strength, stamina and physique is no longer as relevant as it was when the legislation was drafted. In the event that women are given more opportunities to participate in contact sport and cultural notions of femininity are deconstructed, then it is likely that women will

\textsuperscript{33} \textit{Taylor} [2004] VCAT 158, para 62.
\textsuperscript{34} [2004] VCAT 158, para 85.
\textsuperscript{35} [2004] VCAT 158, para 84.
\textsuperscript{36} McArdle, D. (1996). As above, see n4.
continue to evolve into naturally stronger beings with each generation. But as long as this exclusion exists, the pressure on women to conform to stereotypical feminine activities will persist and hinder this evolution.

Therefore, it would appear that the reasoning behind this legislation may be invalid as not only are women closing the gap to men in terms of strength, but provisions like this are in fact contributing to the difference in physical strength between women and men.

Women are inferior

The view that women are inferior must also be considered in context. Like most systemic norms in society, including the legal system, the rules of most sports were originally designed by men to test male skills. This is where the liberalistic model of feminism falls short in its attempt to gain true equality and the radical feminist theory, which accepts that women are different to men, comes to the fore. Women would be more successful if sports were played within a regulatory framework that was adapted to the natural skills and strengths of females. However, if women did play sport within a completely different framework, they would once again be viewed as deviating from the norm on the basis of their inferiority, which would further reinforce the gender hierarchy.

An example of a change, albeit a minor change, that has occurred in a sport is in cricket. Traditionally, cricket was played with the participants’ bowling underarm. It has been reported that when women tried to play, they found that their full length dresses prohibited them from bowling underarm, so they bowled overarm. Not only did the men adopt this change, but it is now against the rules to bowl underarm in a game of cricket. However, this change is not fundamental enough, as it merely adopts a different means to achieve the same end. Perhaps if the rules of cricket were changed so that the skill of bowling only relied upon accuracy, rather than the speed of the delivery or the amount of spin on the ball, this would redress the inherent disadvantage that women face when bowling in cricket.

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However not all sports consist of rules that disadvantage women. In *South v Royal Victorian Bowls Association Inc*[^41] the respondent’s constitution prohibited females from participating in lawn bowls competitions. The respondent argued that lawn bowls requires strength and therefore they were permitted to exclude women under the same provision as argued in *Taylor*. It was held that there was no material difference between men and women when it came to the strength required to compete in lawn bowls. Even though men could propel the bowls faster, this was irrelevant as women had the requisite strength to achieve the same effect.

It is imperative that it be acknowledged that women are different to men, but that this difference does not mean that they are inferior. Garcia[^42] has found gender differences in how children participate in physical education settings. Girls tend to interact in a cooperative, caring and sharing manner, whilst boys interact in a competitive, individualised and egocentric manner. Gill[^43] has also shown that women score lower than men on tasks based on competitiveness. This demonstrates how women may be disadvantaged in sport, where the emphasis is on competitiveness.

If this difference is accepted by society without viewing it as a liability, it may be possible to see the emergence of what Townson[^44] describes as a distinctive women’s sporting world; equal to that of men but with its own characteristic elements. Perhaps the values of sports can be changed so that they are not purely the values of men. Until this occurs however, women should not be prevented from competing with and against men in sports such as figure skating and equestrian, which do not place a large emphasis on the relative strength of competitors.

[^41]: [2001] VCRT 207.
Body image

Another way that the gender hierarchy is reinforced in sport is through body image. Strong, fit and muscular bodies, which are necessary to compete in sport, embody the concept of power. But this powerful body type has been defined as masculine and culture has discouraged women from developing such bodies. In contrast, the feministic traits that women are supposed to adopt limit their physical ability, which prevents them from effectively competing against men and from achieving their potential in sport.

Cultural notions of femininity create conflict for women who participate in contact sports that require masculine traits and body shapes. Markula describes the ideal feminine body type as a series of contradictions ‘firm but shapely, fit but sexy, strong but thin’.45 Mutrie and Choi46 found that female athletes had feelings of ambivalence towards their bodies and that this was directly related to the discrepancy between perceptions of their body as an athlete compared to perceptions of their body as culturally female. Women who have a slender body may believe that this suggests good self-discipline and that they are empowered. However according to Krane and colleagues47 this in fact demonstrates a lack of power and it merely reinforces the norms of the cultural ideal body image, consequently oppressing women.

Therefore the culturally dictated body image which requires women to adhere to notions of femininity prevents them from excelling in sports which require strength, stamina and physique. This in turn perpetuates the distinction between men and women, providing support for the discriminatory concept that women should be excluded from competing against men in such sports.

Amateur level will eventually influence elite

At the moment, very few women would be able to compete against men at the elite level in sports such as cricket, Australian Rules football and rugby league. However, this is no reason to prevent mixed participation from occurring at amateur levels of these sports. As mentioned earlier, the within group sex differences are at least equal to the differences between the sexes, if not greater. Therefore, at lower levels of competitive sport where the factors separating competitors are more fluid, differentiating purely on the basis of sex should not occur. If a woman can match the ability of men in her chosen sport, then she should be able to compete.

Once participation is occurring at an amateur level, more women will participate and eventually they will become stronger and closer to the level of men. In his largely influential and empirically supported social cognitive theory, Bandura argued that social modelling is one of the most powerful means of transmitting values, attitudes and patterns of thought and behaviour. Therefore, if a number of women are participating against men in contact sports, other women may be inclined to follow them. Some people may argue that it would require a woman to be competitive at an elite level before there would be a social modelling effect. However, Lockwood and Kunda found that sporting role models who were peers had just as great an effect as elite athletes on influencing young girls’ behaviour.

Not only would women’s participation in contact sports deconstruct gendered stereotypes in sport generally, but there would be a much wider influence. As discussed above, sport is a key cultural institution which develops norms that are accepted and maintained in society at large. By redressing notions of femininity, female participation in contact sports, even at an amateur level, would result in the deconstruction of systemic cultural norms that disadvantage women in society and it would go some way to redressing the power imbalance based on perceptions of gender.

Should there be a one-way exception?

An important issue that arises when considering the gender exception for sports based on the strength of the competitors is whether this should be interpreted as a one-way exception that only prevents males from competing in female sports. So far it has not been interpreted as such and although Morris J considered this a desirable understanding of the law, he concluded that this was not the case.\(^{51}\)

However a one-way interpretation is still consistent with the objectives of the various Acts, in that it promotes equal opportunity for women to compete with men and provides an opportunity for women to compete amongst themselves so that they are not disadvantaged because of the domination by stronger men. It is true that this approach does not create formal equality; nevertheless it is a necessary step to redress the inherent imbalance of power in sport. All anti-discrimination legislation provides for special measures and affirmative action provisions, which have been deemed as essential to achieving true equality.\(^{52}\)

There is an argument that special measures may serve to entrench discriminatory attitudes and that society will not redress the disadvantages women experience if the underlying attitudes remain discriminatory.\(^{53}\) It is also true that a provision which specifically protects women’s sports may further the belief that women are weaker and inferior. However, it is a better alternative than women not being allowed to compete with men at all, or even worse, women’s competitions being dominated by men and allowing no success for female athletes in any competitions.

It must be remembered though, that males also face pressure to conform to the appropriate behaviours that are prescribed to masculinity. This prescribed behaviour would largely be considered inconsistent with participating in female competitions. The irony is however, that if society is successful in deconstructing the gendered hierarchy, then the concept of a man competing in a sport organised for women would not be inappropriate.

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\(^{53}\) See discussion in Australian Law Reform Commission. (1994). As above, see n53.
It is submitted that to achieve true equality it is necessary to amend this provision to provide for a one-way exception that prevents males from competing against females in sports where the relative strength, stamina and physique of the participants is relevant. The justification is that allowing women who have the requisite ability to compete against men does not disadvantage men, whereas allowing men to compete against the average woman, who has less strength, does place women at a disadvantage. It may be that the current legislation in Queensland and the Northern Territory, if challenged, would be interpreted in such a manner, as they both provide a requirement that the restriction must be reasonable.\(^{54}\)

**Applicability of Taylor decision**

Duthie\(^ {55}\) believes that the applicability of the decision in *Taylor* will be somewhat limited. It does appear that Morris J deliberately intended to limit his decision to Australian Rules football, citing the judgment in *Jernakoff v Western Australia Softball Association*\(^ {56}\) where the Tribunal concluded that the application of the provision will vary from sport to sport and that the present case was not to be regarded as a precedent for the future.

Morris J limited his decision to children aged 13, because he found that at the age of 14 there is a significant difference in strength between boys and girls. As such, the immediate application of this decision will be limited to those instances involving children below the age of 14 years old playing Australian Rules football. The problem with further extending Morris J’s decision to other sports is that he did not explain why a difference of one standard deviation in lean body mass was significant enough to constitute a relevant difference between the sexes in the sport of Australian Rules football. Undoubtedly, Australian Rules football would be considered at the upper end of the scale of sports in which the relative strength, stamina and physique of the competitors are significant. Therefore, in sports such as volleyball, tennis and soccer, which are non-contact sports, organisations would theoretically be unable to discriminate on the basis of sex, at least until children reach the age of 14 years old.

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\(^{54}\) Section 111 Anti-Discrimination Act 1991 (Qld); s..\(^ {56}\) Anti-Discrimination Act 1992 (NT).

It is interesting to note that Morris J agreed with the Tribunal in *Re Hall and Victorian Amateur Football Association* 57 in finding that the sporting body had the onus of proving that there was a relevant difference between the sexes. 58 Therefore, it may be prudent for the national governing organisation of each sport to commission a report into the differences between sexes, before deciding to exclude females from participating in their competition. This would provide a guide to the limit of the exclusionary provision and perhaps allow them to avoid the costs of defending similar cases to *Taylor* in the future.

**Conclusion**

Opportunities for women to enjoy sport provide a means through which the scripts provided by the powerful male can be re-written to define what it is to be a woman, thus challenging notions of women being inferior to men. 59 However, provisions that legitimise the exclusion of women from sport on the basis of their sex, without considering their ability, remove this opportunity and in fact contribute to the subordination of women in society at large. As can be seen, there are parallels between gendered hierarchies present in the law and present in sport. As sport is a key cultural institution, it also perpetuates the systemic bias inherent in society, rather than merely reflecting it. The patriarchal basis for such an exclusionary provision is unjustified and runs contrary to notions of liberty and equality.

Females should have the right to assume the risk that they might get hurt, should not be viewed as unnatural if competing in physical sports and should not be forced to conform to notions of a feminine body image that physically prevents them from competing on equal terms. Assumptions that women are weaker and inferior need to discarded and women should be judged solely on their individual abilities. The fear that males will have to modify their behaviour to accommodate women will not be a problem once gendered norms are deconstructed and developed to include the concept of women competing on equal terms. If change can at least occur at an amateur level, where the differences between sexes are not as pronounced, then this will contribute to long term change at the elite level and in other

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institutions in society. Both the Australian Law Reform Commission\textsuperscript{60} and the Sex Discrimination Commissioner\textsuperscript{61} have recommended that the Commonwealth’s equivalent of this provision be repealed.

However, the best solution may be that the law is amended to act as a special measures provision that provides a one-way exception. This will allow some women to compete on equal terms against men if they wish, whilst at the same time, allowing other women to compete without being disadvantaged by the presence of stronger males, who may otherwise dominate their competitions.

\textsuperscript{60} Australian Law Reform Commission. (1994). As above, see n53.
Reference List

Anti-Discrimination Act 1977 (NSW)
Anti-Discrimination Act 1991 (Qld)
Anti-Discrimination Act 1991 (ACT)
Anti-Discrimination Act 1992 (NT)
Anti-Discrimination Act 1998 (Tas)
Boxing and Wrestling Control Act 1986 (NSW).
Equal Opportunity Act 1984 (SA)
Equal Opportunity Act 1984 (WA)
Equal Opportunity Act 1995 (Vic)
Sex Discrimination Act 1984 (Cth)

Agar v Hyde (2000) 201 CLR 552
Ferneley v Boxing Authority of New South Wales [2001] FCA 1740
Jernakoff v Western Australia Softball Association (1999) EOC 92-981.
Rootes v Shelton (1967) 116 CLR 383.
South v Royal Victorian Bowls Association Inc [2001] VCRT 207


