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- Guidelines for the inclusion of transgender and gender diverse people in sport - the section 42 exception

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THE EDITOR

It seems a lifetime since the last Play by the Rules magazine in March. The world has changed, and at the time of writing, community sport is slowly gearing up for a return to action in an environment never before experienced.

There are positives. In all my time in sport, at the national level for 27 years, I have never seen a greater level of cooperation across the board. The feeling that 'we are all in this together' is similar to the atmosphere in the lead up to the 2000 Paralympic and Olympic Games. There has been some great work done, and some meaningful debates, nationally and within all the states and territories, from government and through sports, to ensure a safe and successful return to playing. We need to keep going, to continue to work collectively and to meet head on the challenges coming out of the pandemic.

There are many challenges of course. At Play by the Rules our focus is to ensure community sport remains safe, fair and inclusive, and that the momentum we've seen in the past few years is not lost. In this magazine you'll find links and resources to help, in particular the [Post COVID-19 Community Sport Support Centre](#) now set up on Play by the Rules.

Thanks, and stay safe.



Peter Downs
Manager - Play by the Rules

News:

Post COVID-19 Community Sport Think Tanks



In response to the COVID-19 pandemic and shutdown of community sport, Play by the Rules has developed a series of live streamed events, called Think Tanks. The Think Tanks are part of the Post COVID-19 Community Sport Support Centre now on Play by the Rules.

The idea behind the Think Tanks is to give participants food for thought, resources and ideas to move forward in a post COVID-19 world. We are particularly interested and focused on ensuring that the momentum to keep sport safe, fair and inclusive is not lost. There is a danger that with fewer resources and greater workloads and responsibilities, important work in this area will be set back, even lost, in the months and years ahead. The Think Tanks are part of our contribution to help ensure this does not happen.

The first series of eight Think Tanks concludes on 26 June. Each Think Tank is recorded, and transcripts and subtitles are added with additional links and resources where relevant. The Think Tanks are also combined with webinar recordings from similar events being conducted in NSW and Victoria, all developed to help community sport recover and then thrive in a post COVID-19 world.

You can access these replays at <http://playbytherules.net.au/got-an-issue/covid-19-support-centre/community-sport-forums>

Think Tank 1:

The importance of community connections with Paul Kennedy and Dr Bridie O'Donnell

Think Tank 2:

Governance challenges and planning for the future with Margot Foster AM

Think Tank 3:

How do we keep the inclusion of LGBTQ+ people on the agenda with Dr Ryan Storr, Christine Grainger and Beau Newell

Think Tank 4:

Exploring equity, emotional wellbeing and collaborative approaches to return to community sport with Professor Simone Fullagar

Think Tank 5:

How can we ensure a safe return to sport and mitigate the risk using the Sport Australia Return to Sport Toolkit with Kate Corkery and Iain Roy

Think Tank 6:

Child safety in a post COVID-19 world with Professor Daryl Higgins, Douglas Russell and Brooke Irvine

Think Tank 7:

Violence Against Women—Community Sport's Role in Prevention with Patty Kinnersly

Coming up:

2nd July

Think Tank 8:

Implications of COVID-19 on disability sport (draft title) with Lynne Anderson - [register here](#).



News:

“At this time we all need to Play by the Rules”

As part of the new Post COVID-19 Community Sport Support Centre we’ve created a suite of promotional video and audio messages featuring some of Australia’s leading sports stars. These include a community service announcement—a 30-second promotional video encouraging Australians to play by the rules at this time. A longer 60-second version is also available for promoting on social media, and there are audio files that can be used as announcements and social media messages.

To download and embed these video and audio messages go to <http://playbytherules.net.au/got-an-issue/covid-19-support-centre/post-covid-19-community-sport-resources/video-and-audio-resources>

Sports stars include:

- Alex De Minaur (Tennis)
- Jack Riewoldt (Aussie rules)
- Jess Sergis (Rugby league)
- Bronte Campbell (Swimming)
- Alana Kennedy (Football)
- Matt Ryan (Football)
- Aaron Finch (Cricket)
- Meg Lanning (Cricket)
- Caitlin Bassett (Netball)
- Ashleigh Brazill (Netball and Aussie rules)
- Sammy Bremner (Rugby league)
- Jake and Tom Trbojevic (Rugby league)
- Matthew Dellavedova (Basketball)

Feature article:

How do we keep the inclusion of LGBT+ people on the agenda?

On 29 May I participated in the community sport Think Tank for Play by the Rules on [how to keep LGBT+ inclusion on the agenda](#) post COVID-19. I offer some extended thoughts below.

I have had the pleasure of working with the Sydney Sixers, who have integrated inclusion efforts into the core of their organisational values.

Early observations suggest diversity and inclusion are being sidelined in recovery efforts post COVID-19, with several diversity and inclusion positions being axed from sporting organisations. Diversity work in particular has often been seen as an add on across the sport sector, something peripheral to the core operations of an organisation, and often seen as too hard or of no specific benefit to the organisation (think gays can't play sport or aren't interested). But with significant progress being made in recent years around LGBT+ inclusion, it is important the sector continues to advance social progress for LGBT+ people in Australia.

I want to start the article with a preface. I personally do not think LGBT+ inclusion was on the agenda. Yes, the sport sector is talking about the issue and visibility has increased, but there is little engagement and enactment of LGBT+ inclusion across the sport sector. There is traction, especially in Victoria, and sports have started to engage with LGBT+ inclusion through awareness raising, support of LGBT+ initiatives and programs, and conversations have started. Getting it on the agenda has been hard work though, and has required sustained efforts from a range of advocates across the sector.

However, my recent research in Australia has identified that overall, there is a lack of institutional support and commitment to the enactment of LGBT+ inclusion across sporting codes. In particular, efforts to tackle homophobia have fallen flat, and we are seeking new ways to engage sports to help make sporting spaces safe for all LGBT+ people.

The business case for LGBT+ diversity appears to be promising; the creation of LGBT+ supporter groups can attract new fans to a sport, pride rounds can lead to new sponsorships and merchandise sales, feel-good stories can mean good PR and positive press, but ultimately, inclusive practices and policies lead to better health outcomes for LGBT+ people.

Although we cannot provide population estimates for those who are LGBT+, let's go with the often cited 10 per cent. If you are a sport or organisation looking to rebuild and survive in the future, I just don't think it's possible to ignore or exclude 10 per cent of the population anymore. Add to that women and girls, other minorities such as disability, Indigenous, and culturally diverse communities. Sport participation and governance should reflect the diverse communities it seeks to represent.



LGBT+ supporter groups have been very successful in helping drive change and engaging clubs with LGBT+ inclusion efforts. Picture: The Purple Bombers

LGBT+ supporter groups have been very successful in helping drive change and engaging clubs with LGBT+ inclusion efforts. However, one thing that strikes me in doing this work, is that often there is no ill-intent, and I have met many sports administrators who have supportive attitudes and a desire to help make sport more inclusive. For those who work and dedicate their lives to sport, they want to see more people playing and engaging with their sport. The problem is that they do not know how to do LGBT+ diversity work. What does LGBT+ inclusion look like? How does it play out in their organisation or sport? What might inclusion feel like for an LGBT+ person? Ultimately then, at the heart of the matter, is a lack of education and knowledge in enacting LGBT+ inclusion.

Therefore, in order to establish LGBT+ inclusion as a key priority area post pandemic, we need to equip those in sport with the tools to enact and sustain LGBT+ inclusion in

sporting environments and organisations.

Some top tips for the sport sector in keeping LGBT+ inclusion on the agenda, from my own research and the current evidence base:

- **Converting supportive attitudes into behaviours:** Marriage equality showed that attitudes have changed. However, we need to convert and begin to change supportive attitudes into behaviours and actions. A recent research project I led with a state sporting organisation showed that although many staff have supportive attitudes to LGBT+ inclusion, they were not willing to enact these attitudes through behaviours which supported inclusion. In other words, I believe in supporting this work, but I'm not willing to do anything about it.
- **Institutional support in senior leadership:** Unless we have senior administration believing in the merits of LGBT+ inclusion work, and willing to commit resources and time to engage in this work, it will be difficult to make progress. Senior leadership and CEOs need to believe that this work is important and it is work they should be doing. Using the business case for diversity will be crucial for this.
- **Education and training:** A 30-minute awareness raising session is a good starting point, but is not going to educate your workforce and sufficiently equip them with the skills to feel confident to enact LGBT+ inclusion. Ongoing education and professional development takes time, and culture change does not happen in half an hour.
- **Engage LGBT+ people:** We need LGBT+ people in decision-making roles across all levels of sport. From coaches, volunteers, officials, boardrooms to players. Helping to make plans, execute strategies, design participation programs and engaging the communities you seek to serve will help advance inclusion efforts. Simply reach out, connect with organisations and key individuals to get some help. It's okay to ask for help and admit that as an organisation you would like to do better.
- **Sport for development:** We need to start using and calling upon sport for social good and explore the merits of promoting sport among LGBT+ communities. Social connection, social isolation, mental health, community regeneration—we need to address these social issues among LGBT+ people. We know sport can work, and there are many great and wonderful sport for development projects in Australia. Let's do the same for LGBT+ people and positively impact and enrich the lives of LGBT+ people. Evangelical thinking yes, but my recent research with the LGBT+ tennis community, which I have nearly

finished, is promising in this regard.

- Building an evidence base on the social impact of sport on LGBT+ people: Most research documents discrimination and the detrimental impact sport has on LGBT+ people and that homophobia and transphobia persist in sporting environments. However, we know LGBT+ people engage with sport in meaningful and enjoyable ways. We need to document and explore this. In recent research with Tennis Australia, we have explored the impact of tennis on LGBT+ people. The results are very positive and encouraging, specifically around social connectedness, social support, and creating social capital. Let us hear and share more positive stories from the sector. I think this will inspire more LGBT+ people to start playing and engaging with sport.

We need to acknowledge that LGBT+ diversity work might be challenging, and solving the wicked problem of homophobia in sport is no easy feat.

Transphobia in particular is still extremely prevalent in sport. But sport can and does provide positive experiences for LGBT+ people, and serves as a platform to address health inequalities and offer social connections to those who might really need them at the moment. We need to use and harness the power of sport in recovery efforts, and include LGBT+ people, and hope to look back on this period as a defining moment for inclusion efforts and the sport sector in Australia.

Thank you to everyone who plays their part in advancing LGBT+ inclusion. Active allyship is extremely important, and everyone can play their part. It really is a team effort.



Dr Ryan Storr

Ryan is a researcher and advocate for LGBT+ inclusion in sport and physical activity. His PhD and research is based on exploring how diversity is enacted in sport settings, and he is passionate about empowering LGBT+ communities to lead active and healthy lives.

Feature article

We are all in the rehabilitation group

Rehab is for quitters! Those were the words we had printed on our custom t-shirts—it was our way of making light of our situation. The year was 2007 and I was part of the Brumbies rehabilitation group.

A ‘rehab group’ is the dreaded place in every professional sports team for broken bodies on the gruelling road back to full fitness. In a contact sport like rugby, there’s always a healthy number of unhealthy players that make up the group. For some a sentence in rehab is but a matter of weeks, but for seriously injured players, rehab can become one’s home for the better part of a year. Being in rehab is a physically and mentally sapping experience made all the more challenging by one’s proximity to the wider training squad.

From the outside looking in, rehab doesn’t appear all that different from the typical day-to-day experience of a professional athlete. After all, players turn up, train hard, perform recovery activities and receive medical treatment, rinse and repeat. But the internal world of an injured player can be one of immense suffering. The most obvious pain point is the inability to do something deeply cherished. When a much-loved pastime is taken away from people, it’s difficult to adapt to a new reality, and many players with long-term injuries experience mental health issues.

And while not being able to get one’s fix of adrenalin and endorphins through playing sport is part of the problem, a much larger



factor is the loss of community that often accompanies time away from sport. For many people sport is the centrepiece around which social bonds and close relationships are built, and losing those deep connections is often much more painful than physical injury. Human beings are deeply social creatures that cannot thrive without regular interactions with their tribe.

I've been thinking about these issues in relation to the COVID-19 lockdown, which has largely wiped sport from our calendars.

Driving past empty ovals or walking past deserted courts and public playgrounds really has brought home how much our lives have changed.

And so the question must be, how do those of us who love sport navigate our new world? At the time of writing, restrictions are easing and some clubs have begun modified training. Needless to say, when each of us returns to sport it's imperative that we all remain vigilant with regard to distancing protocols and the latest hygiene recommendations. Australia has made incredible progress towards a COVID-19 free society, but until a vaccine is available we all need to show real leadership in our adoption of the best possible prevention practices.

It's equally important that we all do our part to ease the mental health toll on our sporting communities. The simplest and most effective way to ensure our mates are coping

is to reach out to them. Send text messages, arrange group Zoom calls, ring your mates and let them know that while the pandemic may prevent training sessions and games, it can never stop a good yarn between close friends.

During this time, it is also worth considering which members of our sporting communities are likely to be feeling the loss of community most acutely.

The lockdown has affected each of us differently, and those of us faring well have a responsibility to do what we can for those struggling with the changes to their lives.

Lastly, and perhaps most crucially, let's all commit to remaining positive about the future and grateful for all the things we still have. That way when sport returns in full force, we'll appreciate its impact on our lives like never before.



Clyde Rathbone
Co-Founder of [Letter](#)

Guidelines for the inclusion of transgender and gender diverse people in sport - the section 42 exception

In June 2019, the Coalition of Major Professional and Participation Sports partnered with the Australian Human Rights Commission and Sport Australia to develop the Guidelines for the inclusion of transgender and gender diverse people in sport.

The guidelines aim to facilitate diversity and inclusion when it comes to transgender and gender diverse persons. It provides guidance as to how persons should navigate state and federal anti-discrimination laws and, in particular, section 42 of our federal Sex Discrimination Act 1984 (Cth) (the Act) which actually permits discrimination on the basis of sex where strength, stamina or physique are a relevant component of a competitive sport (section 42 exception).

While this is the case, section 42 also follows the primitive provisions of the Act which provide no person may discriminate against another person on the basis of their sex or gender identity in the provision of goods, services and facilities.

Teachers, coaches and athletes alike may face concerns in how to ensure their compliance with the primitive provisions of the Act when balancing the section 42 exception.

The guidelines provide answers to this question,

setting out a number of considerations one must take into account in determining whether the section 42 exception applies:

1. Consider the importance of inclusion in your sport

Sport is critical not only to a child's physical development, but equally their social and mental health development. If, for example, a teacher is considering whether it is appropriate that a trans female take part in an all-female athletics team at a school-only level, it may be appropriate that they be included if the school is promoting participation of all students.

The issue becomes more complex when students are playing sport at a competitive standard (for example, national championships).

2. Consider whether the sport is 'competitive'

'Competitive' sport is not defined under the Act, so readers will have to gauge to what extent the sport is merely social. If it is social and players or coaches are concerned that they may be acting discriminatorily, it is recommended that legal advice be obtained.

All readers must also be aware that discrimination is likely to be found if the victim

is a coach, umpire, referee or administrator. If a trans female coach is banned from overseeing a female sporting competition, there will be no justification for the ban on the basis of section 42.

Further, the exception only applies to athletes over the age of 12. Even if the sport is being played at a national championship, discrimination is not permitted for transgender primary aged school children. This is due to the fact that prior to puberty, a trans female athlete is unlikely to have an advantage over a cis female athlete.

In the case of sport in schools, each state's education system should have certain policies in place. For example, the Queensland Human Rights Commission has a published guide regarding transgender students, citing relevant Queensland legislation.

3. Consider whether strength, stamina and physique are relevant to the sport

The actual sport being played must be considered. Obviously, allowing trans women to play contact sport with an all-female field will be viewed very differently from a sport such as shooting.

The guidelines explicitly provide that these characteristics may not be relevant if your sport is skill rather than strength-based.

The guidelines conclude by advising sporting organisations to seek the advice of their overarching sporting body. In Australia, many sports now publish guidelines on how to deal with the issue in their sport alone; for example, the AFL has a published Gender Diversity Policy.

To ensure all players are aware of the standpoint of the organisation before play, it is recommended the organisation have a policy in place which is accessible to all players. Such a policy may prevent the public humiliation a transgender athlete may face if they are refused participation after registration but before play, not to mention prevent potential litigation if participants raise safety concerns in circumstances where a transgender athlete is permitted to take part as their identified gender.

Discrimination against transgender athletes may lead to litigation—and with good reason, as a key component of sport is inclusivity for all.

While there has not been a raft of action brought in Australia as yet, as transitioning becomes legally, medically and socially recognised by our society we can expect that more sporting bodies may be faced with how to approach transgender inclusion.

Any persons who are faced with this are advised to familiarise themselves with the guidelines and federal and relevant state legislation. If required, legal advice would also not go astray.

Alexandra Blake

Lawyer

McCullough Robertson

ANZSLA
THE SPORTS LAW ASSOCIATION

| Sport Australia's Return to Sport Toolkit

Sport Australia has developed a Return to Sport Toolkit that includes a suite of resources to help sporting organisations get ready to recommence training, competitions and programs in a safe, responsible and low risk manner.

Important note: State and territory governments and their public health authorities are responsible for decisions about the resumption of sporting activities in each jurisdiction, both at the professional and community sport level. This Return to Sport Toolkit may be updated from time to time as further guidance material from governments and public health authorities is provided.

The Return to Sport Toolkit includes resources that can be used by all levels of Australian sport:

- For national sporting organisations (NSOs), national sporting organisations for people with disability (NSODs) and state sporting organisations (SSOs) recommencing their own training, competitions and programs; and
- For participation programs and competitive sport (training and competition) conducted at local club and association level.

The Toolkit builds on the [AIS framework for rebooting sport](#) and the [Australian Government's national principles for the resumption of sport and recreation activities](#) and includes easy-to-use templates and step-by-step checklists for organisations to follow when planning their resumption of sporting activities.

Download the [COVIDSafe app](#) to help slow the spread of the virus and keep Australians safe.

The Return to Sport Toolkit has six components:

1. **Detailed checklist**—suited for large and medium sporting organisations
2. **Simplified checklist**—suited for small sporting organisations
3. **COVID-19 Safety Officer**—roles and responsibilities
4. **COVID-19 Safety Plan template**
5. **Attendance register template**, and
6. **COVID-19 hygiene guidance** communication material.

To access the Return to Sport Toolkit go to <https://www.sportaus.gov.au/return-to-sport>

On 9 June, Sport Australia's Kate Corkery and Iain Roy spoke on the Think Tank live stream on the Return to Sport Toolkit. You can see a replay of that Think Tank at <http://playbytherules.net.au/resources/videos/forum-5>

One of the questions that arose from the Think Tank concerned legal liability of COVID Safety Coordinators. ANZSLA life member and academic Andy Gibson subsequently penned an article addressing the issue. You can see that at <http://playbytherules.net.au/resources/articles/legal-liability-and-your-covid19-safety-officer>



COVID-19 awareness mini-course

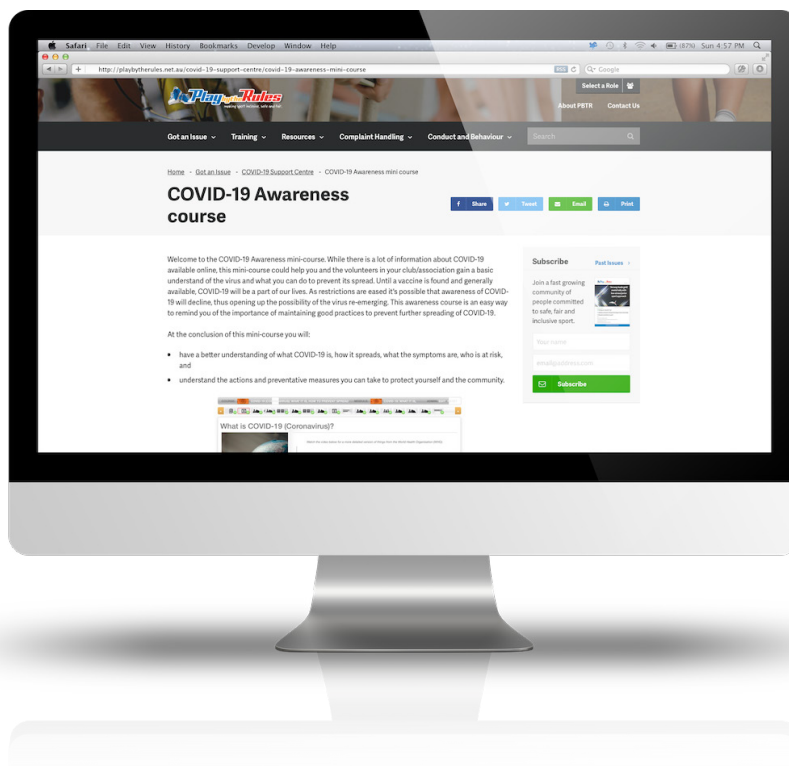
The COVID-19 mini-course is free and suitable for anyone and everyone interested in understanding a little more about COVID-19. This mini-course should take 10–15 minutes to complete and is a good baseline awareness program for your volunteers and staff. The course has many interactive components and is very user friendly to navigate and complete.

While there is a lot of information about COVID-19 available online, this mini-course could help you and the volunteers in your club/association gain a basic understand of the virus and what you can do to prevent its spread. Until a vaccine is found and generally available, COVID-19 will be a part of our lives. As restrictions are eased it is possible that awareness of COVID-19 will decline, thus opening up the possibility of the virus re-emerging. This awareness course is an easy way to remind you of the importance of maintaining good practices to prevent further spreading of COVID-19.

At the conclusion of this mini-course you will:

- have a better understanding of what COVID-19 is, how it spreads, what the symptoms are, who is at risk, and
- understand the actions and preventative measures you can take to protect yourself and the community

To access the course go to <http://playbytherules.net.au/got-an-issue/covid-19-support-centre/covid-19-awareness-mini-course>



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Share and spread the word

One easy way to keep up to date and support safe, fair and inclusive sport is to share Play by the Rules across social media. We post every day on Facebook and Twitter and have audio files on Soundcloud and an extensive collection of videos on YouTube and Vimeo.



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To make Play by the Rules possible, we also work with

