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**GENDER, CULTURE
& NARRATIVE**

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LEVELLING THE PLAYING FIELD: DISCRIMINATION AGAINST WOMEN IN SPORT IN AUSTRALIA

HAZAL GACKA*

Historically, female athletes have received minimal recognition and inequitable remuneration in the male-dominated world of sports. Recent developments are promising but a deeper examination of the changes within sports such as the Australian Football League ('AFL') and netball demonstrate that these historical issues remain. This article will first outline the relevant legislative and policy background, and the basis of discrimination against women in sport from feminist perspectives. A detailed analysis of two specific and interrelated issues will then be discussed: lower salaries, sponsorship and prize money, and inadequate media coverage. The inaugural AFL Women's ('AFLW') competition marks a significant step forward for women's sport and will be examined with regards to these particular issues. Finally, recent developments and further recommendations for eliminating discrimination will be outlined, including legislative amendments, targeted policies, and the need for a change in the gendered assumptions that women are somehow inferior to men in sport and in society in general.

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I INTRODUCTION

'A revolution is underway.'¹ That is the current discourse regarding women's sports in Australia and recent developments do appear to support such a bold statement. The 2017 inaugural AFLW competition was successful beyond expectation; Netball Australia recently announced increased wages and a prime-time broadcasting deal; the women's Rugby Sevens team won gold at the Rio Olympics in 2016; and in 2015 Michelle Payne became the first female winner of the prestigious Melbourne Cup. Indeed, these developments are a promising step towards equality for female athletes; however, progress has been slow and there is still significant discrimination to overcome as evidenced by lower salaries for professional female athletes and poor media coverage of women's sports. These issues potentially equate to breaches of anti-discrimination legislation and equal pay laws. Feminist perspectives suggest this discrimination is founded on society's general belief that women are inferior to men, and are therefore incapable of succeeding in sport in the same way. Eliminating the discrimination suffered by women in sport requires legislative amendments, the continued action of governments and sport associations, and most importantly, a change in the gendered assumptions that are inherent in sport and society.

¹ Linda Pierce, 'Women in sport: finally, your time starts now', *The Sydney Morning Herald* (online), 17 September 2016 <<http://www.smh.com.au/sport/women-in-sport-finally-your-time-starts-now-20160916-grhq10.html>>.

II LEGAL AND POLICY BACKGROUND

Commonwealth and state legislation prohibit direct and indirect discrimination on the grounds of sex or gender, for example the *Sex Discrimination Act 1984* (Cth) ('SDA') s 5 and the *Anti-Discrimination Act 1991* (Qld) ('ADA') ss 7 and 9. Discrimination is also prohibited in relation to family responsibilities, pregnancy and breastfeeding, for example *SDA* ss 7, 7AA and 7A, and *ADA* s 7, which are discriminatory behaviours that are predominantly faced by women. Sport is a specific area of unlawful discrimination under *SDA* s 42, *ADA* s 111, and other state legislation; however, all provide an exception whereby a sex can be excluded from competitive sports where 'strength, stamina or physique' is relevant.² However, the *SDA* is based on the *Convention on the Elimination of All Forms of Discrimination Against Women* ('CEDAW'),³ which provides key principles of true equality of men and women and action to end discrimination against women, and specifically includes a provision for equal participation rights for women in sport: article 10(g).⁴

The *SDA* outlines its objects under s 3, which include:

(a) to give effect to certain provisions of the *CEDAW*; (b) to eliminate, so far as is possible, discrimination against persons on the ground of sex, sexual orientation, gender identity, intersex status, marital or relationship status, pregnancy or potential pregnancy or breastfeeding in the areas of work, accommodation, education, the provision of goods, facilities and services, the disposal of land, the activities of clubs and the administration of Commonwealth laws and programs; ... and (d) to promote recognition and acceptance within the community of the principle of the equality of men and women.

² See, eg, *Equal Opportunity Act 2010* (Vic), s 71, *Sex Discrimination Act 1984* (Cth) s 42(1), *Anti-Discrimination Act 1991* (Qld) s 111(1)(a), (3).

³ Australia ratified CEDAW in 1983. Australian Human Rights Commission, '*The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW): Sex Discrimination – International Activities*' (2017) <<https://www.humanrights.gov.au/convention-elimination-all-forms-discrimination-against-women-cedaw-sex-discrimination-international>>.

⁴ 'Each State Party shall take all appropriate measures to eliminate discrimination against women and to ensure to women equal rights with men ... [and] the same opportunities to participate actively in sports and physical education': United Nations General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981), art 10(g).

However, there is a view that the *SDA* does not fully address these objects because it does not challenge systematic gender bias — its protection only extends to a person when they make a complaint, and most pertinently, it contains exemptions.⁵

The exemptions from the prohibition of sex discrimination in competitive sports may in fact be discriminatory themselves. Essentially, they allow exclusion of women participating in sports and are based on socially constructed gender norms, including ‘what women should do’,⁶ and that men are stronger/faster/better than women. The legislation enforces these stereotypes by only focusing on ‘strength, stamina and physique’ rather than other factors such as skill, dexterity, speed, and dedication.⁷ Thus, it appears that the law may be hindering the progress of women in sport in some cases.

One case example is *Ferneley*,⁸ which challenged the legislated exclusion of female boxers in NSW. The rationale behind the exclusion was that ‘the spectacle of women attacking each other is simply not acceptable to a majority of people in our community’,⁹ demonstrating how gendered assumptions of “appropriate” behaviours lead to discrimination against women in sport.¹⁰ In *Taylor*,¹¹ it was found lawful to exclude 15 year old girls from playing mixed AFL games because their average lean body mass becomes one standard deviation less than that of a boy, therefore, the relative difference between the strength, stamina, or physique

⁵ J Kendal Smith, ‘Female boxers: ‘Sideshow Freaks’?’ in Thomas V Hickie, Anthony T Hughes, Deborah Healey and Jocelynne A Scutt (eds), *Essays in sport and the law* (ASSH Studies, 2008) 181, 183.

⁶ Jocelynne A Scutt, ‘Dancing backwards over sand: women, sport and that old equality question’ in Thomas V Hickie, Anthony T Hughes, Deborah Healey and Jocelynne A Scutt (eds), *Essays in sport and the law* (ASSH Studies, 2008) 119.

⁷ Charlotte Churchill, ‘Women, gender stereotyping and contemporary regulation of Australian sport’ in Thomas V Hickie, Anthony T Hughes, Deborah Healey and Jocelynne A Scutt (eds), *Essays in sport and the law* (ASSH Studies, 2008) 138.

⁸ *Ferneley v Boxing Authority of New South Wales and Another* [2001] FCA 1740 (*Ferneley*). The case was held against *Ferneley* based on a technicality in the interpretation of the *SDA* (the Boxing Authority was not a ‘service’ for the purposes of s 22 and Wilcox J considered that s 42 only applied to mixed-sex sports, of which the present case was not).

⁹ *Ibid* [6]: The statement is by the responsible Minister Mr Cleary from his Second Reading Speech on the Bill for the *Boxing and Wrestling Control Act 1986* (NSW).

¹⁰ Matthew Bradford, ‘Sport, gender and law’ (2005) 1–2 *The International Sports Law Journal* 1, 8.

¹¹ *Taylor v Moorabbin Saints Football League & Football Victoria* [2004] VCAT 158 (*Taylor*).

of boys and girls was enough to validate the provision.¹² The decision has drawn criticism as it only reinforces the belief that the smaller average size of women to men makes them somehow inferior. It does not take into account the fact that boys who are one standard deviation below the average would still be allowed to play.¹³

This 'strength, stamina and physique' exemption is generally applied and justified in relation to men and women competing together, and allows single sex sport competitions, which is the norm for most sports especially at the elite level. However, the fact that this exemption exists allows sporting organisations to justify the exclusion of women and create single sex competitions from the early stages of girls' and boys' sporting development. It certainly allows the reinforcement of 'the supposed limitations on the capabilities of sportswomen.'¹⁴

In addition to the anti-discrimination laws, there are equal pay laws that are relevant to sports people playing professionally or semi-professionally. The *Fair Work Act 2009* (Cth) ('FWA') provides for equal remuneration for men and women workers for work of equal or comparable value under s 302(2). The modern awards objective and minimum wages objective must take into account the principle of equal remuneration for work of equal value but provisions for enterprise agreements are silent on this requirement.¹⁵ Part 2-7 allows the Fair Work Commission ('FWC') to make equal remuneration orders. However, under s 302(3), unless the employee or employee organisation makes an application, or unless employees make a complaint to the Sex Discrimination Commissioner, this law will not necessarily be enforced. Sex discrimination in employment, including terms and conditions such as remuneration, and opportunities for

¹² Ibid [65], [82].

¹³ Churchill, above n 7, 138.

¹⁴ Steven Taylor, 'Game, sex and match: sexism, heterosexism and homophobia in women's tennis' in Thomas V Hickie, Anthony T Hughes, Deborah Healey and Jocelyne A Scutt (eds), *Essays in sport and the law* (ASSH Studies, 2008) 155.

¹⁵ The modern awards objective can be found in the *Fair Work Act 2009* (Cth) s 134, and the minimum wages objective at s 284.

promotion, transfer or training, or in superannuation is also prohibited under the *SDA*.¹⁶

Also, the *Industrial Relations Act 2016* (Qld) (*IR Act*), assented to on 9 December 2016, aims to 'provide a framework for cooperative industrial relations that is fair and balanced' and that 'supports the delivery of high quality services, economic prosperity and social justice for Queenslanders.'¹⁷ This purpose is to be achieved by, among other things: '(j) ensuring equal remuneration for work of equal or comparable value; and (k) promoting diversity and inclusion in the workforce, including by providing a right for employees to request flexible working arrangements to help balance their work and family responsibilities'.¹⁸ The *IR Act* provides that the modern awards objective must take into account the principle of equal remuneration for work of equal value.¹⁹ Unlike the *FWA*, there is provision for collective bargaining agreements, and multi-employer agreements or project agreements, to provide equal remuneration for work of equal or comparable value in relation to all employees under s 201.²⁰ The Queensland Industrial Relations Commission ('QIRC') has the power under chapter 5 of the *IR Act* to ensure modern awards, bargaining instruments, and other instruments affecting wages provide equal remuneration. The QIRC, in making such an assessment on the value of the work, 'must be free of assumptions based on gender' and may use comparisons within and between occupations and industries.²¹ Importantly, discrimination on the basis of gender is not necessary to establish that the work has been undervalued.²²

Finally, the *Workplace Gender Equality Act 2012* (Cth) (*WGE Act*) aims to promote and improve gender equality (including equal remuneration between women and men) in employment and 'support employers to remove barriers to the full and equal participation of women in the workforce, in recognition of the

¹⁶ *SDA* s 14.

¹⁷ *Industrial Relations Act 2016* (Qld) s 3.

¹⁸ *Ibid* s 4.

¹⁹ *Ibid* s 143.

²⁰ *Ibid* s 201.

²¹ Explanatory Notes, *Industrial Relations Bill 2016* (Qld) 50.

²² *Ibid*.

disadvantaged position of women in relation to employment matters', among other things.²³ The *WGE Act* requires certain non-public sector employers to lodge reports each year with information relating to various 'gender equality indicators',²⁴ which includes gender composition of the workforce and equal remuneration between women and men.²⁵ The overarching goal is to close the gender pay gap, which currently sits at 23.1 per cent.²⁶ The Workplace Gender Equality Agency ('WGEA') does play an important role in enforcing gender equality legislation and policies, although it is very workplace and industry focused, and does not appear to offer the same support for sportspeople as it does for management and staff of sporting organisations.

As well as legislation, the policies of sporting organisations are pertinent in prohibiting (or allowing) discrimination against women. The Australian Olympic Committee ('AOC') prohibits gender-based discrimination and harassment in its Constitution,²⁷ and the Australian Sports Commission ('ASC') provides a Member Protection Policy template for national sporting organisations to create their own anti-discrimination policies.²⁸ For example, Tennis Australia's Policy prohibits gender-based discrimination, but does provide for the exemptions under the legislation.²⁹ Also, the ASC, along with the Australian Human Rights Commission ('AHRC') and other anti-discrimination and human rights agencies, have created '*Play by the Rules*', which promotes anti-discrimination and inclusion programs in sport.³⁰

²³ *WGE Act* s 2A.

²⁴ *Ibid* s 2B.

²⁵ *Ibid* s 3.

²⁶ Workplace Gender Equality Agency, 'Data explorer' (2017) <<http://data.wgea.gov.au/>>.

²⁷ Article 4.5 AOC, '*Constitution of the Australian Olympic Committee Incorporated*' (2013) <http://corporate.olympics.com.au/files/dmfile/AOCConstitution_Effectivefrom4May2013_Mar kedupV4_FINAL_APPROVED.pdf>.

²⁸ ASC, *Member protection policy* (2013)

<http://www.ausport.gov.au/supporting/integrity_in_sport/resources/national_member_protection_policy_template>.

²⁹ Tennis Australia, '*Member Protection Policy*' (2014) Articles 8.12 and 8.14

<http://www.tennis.com.au/wpcontent/uploads/2014/06/TA_Member_Protection_Policy-LR.pdf>.

³⁰ *Play by the Rules*, '*About Play by the Rules*' (2015) <<http://www.playbytherules.net.au/about-us>>.

Thus, direct sex discrimination in remuneration and unreasonable practices that disadvantage women in sport constitute unlawful discrimination,³¹ and would contravene most sporting associations' policies. Nevertheless, not all female employees within government and sporting organisations are being remunerated in accordance with these legislative requirements. Inequality and discrimination against women in sport remains a consequence of the historical subordination of women generally in society.

III FEMINIST PERSPECTIVES

'Sport is historically a male-dominated sphere of popular culture',³² which makes it difficult for women to be involved or taken seriously within its exclusive realm. This is particularly problematic in Australia as sport comprises an integral part of our national culture yet excludes many women — including those who have been playing sport for as long as men have — by denying them the same level of recognition, career opportunities, and remuneration as their male counterparts. Sport has, in many ways, come to define masculinity itself in terms of the physical skills, strength, and even aggression that is expected of athletes.³³ Women have historically had problems achieving equality because of the misconception of women as inferior.³⁴ This is most evident in the sporting context, where it is believed that women do not have the requisite strength, speed, and stamina to succeed at the same level as men. This in turn reinforces women's exclusion from full participation in society.³⁵

Liberal legal feminists find that gender inequality exists because women are not always afforded the same basic rights as men. The liberal ideal of formal equality

³¹ Human Rights and Equal Opportunity Commission, *Equal pay handbook* (2008) <https://www.humanrights.gov.au/sites/default/files/content/pdf/sex_discrim/equal_pay.pdf>, 4.

³² David Rowe, *Sports, Sexism and the Law: Some Contextual History* (Panel presentation Western Sydney University Law School Public Seminar, Collector Hotel, Parramatta, 28 April 2016) <http://www.uws.edu.au/ics/news_and_media/blog/sports,_sexism_and_the_law_some_contextual_history>.

³³ *Ibid.*

³⁴ Marett Leiboff and Mark Thomas, *Legal Theories: Contexts and Practices* (Thomson Reuters, 2nd ed, 2014) 441.

³⁵ Iris M Young, 'The exclusion of women from sport – conceptual and existential dimensions' in Paul Davis and Charlene Weaving (eds), *Philosophical perspectives on gender in sport and physical activity* (Routledge, 2010) 15.

requires women and men to have equal rights to compete and achieve within the sporting arena.³⁶ This would involve the same access to facilities, coaching, pay and career progression opportunities as men. Radical legal feminists believe that the fundamental source of inequality is the oppression of women purely on the basis of sex.³⁷ In other words, society and its institutions are largely created and dominated by males for their benefit and serve to oppress women. This includes sport. Furthermore, Mackinnon argues that women are not only oppressed by the patriarchal society but are actually violated and exploited as sexual objects.³⁸ This powerlessness and sexualisation of women manifests in all facets of society, including sport, and is considered normal. Thus, sport maintains the patriarchal structures, beliefs, and behaviours that subordinate women. A radical view would find that once the inherent oppression of women in society is eliminated, the subordination suffered by women in sport would follow suit.

Although there have been some advances in gender equality, including specific policies, increased participation by women and major accomplishments by female athletes, there is still disparity between women to men regarding remuneration and sponsorship.³⁹ Less value is given to women's sports, resulting in unequal prizes and minimal media coverage.⁴⁰ This treatment of women's sport and female athletes is oppressive and discriminatory. Sport is in a unique position of both producing and reinforcing wider society's gender constructs and biases, which is why gender equality and prohibiting of sex-based discrimination in sport is crucial. Both sexes should be given equal opportunities to enjoy the various benefits of sport, including well-being, fame, money, and career opportunities.⁴¹

³⁶ Bradford, above n 10, 2.

³⁷ Leiboff and Thomas, above n 34, 446.

³⁸ *Ibid* 448.

³⁹ Bradford, above n 10, 4.

⁴⁰ United Nations Division for the Advancement Women Department of Economic and Social Affairs, *Women 200 and beyond: women, gender equality and sport*, (2007) 3 ('UNDAWDESA').

⁴¹ Gertrud Pfister, 'Gender equality and (elite) sport' (2011) 25 *Enlarged Partial Agreement on Sport (EPAS)* 1.

IV UNEQUAL SALARY, PRIZE MONEY, AND SPONSORSHIP

Kate Jenkins, Australia's Sex Discrimination Commissioner, recently recognised that 'there are still many challenges to overcome for women in sport',⁴² including equal pay and sponsorship opportunities. Many female athletes, even at the elite level, are unable to participate full-time in their sport due to insufficient earnings.⁴³ Discrimination against women in salaries is particularly alarming. For example, Netball Australia, only recently doubled the minimum wage to \$27 375, with a top wage of \$67 500 for some players and netball is only expected to become 'fully professional within five years'.⁴⁴ This is despite the success of the national netball team, the Diamonds, including 11 world championships and the fact that they have been playing the sport internationally since 1938. To put these figures in comparison, the minimum wage for players in the NRL is \$82 500, in the AFL \$55 440, and in the Football Federation of Australia ('FFA') A-League \$55 000, while the average wages are \$244 000, \$302 104, and \$146 666 respectively.⁴⁵

Also, it was only in 2014 that the Jillaroos, the National Rugby League's ('NRL') women's team, first received a match fee of \$500 for playing a Test (the men receive \$12 500 per match).⁴⁶ The NRL has no plan to introduce a national women's competition until 2020, despite the 482 000 women involved in the game nationally.⁴⁷ Consequently, these women have little opportunity to make a living out of their sport while male players on minimum wage in the NRL can. Australian basketball and hockey are the only team sports that pay the same

⁴² Kate Jenkins, 'Women in sport: The gender gap is slowly closing', 24 January 2017, <<http://www.heraldsun.com.au/rendezview/women-in-sport-the-gender-gap-is-slowly-closing/news-story/8880c7e901302bfd526af4ee8a0b075b>>.

⁴³ State Government of Victoria, *Safe and Strong – Victorian Gender Equality Strategy* (2016) 31.

⁴⁴ Pierce, above n 1.

⁴⁵ Dan Colasimone, 'Women's AFL competition could spark turf war with netball, cricket, W-League and rugby', ABC, 16 September 2016 <<http://www.abc.net.au/news/2016-09-15/turf-war-in-womens-sport-would-be-great-for-female-athletes/7844516>>.

⁴⁶ Phil Rothfield, 'What's the buzz: Jillaroos become first women to be paid for playing a Test match', 8 November 2014 <<http://www.dailytelegraph.com.au/sport/nrl/whats-the-buzz-jillaroos-become-the-first-women-to-be-paid-for-playing-in-a-test-match/news-story/1f89f22560ade73617cfd93a0dc5d7c2>>.

⁴⁷ Jennifer Browning, 'NRL won't rush women's rugby league competition despite AFLW success, Todd Greenberg says', 5 February 2017 <<http://www.abc.net.au/news/2017-02-05/nrl-wont-jump-the-gun-on-womens-league-just-yet/8240140>>.

daily rate irrespective of gender.⁴⁸ As for prize money, tennis is one of the few examples of parity, with equal prize money introduced in the Australian Open over 30 years ago, with Tennis Australia offering equal prize money for all elite tennis players in tournaments.⁴⁹ In most other sports, female athletes must supplement their income with another job.

In soccer, for instance, Matildas' player Katrina Gorry explains that due to inadequate remuneration, most players work while playing at the highest level, while men earn much more from the sport.⁵⁰ Until recently, the Matildas earned only \$500 in match fees for standard games, compared to \$7500 for the Socceroos.⁵¹ Yet the Matildas perform consistently well in all tournaments and are ranked 8th in the world (out of 177), while the Socceroos are ranked 55th (out of 209). The Matildas went on strike in 2015 in order to resolve the pay dispute with the FFA, which finally agreed to a minimum base-salary of at least \$30 000 and up to \$41 000 a year, as well as increased match payments and allowances during camps and matches after collective bargaining agreement negotiations with the players' union, Professional Footballers Australia ('PFA').⁵² This at least brings the salary up to a liveable figure for the Matildas.

Until recently, The W-League — unlike the A-League and both national teams — did not have a formal pay deal, and women were earning as little as \$100 per week, or even playing for free.⁵³ The PFA reported that in 2016, 85 per cent of players earned less than \$5000 for the season, 25 per cent earn under \$500, and it cost on average around \$2200 for the women to play.⁵⁴ The FFA and PFA are

⁴⁸ Michele Hutchison, 'The glaring pay imbalance in sport: Why it pays to be a man', 25 September 2015 <<http://www.news.com.au/finance/work/at-work/the-glaring-pay-imbalance-in-sport-why-it-pays-to-be-a-man/news-story/a7e1a0544da3982cdc9fc6080b3b52c3>>.

⁴⁹ Tennis Australia, 'Tennis Australia addresses United Nations Forum on Gender Equality', 16 March 2017 <<http://www.tennis.com.au/news/2017/03/16/tennis-australia-addresses-united-nations-forum-on-gender-equality>>.

⁵⁰ 'Matildas player Katrina Gorry: The truth about being a female athlete', News.com.au (online), 25 January 2015 <<http://www.news.com.au/lifestyle/fitness/matildas-player-katrina-gorry-the-truth-about-being-a-female-athlete/story-fnlsv2b8-1227196086921>>.

⁵¹ Women on Boards, 'Gender balance in global sport report' (September 2016) 13.

⁵² Ibid.

⁵³ Tara Cassidy, 'W-League pay on the agenda', 21 October 2016 <<http://thefootballsack.com.au/2016/10/w-league-pay-on-the-agenda.html>>.

⁵⁴ Professional Footballers Australia, 'W-League Workplace Conditions Report 2016' (2016) 7.

working towards a collective bargaining agreement for the players, and it is reported that the women did receive a base salary of \$5000 for the 2016/17 season.⁵⁵ The PFA is aiming to achieve a \$11 500 a season salary for professional W-League players, \$60 000 for those who also play in the Matildas (or have either overseas or employment contracts), and \$2500 for the amateur players, while also hoping for an extended 18-game season and development programs to enable the players to focus on football all year round.⁵⁶ However, further details about pay and other conditions might need to be addressed in order to achieve the purpose of allowing these women to become full-time professional players on \$11 500 a year, although it is more promising for those players who are also selected as Matildas.

With great news for female cricketers at least, Cricket Australia ('CA') has tabled a five-year offer which includes professional women's cricketers in the new Memorandum of Understanding between CA and the Australian Cricketers' Association ('ACA') for the first time.⁵⁷ The average salary of players in the number 1 ranked Southern Stars is set to jump from \$79 000 to \$179 000 and to \$210 000 by 2021, and for female domestic players, from \$22 000 to \$52 000.⁵⁸ CA will also introduce prize money for the winners of the Women's National Cricket League ('WNCL') (\$258 000) and the Women's Big Bash League ('WBBL') (\$309 000), and match fees for domestic one-day games will be the same amount for male and female players. Male players will likely have their international annual retainer increase to \$816 000 by 2021, and domestic players will have an average salary of \$235 000. Interestingly, during previous negotiations between CA and ACA in which ACA sought a further \$1.45 million to CA's \$4.23 million commitment, the men's team offered the difference from their own contracts in return for ACA having further involvement in the women's contract conditions,

⁵⁵ Cassidy, above n 53.

⁵⁶ Anna Harrington, 'How the hype and success of the AFL Women's competition gave football the kick it needed', 22 February 2017 <<http://www.foxsports.com.au/football/w-league/how-the-hype-and-success-of-the-afl-womens-competition-gave-football-the-kick-it-needed/news-story/ffe69c880b7b511d5536de00395a025>>.

⁵⁷ Cricket Australia, 'CA table landmark proposal to players' 21 March 2017 <<http://www.cricket.com.au/news/cricket-australia-womens-pay-rise-double-salary-domestic-international-mou-aca-ca-sutherland/2017-03-21>>.

⁵⁸ Ibid.

but this offer was rejected. This indicates that despite the salary increases and improved conditions, it is still clear, even to their male counterparts, that female cricketers are being undervalued.⁵⁹

In addition to their salaries, there are other relevant financial entitlements for women. In 2016, male and female athletes in basketball, soccer, and cricket were travelling in different classes and staying in different standard accommodation when attending sporting events, prompting Federal Sports Minister Sussan Ley and the ASC to demand gender equality in the travel policies of sports organisations.⁶⁰ It has recently come to light that a “loophole” in the *Parental Leave Act 2010* (Cth) effectively disqualifies female jockeys from receiving paid parental leave. Due to required safety rules, female jockeys cannot ride beyond the first trimester,⁶¹ yet payment eligibility requires recipients to have worked for at least 10 of the 13 months prior to giving birth. Compliance with safety requirements renders them ineligible to receive leave payments.⁶² Until the issue is rectified, Racing NSW at least has committed to its own parental leave scheme for its female jockeys to receive eight weeks’ pay based on their average weekly earnings for the previous year.⁶³ This issue demonstrates the importance of enforcing discrimination laws in relation to parental responsibilities and pregnancy, as many women in many sports may be affected by the operation of parental leave schemes and other family responsibility entitlements.

Finally, commercial sponsorships are of particular importance for athletes if their salary is not high, as is the case for many female athletes. However, females also receive less commercial support, with some exceptions including the Commonwealth Bank Southern Stars and surfer Stephanie Gilmore. Most

⁵⁹ Women on Boards, above n 51, 17.

⁶⁰ Associated Press Australia, ‘Federal sports minister Sussan Ley demands gender equality in sport travel’, *The Guardian* (online) 3 February 2016 <https://www.theguardian.com/sport/2016/feb/03/federal-sports-minister-sussan-ley-demands-gender-equality-in-sport-travel>.

⁶¹ Ray Hickson, ‘Racing NSW brings in parental leave scheme for female jockeys’, 29 November 2016

<<http://www.news.com.au/sport/superracing/racing-nsw-brings-in-parental-leave-scheme-for-female-jockeys/news-story/24b8eff2b39483730699014f806de0dc>>.

⁶² *Paid Parental Leave Act 2010* (Cth) ss 32–36.

⁶³ *Ibid.*

endorsements seen in the media are of male athletes, spruiking everything from cereal to underwear. Olympic Gold medallist Sally Pearson has had difficulty attracting sponsors,⁶⁴ as have the world champion Diamonds, due to low media attention on the sport.⁶⁵ Sponsors and advertisers heavily invest in professional sports, such as football, cricket, and car racing — however, since men dominate these sports, the revenue raised is effectively for the benefit of male athletes.⁶⁶ This issue is so significant that in August 2015, the ASC Chair wrote to ASX 100 companies urging increased sponsorship of Australian women's sport, as corporate support lags substantially behind at just 8 per cent, meaning women 'earn just a fraction of their male counterparts.'⁶⁷

Inequity and discrimination are quite apparent in the income that male and female athletes receive. The stereotypical beliefs about the value of women's sport create this inequality. The disparity in pay emphasises the fact that female athletes are assumed to lack the required skills and attributes to be as successful as men.⁶⁸ In other words, women have biological differences, which make them 'inferior' to men (who are stronger and faster, etc) and consequently, women's sports are 'not as competitive' and not as popular with fans, broadcasters, and sponsors, therefore female athletes should be paid less.⁶⁹ However, less opportunity begets less attention and revenues. If women are underpaid to the extent that they must supplement this income in order to support themselves and their family, then their availability for training and competition will be affected. With less time to devote to their sport, they cannot achieve the same levels of success.

The AFL, FFA, Netball Australia, and Cricket Australia have recognised that to attract the best talent and competition they must offer the best pay and

⁶⁴ Justin Quill, 'Give the female athletes a level playing field on sports funding', *Sunday Herald Sun*, 22 September 2013 <<http://www.heraldsun.com.au/news/opinion/give-the-female-athletes-a-level-playing-field-on-sports-funding/story-fni0ffsx-1226724417784>>.

⁶⁵ Ashley Rose, 'Australian netballers: the last of the great amateurs?' in Thomas V Hickie et al, *Essays in sport and the law* (ASSH Studies, 2008) 165.

⁶⁶ Pfister, above n 41, 21.

⁶⁷ Australian Sports Commission, 'Support women's sport' (2017) <<http://www.ausport.gov.au/>>.

⁶⁸ Taylor, above n 14, 150.

⁶⁹ Women on Boards, above n 51, 15.

conditions to female players,⁷⁰ and recent improvements in pay and conditions are a step towards that goal. However, Matildas player and player-relations Executive Kathryn Gill notes that Australian sportswomen have been treated like ‘second-class citizens for far too long’,⁷¹ and that the Matildas had to fight through collective bargaining negotiations to receive their improved workplace conditions, something their male counterparts have not had to face.

V LACK OF MEDIA COVERAGE OF WOMEN’S SPORTS

The role of the media in shaping mentalities and representations is important, and the media almost exclusively shapes people’s knowledge and opinions about women’s sports.⁷² The unequal and discriminatory representation of women’s sport in the media is a significant issue. In fact, women’s sport and female athletes are underrepresented across all platforms of the media.⁷³ ASC research published in 2014 found that media time devoted to women’s sport was 7 per cent for dedicated TV sport coverage (compared to 81 per cent for men), with 5 per cent of TV news coverage, 7 per cent of print news, 3 per cent of online news and 4 per cent of social media coverage.⁷⁴ Tennis accounted for nearly half (47 per cent) of the TV coverage, and when broken down by sport, women’s cricket received 2 per cent of total coverage; football 7 per cent; basketball 15 per cent; golf 12 per cent; athletics 8 per cent; and surfing 4 per cent — although coverage of women’s sport increased to around 25 per cent in 2012 during the Olympics.⁷⁵ Therefore, despite the fact that there are concurrent women’s competitions in almost every sport, the media are unable or unwilling to give women’s sport the same coverage as their male counterparts.⁷⁶

⁷⁰ Pierce, above n 1.

⁷¹ Associated Press Australia, above n 61.

⁷² Committee on Equal Opportunities for Women and Men, *‘Discrimination against women and girls in sport’*, 29 March 2005, [44]

<<http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileId=10812&Language=en>>.

⁷³ Emma Sherry, Angela Osborne and Matthew Nicholson, *‘Images of Sports Women: A review’* (2015) *Sex Roles* 1.

⁷⁴ James Paterson and Ryan Matzelle, ASC, *‘Women in sport broadcasting analysis – final report’* (April 2014), 7.

⁷⁵ *Ibid*, 36.

⁷⁶ Tracey Holmes, *‘When will the media meet the challenge of giving proper coverage to women’s sport?’* 28 December 2016 <<http://www.abc.net.au/news/2016-12-28/media-still-failing-challenge-of-womens-sport-coverage/8150724>>.

Australian women's cricket, football, and basketball teams are more successful than their male counterparts, yet very few of the public would know given the lack of media coverage.⁷⁷ Generally, only prominent, individual athletes receive broad coverage. This is with the exception of Olympic athletes and teams, given the Olympics are an extraordinary context and more coverage of female athletes is expected.⁷⁸ Some successful female athletes, including Ellyse Perry, the youngest person to represent Australia in cricket and in soccer, Caroline Buchanan, five-time world champion and Olympian in BMX and mountain biking, and netball world champion Laura Von Bertouch are relatively unknown,⁷⁹ especially in comparison to such household names as Ian Thorpe and Michael Clarke. The underreporting of female athletes leads the public to believe that they are not as important and their accomplishments are not recognised.⁸⁰

The lack of media exposure also makes it difficult for female athletes to secure sponsors, which adds to the discrimination that women suffer in sport.⁸¹ Men's sport has dominated media coverage for decades, and this in turn naturally affects sponsorship deals. But it is important to remember that the commercial market for the broadcasting of male sports received major public subsidies, access to public assets, and protected market development,⁸² to be as successful and profitable as it is today. The increase in popularity of female sports such as tennis, swimming, and even Mixed Martial Arts, demonstrates that as soon as women's sports get more attention and visibility they become popular and generate more revenues.⁸³ Thus, the lack of media coverage correlates with the ability for sportswomen to attract sponsors, thereby contributing to the disparity in earnings.

⁷⁷ Tracey Holmes, 'After homophobia let's tackle prejudice against women's sport', ABC, 10 April 2014 <<http://www.abc.net.au/radionational/programs/lifematters/after-homophobia-lets-tackle-prejudice-against-womens-sport/5381930>>.

⁷⁸ Sherry, Osborne and Nicholson, above n 73, 4.

⁷⁹ Paterson and Matzelle, above n 74, 92; Felicity Harley, 'Raw deal: women's sport', Mamamia.com, 18 October 2011 <<http://www.mamamia.com.au/social/whos-the-better-role-model-rihanna-or-ellyse-perry/>>.

⁸⁰ Eoin J Trolan, 'The impact of the media on gender inequality within sport' (2013) 91 *Procedia Social and Behavioural Sciences* 215, 217.

⁸¹ Pfister, above n 41, 42.

⁸² Rowe, above n 32.

⁸³ Netivist.org, 'Gender inequality in sports: are professional athletes salaries fair for women?' (2016) <<https://netivist.org/debate/gender-inequality-in-sports>>.

The 'conundrum' is what comes first?⁸⁴ Is it interest in women's sports or promotion of the sports that creates the interest? The argument and commercial assumption that the public is not interested in women's sports is not supported by recent research.⁸⁵ For example, 50 million people worldwide watched the women's team win the 2013 Cricket World Cup and SBS recorded an almost 50 per cent jump in ratings when it broadcasted a Matildas World Cup quarter final game.⁸⁶ Recently, the AFL announced that the ratings for the inaugural women's competition exceeded all expectations, as discussed further below. There have been other positive developments in this area, such as Channel TEN's live broadcast of the WBBL in prime time since 2016,⁸⁷ and Netball Australia's broadcast deal with Nine Network and Telstra, including a Saturday night live double-header on Nine, which is expected to secure sponsors and eventually increase salaries.⁸⁸ Therefore, coverage figures from 2015 to the present should demonstrate some increase, particularly due to these developments, although a jump from 7 per cent to near 50 per cent seems highly unlikely.

VI THE 2017 INAUGURAL AFLW COMPETITION

On 25 March 2017, the Adelaide Crows made history by becoming the inaugural AFLW champions, a historically significant match, and a win for women and sport generally. The road to this success was not without significant hurdles. After much speculation and negotiation, the AFL reached an agreement with the Football Players' Association ('FPA'), just months before the competition was due to start. Initially, the base salary was going to be \$5000, with \$10 000 for higher profile players, and \$25 000 for the top stars, and there had been no commitments as to further entitlements received by the players' male

⁸⁴ Holmes, above n 76.

⁸⁵ Sherry, Osborne and Nicholson, above n 74, 3.

⁸⁶ Holmes, above n 77.

⁸⁷ Women on Boards, above n 51, 17.

⁸⁸ Max Mason, 'Nine and Telstra sign Netball Australia broadcast deal', *Sydney Morning Herald*, 19 May 2016 <<http://www.smh.com.au/business/media-and-marketing/nine-and-telstra-sign-netball-australia-broadcast-deal-20160518-goyknu.html>>.

counterparts.⁸⁹ AFL chief executive Gillon McLachlan explained that the lack of broadcast and sponsorship deals was the main issue.⁹⁰

The AFL eventually agreed to pay marquee players \$27 000, priority players \$12 000, and the remaining players \$8500 for the 7 match season, which will increase to \$27 946, \$12 846 and \$9276 respectively in 2018.⁹¹ Importantly, the minimum wage was set at a pro-rata amount of the male rookie salary. The players also received boots and runners, travel allowance, income protection, and an allowance to pay for a carer for those players with a child under 12 months. The AFL recognised that in order for the AFLW to succeed and evolve into a fully professional competition, the women needed the ‘same opportunities to thrive’ as their male counterparts.⁹²

The AFL secured their broadcast on the 7 Network’s 7Mate and the opening round of the 2017 AFLW season attracted more than 1.7 million viewers nationally, with more than 50 000 fans in attendance at the venues.⁹³ The very first game drew a crowd of over 25 000, with over a thousand denied entry when the stadium reached capacity. Dr Greenwood, co-author of the 2010 report *‘Towards a Level Playing Field: sport and gender in Australian media’*, stated that it was a ‘dream scenario’ that the AFLW was being broadcast and receiving the level of support it was.⁹⁴ Of course, the competition was scheduled for February–March, the off-season for the male competition, and entry was free to all the games, including the grand final. In any event, the attendance demonstrates the public’s interest in an AFLW competition. The football itself was described as ‘tough’, ‘unbelievably ferocious’, and ‘very physical’.⁹⁵ Observers noted that the

⁸⁹ Eliza Sewell, ‘AFL Players’ Association rejects female pay proposal for new comp’, Herald Sun, 2 September 2016 <<http://www.heraldsun.com.au/sport/afl/afl-players-association-rejects-female-pay-proposal-for-new-comp/news-story/006b11c2f8ad1869b47b8b16111c5063>>.

⁹⁰ Colasimone, above n 45.

⁹¹ Australian Football League, ‘AFL Women’s payment terms agreed’, 10 November 2016 <<http://www.afl.com.au/news/2016-11-10/afl-womens-payment-terms-agreed>>.

⁹² Ibid.

⁹³ David Mark, ‘AFLW: What do we know after round one?’ 6 February 2017 <<http://www.abc.net.au/news/2017-02-06/aflw-what-do-we-know-after-round-one/8245286>>.

⁹⁴ Damian McIver, ‘AFLW: Media coverage of women’s competition “almost inconceivable”’, 6 February 2017 <<http://www.abc.net.au/news/2017-02-06/aflw-almost-inconceivable-coverage-breaking-new-ground/8245672>>.

⁹⁵ Mark, above n 93.

skills of the players did fluctuate, although this can happen — albeit to a lesser extent — to the men.⁹⁶ Naturally, the more training the women receive and the more often and longer that they play, the more their skills will improve, as with any player in any sport.

There are promising signs for the future of the AFLW, however, it is important to note that women have been playing Australian football for over 100 years.⁹⁷ Therefore, the issue is that it took this long to see women on the same stage, with the same career opportunities, and earning the same (or close to the same) money, as male AFL players.

VII DEVELOPMENTS AND FURTHER RECOMMENDATIONS

Sex Discrimination Commissioner Kate Jenkins states that ‘confronting entrenched community attitudes and invisible systemic barriers’ is still required to achieve gender equality in our society, and that sport is, and can be, an ‘important signal of the progress’ that has been made so far.⁹⁸ It is imperative that female athletes receive parity of salaries, prizes, and endorsements. This can only be achieved through a mutual recognition by governments, sporting organisations, and sponsors that female athletes deserve equal remuneration for their contribution to sport. Further progress is needed, and addressing wage inequalities through targeted policy development is an important first step.⁹⁹ Financial incentives for organisations that do have gender equality and sanctions for those who do not is an excellent idea.¹⁰⁰

Recent positive developments in this area include the Victorian Government’s ‘*Safe and Strong*’ framework, which aims to deliver gender equality through reforms in law and policy over the next 5 years.¹⁰¹ Sport and recreation are

⁹⁶ Ibid.

⁹⁷ Brunette Lenkic and Rob Hess, ‘Play On! A hidden history of women’s Australian Rules Football’, 3 September 2016
<https://issuu.com/echopublishing/docs/play_on_extract_with_cover>.

⁹⁸ Jenkins, above n 42.

⁹⁹ UNDAWDESA, above n 40, 29.

¹⁰⁰ Pfister, above n 41, 44.

¹⁰¹ State Government of Victoria, above n 43, 31.

included along with education, work, leadership, health, and media. The Government has recognised the importance of sport in the state's culture and identity as having 'the capacity to challenge gender stereotypes and discriminatory attitudes, and promote core values of fairness and respect.'¹⁰² The Government's strategies to address the issues in sport include working with sporting associations to pilot gender equality using sporting ambassadors, working with local government and the associations to promote equitable provision of infrastructure and facilities, and calling on the Commonwealth Government to mandate a minimum amount of female sport coverage on the Australian Broadcasting Corporation. These strategies were based on the recommendations from the '*Inquiry into Women and Girls in Sport and Active Recreation*', which recognised that females, who make up half the population in Victoria, have skills, knowledge, and experience equal to men, and that 'not tapping into that talent pool is inequitable and wasteful'.¹⁰³

In 2016, it was announced that the AFL, NRL, Australian Rugby Union, and Netball Australia will work together with Our Watch to eliminate violence against women and achieve gender equality by promoting women's participation and opportunities in sport, challenging gender stereotypes and roles, and encouraging respectful, healthy, and equal relationships on and off the field.¹⁰⁴ The National Sporting Organisations Initiative is the first initiative of the Sports Engagement Program by Our Watch, and will work with these sporting associations until July 2018 to implement these strategies and develop standardised policies, tools, and resources for NSOs to implement gender equality.¹⁰⁵ This is a significant initiative to combat not only inequalities within sport but also the entrenched subordination suffered by women in society in general, including the issue of domestic violence.

¹⁰² Ibid.

¹⁰³ State Government of Victoria, *Inquiry into Women and Girls in Sport and Active Recreation: A Five Year Game Plan for Victoria* (November 2015) 8.

¹⁰⁴ The Daily Telegraph, 'Rugby, NRL, AFL, Netball commit to Our Watch for gender equality and to end violence against women', 18 June 2016
<<http://www.dailytelegraph.com.au/sport/swoop/rugby-nrl-afl-netball-commit-to-our-watch-for-gender-equality-and-to-end-violence-against-women/news-story/d8a794117bbb3ea55298125b7b54ceeb>>.

¹⁰⁵ Our Watch, 'Sports Engagement Program' (2017)
<<https://www.ourwatch.org.au/What-We-Do/%E2%80%8BSports-Engagement-Program>>.

However, further progress is needed to change the perception of female athletes and women's sports, particularly in the media. Sport and the media combined have great power to influence social values, beliefs, and practices,¹⁰⁶ and thus, have the responsibility to promote gender equality and eliminate discrimination. For example, the ASC recommends utilising the variety of media devices and social media channels to deliver increased coverage of women's sport, and creating interest in women's sport by ongoing dialogue with the public.¹⁰⁷ The ASC predicts that creating a 'critical mass' of highly engaged consumers by 2017 will, in turn, drive demand for an increase in media coverage.¹⁰⁸ Also, sponsors can be innovative and respond to the need for creating interest in women's sport, while also promoting their brand and getting good returns on their investments. The Commonwealth Bank's strategy is one good example. As long-term sponsors of the Southern Stars (as well as the male teams with Cricket Australia) they have invested in their own social media channels to create effective and targeted advertisement campaigns featuring stories of the female cricketers, with a video of Ellyse Perry racking up over a million views.¹⁰⁹ By utilising content marketing, brands 'have an opportunity to spread the stories of women athletes and increase their visibility.'¹¹⁰

Providing more opportunities for women to participate in sport at all levels and in all roles,¹¹¹ including management and coaching; challenging stereotypes and bias by accepting a gender-neutral view to shift the focus onto the sport rather than the sex of the players;¹¹² eliminating rule differences in male and female sports; and parity in ticket prices are just some of the other recommendations for changes needed to achieve gender equality in sports.¹¹³ These changes can be

¹⁰⁶ Trolan, above n 80, 224.

¹⁰⁷ Paterson and Matzelle, above n 74, 9–14.

¹⁰⁸ Ibid 15.

¹⁰⁹ James McGrath, 'A new era in women's sport sponsorship?' 10 April 2016 <<http://www.sbs.com.au/topics/zela/article/2016/04/10/new-era-womens-sport-sponsorship>>.

¹¹⁰ Ibid.

¹¹¹ Pfister, above n 41, 44.

¹¹² Eileen McDonagh and Laura Pappano, *Playing with the boys – why separate is not equal in sports* (Oxford University Press, 2008) 254–255.

¹¹³ Ibid.

supported by recognising sport as a specific area within all anti-discrimination legislation, with explicit provisions that prohibit discrimination in the areas of remuneration and media coverage, among other things. The current 'strength, stamina and physique' provisions may serve to entrench the underlying discriminatory attitudes about women as inferior to men in sport.¹¹⁴ Removing or altering these provisions and adopting provisions that promote gender equality in all areas of sport would assist in eliminating the discrimination still suffered by many female athletes.

VIII CONCLUSION

ASC's former executive director Simon Hollingsworth predicted that 'the past 12, 18 months will be seen as a significant turning point for women's sport' due to the high performance results,¹¹⁵ increased participation, and commercial growth of women's sport. Recent developments in AFL, netball, cricket, and soccer are encouraging, however, closer inspection of the realities for most female athletes, and the place of women's sport in our society, demonstrates that more change is needed. In some cases, current legislation appears to hinder the progress of women in sport and allows the legal exclusion of women based on physical attributes. Sport sustains gender discrimination against female athletes through unequal pay, prize money, and sponsorships. It is apparent that lower pay and lack of sponsorship is affected by the considerably scarce media coverage of women's sport. Evidence suggests that despite equal pay legislation, sporting organisations may be reluctant to enforce it, however the recently enacted Queensland legislation appears to give the QIRC more power to be proactive in this area.¹¹⁶

Challenging the gendered assumptions and stereotypical beliefs about the value of women's sport is vital. Sportspeople, sports organisations, fans, media organisations, and governments must continue to collectively speak out against

¹¹⁴ Bradford, above n 10, 14.

¹¹⁵ Pierce, above n 1.

¹¹⁶ See, eg. *Industrial Relations Act 2016* (Qld).

gender discrimination in sport and lead progressive change.¹¹⁷ Most importantly, society must overcome its general subordination of women. Once this desperately needed revolution occurs, then female athletes will be on par with their male counterparts.

¹¹⁷ UNDAWDESA, above n 40, 30; Rowe, above n 32.

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