

Who decides: girls or Football Victoria?



By Jennifer Holdstock, Solicitor, Russell Kennedy

Three teenage girls have succeeded in lifting an age ban restricting girls from playing competitive Australian Rules Football with boys from 12 to 14. In an important case¹ for human rights and equal opportunity, the President of the Victorian Civil and Administrative Tribunal (VCAT), Justice Stuart Morris, found unlawful discrimination on the part of Football Victoria, the State regulator, and the Moorabbin Saints Junior Football League (League) against Helen Taylor (14).

Helen Taylor, Emily Stanyer (15) and Penny Cula-Reid (15) have played almost 300 games of football between them. They were banned last year, mid-season, when the League enforced a regulation of Football Victoria which excluded girls from playing competitively with boys once they reached the age of 12 years.

The girls' parents complained on their behalf to the Equal Opportunity Commission on the grounds of sex discrimination. The matter was referred to VCAT where an application was made for interim relief to restrain Football Victoria and the League from banning the girls further until a final determination was made. The application was successful and the girls played out season 2003.

The provision under consideration was s66(1) of the *Equal Opportunity Act 1995* (Vic):

"A person may exclude people of one sex or with a gender identity from participating in a competitive sporting activity in which the strength, stamina or physique of competitors is relevant."

Importantly, Justice Morris commented that he wanted to make it clear that he was not endorsing a

rule which excludes girls from under 15 football. He clarified that it is lawful for a football association to adopt and apply such a rule. He expressed the view that whether girls play under 15 or under 16 football should be a decision left to the girls themselves.

The judge has left the decision as to whether the three girls in this case can play in the 2004 season with the football associations. He said:

"Whether girls play under 15 or under 16 football should be a decision left to the girls themselves."

"It is lawful for the football associations to exclude them from the under 15 and under 16 competitions. It is equally lawful for the associations to allow them to play."²

Football Victoria stated it would consider the decision and discuss what action it would take at its Board meeting in March. It stated that it was expected that it would update the regulation increasing the age cut-off to 14. There is nothing to compel Football Victoria or any other sporting body to exclude girls over 15, it is merely lawful to do so.

The judge commented:

"The notion that females need to be protected by the football associations belongs in another age. Put simply, such an approach is sexist, even when well intentioned"³ and "[t]he choice should be that of the girl, not the football association."⁴

The judge was concerned that this decision would invite male players to seek to play with female players in sports such as netball, resulting in possible disadvantage to the female players. The judge has proposed granting an exemption under s83 of the *Equal Opportunity Act* to such sporting groups to promote equal opportunity and to encourage female participation and competition in sport. VCAT has invited written submissions as to whether it should exercise power to grant an exemption from s65 of the *Equal Opportunity Act* in relation to the exclusion of males from participating in a competitive sporting activity organised for persons under 14 years (that is, for 13 year olds). ■

¹ *Taylor & Ors v Moorabbin Saints Junior Football League & Football Victoria Ltd* [2004] VCAT 158.

² at paragraph 91.

³ at paragraph 53.

⁴ at paragraph 54.

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