



Exchange between Senator Malcolm Roberts and Australia Sex Discrimination Commissioner Anna Cody on *Giggle v Tickle*

Senate: Legal and Constitutional Affairs Legislation Committee (Part 2)

Parliament of Australia

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Youtube video - time between 1:32:20 to 1:40:04

Senator:

I now go to Dr Cody and the intervention in *Giggle v Tickle*, please.

Thank you for appearing, Dr Cody. What are you arguing in, this is the case of someone *Giggle v Tickle* who is born a biological male being stopped from joining a women-only app. What are you arguing in your intervention, and how much are you being paid by the taxpayers to go in to bat for biologically born and developed men being allowed into women's spaces?

Dr Cody:

Thank you, Senator. The role that we have within the case *Giggle v Tickle* is intervention as *amicus curiae*, so helping the court to understand the interpretation of the Sex Discrimination Act and the amendments from 2013. Also, how the Convention for the Elimination of All Forms of Discrimination Against Women applies, whether or not there are special measures and their understanding of Section 5 and Section 7 of the Sex Discrimination Act.

We were given leave by the court to assist them to understand those issues, and also the constitutionality of the Sex Discrimination Act. In terms of the cost, we have two counsel who were briefed, one who agreed, both agreed to appear on a capped-fee basis. So that's a reduced fee. So, one was paid \$13,000 and the other almost paid \$10,000.



Senator:

Thank you. What I actually asked, Dr Cody, was: how much are *you* paid by the taxpayers to go in to bat for biological born and developed men?

Dr Cody:

So, my salary is similar to that you mentioned for Commissioner Sivaraman

Senator:

So, about \$400,000 per year plus 15.4% superannuation.

Dr Cody:

Correct.

Senator:

Thank you. If a woman took a case, just so I can be clear, your position is that the law means a biological man who identifies as a transgender woman can enter female-only spaces?

Dr Cody:

So I would question whether or not Roxanne Tickle is, is not a man, she is a trans woman, and so she has gone through various processes and has transitioned and she is a trans woman. She had access or sought access to the Giggle for Girls App and then was taken off the access for the Giggle for Girls app.

Senator:

So, what sort of chromosomes does she have, XX or XY?

Dr Cody:

I can't answer that.

Senator:

You can't?



Dr Cody:

I can't answer that

Senator:

If a woman took a case to court today, trying to stop a person with a penis. Well, let's come back to that, can someone who was born with XY chromosomes change to XX chromosomes, a male changed to female?

Dr Cody:

I don't believe so, but I'm not a scientist. There are many variations of chromosomes, there are hormonal variations, there are chromosomal variations, there are genitalia variations, there's a lot of variations which are along a spectrum.

Senator:

Would you agree that a piece of legislation can't change a person's sex? If born a man, they are a man. If they're born with XY chromosomes, they're a man and they stay a man?.

Dr Cody:

No, I would not agree.

Senator:

You don't agree. If a woman took a case to court today, trying to stop a person with a penis who identifies as female from going into a women's bathroom, which side would you be arguing for, if you were there as a friend of the court?

Dr Cody:

Could you repeat that Senator?

Senator:

If a woman took a case to court today, trying to stop a person with a penis who identifies as female from going into a women's bathroom, which side would you be arguing for, if you were there as a friend of the court?



Dr Cody:

I would need to know more facts, Senator. I can't make a judgement on that in particular.

Senator:

So, come back to your previous question, previous answer. You talked about XX/XY, you really didn't know the answer. How can you make decisions on sex?

Dr Cody:

The issue is that I'm saying about me not being able to identify whether someone has XX or XY is because I haven't tested them; I'm not a scientist that's not my area of expertise

Senator:

If a person was born male that's XY.

Dr Cody:

Not always Senator

Senator:

Can you give me an example or not?

Dr Cody:

Because there are also people who have innate variations of sex characteristics and so they may be identified as male at birth but in fact then later find out that they are, have XY chromosomes, or XX chromosomes. So it is more complex than just XX being female and XY being male.

Senator:

I'll agree with that but it's a very, very tiny proportion of the population. But someone who was born a man, a boy who has XY chromosomes cannot change to XX. Is that correct?

Dr Cody:

If they are born, if their chromosomes are XY, then their chromosomes. I don't believe



they can change but as I repeat I'm not a scientist, so I haven't studied whether or not can change

Senator:

You are not a scientist, how do you know which side to take in a court case?

Dr Cody:

Um I'm not taking a side within a court case, our role is as *amicus* so that is to provide clarification, help to the court in understanding the legal issues that are in dispute.

Senator:

So how can you clarify if you don't understand?

Dr Cody:

I understand the law. What I don't understand is the science around XX/XY unless the evidence is before the court, so my role is to assist the court with understanding the legal argument.

Senator:

From my reading of what you said in *Giggle v Tickle*, the position on biological males in female spaces seems pretty clear to the Human Rights Commission. Could you explain?

Dr Cody:

What would you like me to explain, Senator?

Senator:

What is your position?

Dr Cody:

On which issue?



Senator:

The position on biological males in female space, could you please explain the Human Rights Commission, your position on that?

Dr Cody:

What do you mean by “biological males,” Senator?

Senator:

Someone born as a male, XY chromosomes.

Dr Cody:

So, if they are a man and depending on which space they are wanting to enter then, And why that space has been created. If it's a special measure, for example, for ensuring equality for women, then there may be good reasons to exclude men from that space.

Senator:

What would be some of the reasons?

Dr Cody:

For safety reasons

Senator:

What sort of safety reasons?

Dr Cody:

Potentially at a domestic violence refuge. There may be a reason why, certainly there is a reason why men would be excluded from a domestic violence refuge for women

Senator:

female prison.



Dr Cody:

In female prisons. Also, that is, it's made for women and therefore men would be excluded from women's prison.

Senator:

Thank you.