

Submission to the Australian Human Rights Commission

14 August 2023

RE: LESBIAN ACTION GROUP TEMPORARY EXEMPTION APPLICATION

The Lesbian Action Group has a history of positive engagement and wider benefit – to lesbians and young lesbian women needing community and role models, and to minoritised groups such as First Nations peoples. A number of these are outlined in the application before you. LAG is not asking to hold events that are harmful to any group: they are asking to hold events that are beneficial to one particular group. Lesbians.

If lesbians, natal female lesbians, cannot meet without the presence of natal males, then gender identity itself becomes a form of conversion therapy – lesbian conversion therapy.

If lesbians cannot gather without the inclusion of natal men, gender identity becomes its own form of discrimination: discrimination against sexual orientation, where natal female lesbians are legally prevented from holding events based purely on sexual orientation – a protected characteristic.

If lesbians cannot gather without the inclusion of natal men, gender identity becomes a tool for exclusion rather than inclusion: the exclusion of female lesbians, who are sexually oriented to other female lesbians and not to a female gender identity.

Young lesbian women will effectively be taught that they are not permitted, by Australian law, to define their homosexuality as saying ‘no’ to natal men, male bodies with penises, male bodies with male bone structure and muscle development. They will be taught that Australian law does not respect their ‘no’ and their sexual orientation to natal women only. And they will not be able to publicly gather exclusively surrounded by other lesbian women who show them that this orientation is natural, nothing to be ashamed of, and worthy of dignity.

This is not what the CEDAW was drafted to support. It defines discrimination as an adverse action taken “on the basis of sex,” describes itself as the only human rights treaty that affirms the reproductive rights of women, and it differentiates between sex and the gender roles imposed upon the sexes that are shaped by culture and tradition. It cites these influences. The *Sex Discrimination Act 1984* (Cth) is drafted under the auspices of this Convention, and is therefore bound to the obligations contained in it. If natal female lesbians are denied the ability to meet as natal female lesbians, drawing a distinction based on sex and reproductive class, then I submit we as a country are failing in our commitment to these international obligations.

Men who experience a female gender identity and are attracted to women will still have events to attend with natal female lesbians. This application is for a specific purpose that does not exclude these broader events.

In the matter of *Jessica Hoyle and LGB Alliance Australia (Review of Refusal of an Application for Exemption)* [2022] TASCAT 142, the member, Cuthbertson SC, expressed concern that granting an exemption would require some sort of invasive “genital check.” It is true that public ‘genital checks’ would indeed be an invasion of bodily integrity and a breach of privacy. It is also true that the legislative changes made to legal identity documents, and the ability for an individual to alter them to reflect gender identity rather than natal sex, poses a challenge to all institutions providing sex-based services – but this is a challenge faced by *all* institutions. If we barred LAG and all lesbian female organisations from holding lesbian-only events and providing lesbian-only services on the basis of a hypothetical and hyperbolic need for ‘genital checks’, we would be ignoring centuries of sex-based services being delivered across many cultures and continents without the need for these checks, and we would be subjecting lesbian groups to an inconsistent and discriminatory standard that thousands of other sex-based services do not have to meet in order to operate.

In considering this application, the Commission will have regard to the following criteria:

- a. Is an exemption necessary?
 - An exemption is necessary in this case, as a distinction must be drawn between sexual orientation based on natal sex, and sexual orientation based on gender identity.
 - No permanent exemptions apply based on this distinction, and the distinction is not made clearly at law.
 - The requested exemption would seek to further the achievement of substantive equality between natal female lesbians and all members of the community who are not. This class of Australian is both minoritised and a literal minority: the Australian Longitudinal Study on Women's Health in 2017 recorded only 1% of the population sample reporting sexual attraction to other women exclusively, and only 1.4% in the 2016 HILDA Survey. Lesbian women also suffer intersectional disadvantage on account of their female bodies and status in society. The exemption supports the taking of a "special measure" pursuant to s7D of the Act.
 - Because of the vulnerability of the female lesbian class, it is not possible to achieve the solidarity, safety and community necessary if there is no legal right to publicly gather without the presence of heterosexual or bisexual people, or natal males.

- b. Is granting an exemption consistent with the objects of the *Sex Discrimination Act 1984* (Cth)?
 - An exemption would give better effect to the Convention than refusing an exemption would. Refusing an exemption would suggest a refusal to acknowledge women as a natal biological class, contrary to this acknowledgement in the Convention.
 - Granting a public, lawful exemption would indicate that natal female lesbians are equals in the eyes of the government, and are not symbolically erased by an over-emphasis on gender identity.
 - The requested exemption is not inconsistent with the objects of the Act. It does not target any sexual orientation for adverse treatment or exclusion: *all* sexual orientations other than lesbianism are excluded, by virtue of them not being the group towards which the special measure is directed. It also does not target any gender identity for adverse treatment or exclusion: gender identities are neither a basis for inclusion nor exclusion, as they are not material to this application. Any natal female lesbian is welcomed to the proposed events, regardless of her gender identity; natal males are not excluded on the basis of their gender identity, but rather on their *natal sex* not meeting the criteria established for the special measure.

- c. Is it appropriate to grant an exemption subject to terms and conditions?
 - I submit that the scope of the advocacy and community work done by the Lesbian Action Group is small, limited primarily to social engagement, and that no further restrictions are necessary to impose.

- d. What are the views of persons or organisations who are interested in or who may be affected by the outcome of an application?
 - I ask the Commission to use its power under s44 of the *Sex Discrimination Act* to grant the exemption requested by the Lesbian Action Group.