



To: Australian Human Rights Commission.

Attention: Lorraine Finlay, Dr Anna Cody, Emeritus Professor Rosalind Croucher, The Hon Catherine Branson QC

legal@humanrights.gov.au

3 October 2023

Dear Commissioners,

Re: AHRC's view of the Lesbian Action Group Application for a temporary exemption to the SDA.

The Australian Human Rights Commission not only requires lesbians to go through the indignity of pleading for the use of a public space (a right previously unquestioned), but in its preliminary judgement fundamentally ignores valid reasons as to why that right is necessary.

The Commission, in a startling piece far removed from reality, speaks of women with Cis and Trans 'experience', ignoring the sexed biological reality of male and female, and its central meaning in homosexual same-sexed attraction. It piously reminds us on precisely zero evidence that transwomen are the most vulnerable marginalised people ever etc., a statement that would be relevant if it were transwomen being told they could not congregate together, something which is not happening. Indeed, transwomen may happily gather to the exclusion of non-trans to zero accusations of discrimination from anybody. Instead, this is a fundamental attack on the rights of homosexual females to gather, organise, find love, and create their culture, without the imposition of any self-selected males who claim an identity as women.

The old homophobia with its slurs and demonisation would frankly be preferable to this appalling attempt at judicial blathering, where lesbians are being told their demands are "unreasonable" and that they are "discriminating". This is the world turned upside down. To portray the genuinely marginalised group, lesbians, as somehow prejudiced and discriminatory, purely for being lesbians and seeking to organise as such, and dress that portrayal up as virtue, is vile and absurd. This is misogyny and homophobia writ as legalese, and its implication, that lesbians existing in their natural state of same sex attraction is 'discrimination', is abhorrent.

The legal chicanery at paragraph 7.32 which infers the possibility of an exemption from liability if lesbians confine attendance to members of their own organisation or meet in private, is, in its stark approval of a culture and people forced underground, frankly jaw dropping in 2023 Australia.

The muddying of the clear waters of the Sex Discrimination Act with the insertion of the unverifiable concept of gender identity, and the Commission's failure in interpretation in prioritising gender, has led us directly to sex discrimination. Let this case serve as clear evidence of the now unarguable fact that once the concept of gender identity is on the statute books as an objective fact (rather than its proper place as belief), and its conflation with sex is allowed, the first people who lose out are homosexual women. These changes were in direct contradiction to Australia's signatory obligations under CEDAW, with particular reference to Article 1 which specifies the discrimination women face as sex based. The Commission would be well advised to review its understanding of these obligations prior to any further findings.

That such legislative changes to the meaning of sex and woman were made without public consultation or referendum, despite the profound and fundamental affect it has on the lives and human rights of women, girls, and lesbians, is appalling and democratically negligent, and it reveals a pervasive cultural disregard for the humanity of Australian women.

The Commission's decision would set a policy precedent that any single sex event is discriminatory and therefore unlawful. Removing the right of women to hold single sex events is an encouragement to men and boys to violate and expunge women's boundaries. This is already an encouragement to violence. It follows that more violence against women and girls would be the outcome of such policies. Ruling that single sex gatherings are discriminatory and unlawful is a judicial call to VAWG.

The unverifiable and subjective belief in a gender identity should not be a state mandated belief. Recent judicial findings in the UK have found that a belief in the objective and verifiable existence of the biological sex binary is a belief 'worthy of respect in a democratic society'. Refusing to feign a belief in gender identity as an organising principal for women and lesbians should not be classed as discrimination. To do so makes it a state mandated belief, something that should be intolerable in secular Australian society.

This proposed decision is particularly ironic given homophobia is often understood to be a subset of sexism and sex role expectations. The main basis on which homosexuality is culturally opposed is the way in which same sex attraction is understood to be an individual failure to properly perform cultural expectations of manhood and womanhood. The expectation of heterosexuality and reproduction is a significant aspect of sex or gender roles. This 'failure' is particularly punished in women who do not sufficiently centre men in their personal universe, and consequently fail to perform their required role as wife, helpmate and mother. This is clearly seen in the nature of insults levied against women who do not perform womanhood as expected, particularly gender non conforming lesbians. In particular, this frame of homophobia as a subset of sex role expectations makes the refusal to apply SDA protections to homosexual women most appalling. It makes it apparent we are neither protected as females NOR as homosexual females. While other groups are increasingly allowed to set social expectations and understandings of themselves, lesbians remain required to engage in socialised niceness, including everyone in our gatherings to our own detriment.

In summary this judgement is a bad joke. The "reasons" do not make even a passing attempt to address the concerns of the applicant or their supporters, and display a startling naivety. Well-founded fears of violence are dismissed. The state now decides what a man and woman is without care or consequence, it tells lesbians that gathering together is unreasonable and discriminatory, and attempts to mollify their oppression with suggestions to move underground and back in the closet.

This decision if ratified, will be a blatant state sanctioned act of homophobia and misogyny, and is a virulent attack on lesbian political assembly and emancipation.

This submission is made for the historical recording of our protest at the judicial and legislative oppression of lesbians in Australia.

Signed: Incandescent Women

Freya Heidrun, Lesbian, 50, Australian.

Evita Perono, Woman, 48, Australian.

Anne Agostini, Lesbian, 40, Australian.

JJ. Ellie O'Neil, Woman, 34, Australian.

Lenore Douglass, Lesbian, 47, Australian.

The signatories above have chosen pseudonyms to shield them from both current and future harassment, persecution, homophobia and misogyny - sadly an increasingly common corollary to any situation where women express defence of their human rights.