

Lesbian Action Group response to Australian Human Rights Commission Preliminary View with regard to their application for a temporary exemption under the Sex Discrimination Act (1984)

Tuesday October 3rd 2023

To whom it may concern

The Lesbian Action Group strongly appeals to the Australian Human Rights Commission to review and overturn their preliminary view on our application for a five-year exemption under the Sex Discrimination Act (1984) to run public events for female-born lesbians.

Definitions

Within this preliminary view there is a muddle of confusion over terms used, and therefore the potential for misrepresentation and misinterpretations. We believe that terms must be clear and unambiguous. In this response to the Commission we use terms and their definitions as follows:

Sex = pertaining to biology ie reproductive system, gametes, chromosomes etc, which is binary and immutable, determined at conception and observed in utero via scans and at birth.

Sex is also the basis for the Sex Discrimination Act because it is recognised worldwide that females have historically been and still are discriminated against in any numbers of ways, and are vulnerable to male violence, to sexual harassment and rape, to domestic violence, to exploitation and trafficking, to financial and employment disadvantage, to limits because of their reproductive and mothering role, to limits because of the historical structure of society around male dominance.

Female = biological sex; therefore 'female-born' refers to biological sex

Male = biological sex

Gender identity = a feeling about how a person wants to present in the world along the sex stereotype spectrum ie ultra masculine to ultra feminine. This is socially

constructed depending on the culture, the environment, the societal norms and can change over time with age, maturity, social conditions, personal circumstance.

Woman = a gender identity (for the purposes of this submission only, as the word and meaning of 'woman' has been corrupted and is disputed)

Man = a gender identity (for the purposes of this submission only)

Transgender = gender identity / identifying as the opposite gender

ie a biological male who identifies as a woman or a biological female who identifies as a man

ie **transwoman** = trans-identified male; **transman** = trans-identified female

Sexual orientation = the sexual and romantic attraction felt exclusively to the opposite sex, exclusively to the same sex, or at different times to either sex. (SDA 2013)

Lesbian = a female exclusively attracted sexually and romantically to females; we use the term 'lesbian born female' throughout the exemption application, and this response, even though we believe it to be a tautology, in order to be crystal clear to the Commission about our definition of lesbian

Gay male = a male exclusively attracted sexually and romantically to males

Bisexual = a male or female attracted to both females and males

Queer = a male or female of any sexual orientation or gender identity that identifies as queer. This however is not a category of vulnerable or protected people recognised in the Act, so in our view should have no place or weight in this preliminary view. Further, it is considered a slur by many in the gay community.

Cisgender = this is not a term we recognise. We understand that for some it means a person who 'identifies' as the same sex they were conceived as. We believe this to be unnecessary nonsense and unfounded in science. We maintain that we are not born with a gender. We are born with a sex and that is Immutable throughout our lives.

LGBTQIA+ = an umbrella term used to conflate the needs, concerns and representation of a number of disparate groups, with very very little in common. To support, fund and listen to the LGBTQIA+ 'community' does not indicate an equal amount of resources go to each of those groups represented in that acronym, with lesbians being demonstrably the group which is the least represented, advocated for, funded, resourced, protected and listened to. (Appendix 6,7,8)

We would like to address your ‘Considerations and Reasons for Preliminary View’ to deny our exemption, with the following.

A

In 7.30 and 7.31 the Commission states that *‘restricting access to a public event ...would amount to unlawful discrimination under the SDA on the ground of at least sexual orientation and gender identity in the provision of goods and services (s 22SDA).’*

A1 We note that you do not include discrimination on the basis of sex in your preliminary view, just sexual orientation and gender identity.

A2 We further note that there is no definition of sex in the Act, and as this is a Sex Discrimination Act, we find that concerning and puzzling. In this response we use the commonly understood definition of sex which is the biological reality of being born either male or female.

A3 In the light of this exclusion of sex discrimination we conclude that the Commission does not see this application as pertinent to the exclusion of men from our events, and would therefore agree to us excluding ‘Heterosexual, Bisexual and Gay males’.

A4 With regard to Heterosexual and Bisexual Biological Females, we would have no way of telling their sexual orientation, so being female, we would not exclude them. We would of course hope that they would self-exclude on the basis of sexual orientation, out of respect for our boundaries and expressed wishes.

A5 Similarly with regard to transgender or queer people who are born female and their sexual orientation is lesbian i.e biological females attracted solely to other biological females, we would not wish to exclude them.

A6 With regard to transgender and queer people who are biological males, whatever their claimed gender identity or sexual orientation is, they would logically fall under the category of male in A3 above, and would therefore, because of their sex, not come under this ruling as being discriminated against.

A7 We further note that it is those opposing the exemption that bring up the notion of sub-categories of women. We consider this to be fanciful nonsense. We reiterate that in this context ‘woman’ is a gender identity. Lesbians are not a gender identity.

We are discriminated against, and therefore seek protection from, discrimination on the basis of our sex (female) and sexual orientation (lesbian/ female homosexual).

So it would appear that the Commission's concerns about discrimination in 7.31 are without merit and we request a temporary exemption on that basis.

A7 Further, we would like to examine the term 'public event' as implied in this preliminary view. The Lesbian Action Group has applied for an exemption to publicly advertise our event to lesbians born female. It does not say we wish to run a 'public event'. On the contrary, we wish to run an event for lesbians born female, not the general public. We trust that this was a genuine misunderstanding on the Commission's part and not an intentional misrepresentation to skew our case.

B

In 7.32 we note that the Commission has explained that *s 39 permanent exemption for voluntary bodies* would 'likely' allow us to become a membership based body, able to run events for our members.

B1 We thank you for this suggestion, however, as we outlined in our application, twice as a membership based body, we have been challenged, and taken before state tribunals, (2003 VCAT and 2005-09 SAEOC) costing us financially, emotionally and in time wasted, and leading to us deciding to go underground with our events for the past two decades.

B2 If we get this exemption it will mean *'Actions and circumstances covered by an exemption are not unlawful under the Sex Discrimination Act while that exemption is in force. This means that if a temporary exemption is granted the activities covered by it cannot be the subject of a successful complaint under the SDA.'* (s 44)

B3 This of course would give us ample opportunity, without threat and fear of litigation, to:

- freely rebuild our decimated lesbian community nationally
- make public and visible a place of support to young, socially isolated and other vulnerable lesbians
- come back out of the closet we have been in for the past two decades
- apply for funding to support our community
- foster a sense of pride and well being amongst the lesbian community.

For these reasons we ask you to reconsider your preliminary view.

C

In 7.33, we note the Commission's acknowledgement that *'This is a complex issue where opinions are divided.'*

C1 However the Commission does not elaborate on the 'complex issue' nor the 'divided opinions'. This is of concern because it makes it unclear as to how the Commission defines the 'complex issue' and weighs the 'divided opinions'.

C2 And whether in fact the Commission understands the complexity of the issue, or how indeed the Commission defines the complexity of the issue.

C3 What are the divided opinions? How do they fit within the scope of the Act? Is there a conflict there in terms of the Act? How are the differing opinions weighed in terms of the Act, or not?

C4 There are a lot of questions to be answered. We feel that this lack of clarity and accountability from the Commission is of grave concern, discredits the Preliminary View, and leaves the Commission open to suspicion of bias.

D

In 7.34 and 7.35 we thank the Commission for acknowledging *'that lesbians in Australia have faced structural and entrenched discrimination, both historically and in the present day.'* And that you agree *'that it may be important and beneficial for lesbians to gather together as a community to celebrate their culture and discuss issues of special relevance to their community'* and that many submission writers *'...seek to preserve spaces for lesbian women based on biological sex at birth... and express concern that the protections against gender identity discrimination have threatened their ability to do so.'*

D1 This, we would strongly suggest is a compelling reason to grant the exemption. An exemption would go a long way to redressing this historical and present day structural and entrenched discrimination against lesbians on the basis of our sex and our sexual orientation.

D2 In the light of this acknowledgement it is difficult to understand the Commission's rejection of our application. Surely the failure to grant it could itself be seen as an act of discrimination against a vulnerable, protected minority group.

E

In 7.36 and 7.37 ...*the Commission must have regard to the circumstances of each individual case and balance the relevant factors. Given the significant legal consequences for potential complainants, the Commission must be satisfied that an exemption is appropriate and reasonable, and persuasive evidence is needed..'*

E1 Firstly can we examine who might be the 'potential complainants'.

E1a Heterosexual, bisexual and gay biological men – do you really think they would want to come along to an event for lesbians born female? If so, one would have to ask why. Would their complaint really have legs as a case of discrimination?

E1b Heterosexual or bisexual biological females, or trans-identified or queer biological females – as we have outlined in A4 above, we would have no way of knowing their sexual orientation so would rely on their own integrity to self-exclude. Would they bring a case of discrimination against us? We doubt it.

E1c We are left therefore with trans-identified biological males, who say they are lesbian, as the potential complainants.

- This is the group of people that has threatened and enacted legal complaints against us for two decades or more.
- This is the group of people who has contributed hugely to the decimation of lesbian culture, spaces and community in Australia.
- This is the group of people we need protection from under the Sex Discrimination Act in the form of a temporary exemption on the basis of our sex (biological female) and our sexual orientation (lesbian).

We ask the Commission if it is really contemplating refusing our application on the basis that it might discriminate against this particular litigious, ill intentioned group of people?

We also ask the Commission if it has taken into *account the significant legal consequences* for Lesbian Action Group and the lesbians we are advocating for if the exemption is not granted. Our past experience firmly demonstrates the consequences of legal actions against us ie the further decimation and erasure of lesbian spaces, community, culture and rights, and the propensity of those opposing us to use that avenue of attack against us.

E2 On the issue of *persuasive evidence that granting the exemption is appropriate and reasonable and justified* we suggest that we provide ample evidence in this response and further in an addendum to this response. Responses from other interested parties will also provide you with that evidence.

F

In 7.38 and 7.39 the Commission notes *'the event is intended to be a (lesbian) community event, involving singing, dancing, celebrations and the discussion of ideas. It aims to build a sense of pride, recognition and wellbeing amongst the (lesbian) community.'*

F1 We seek to hold events for lesbians to celebrate International Lesbian Day, and other occasions. We want to be able to reach out publicly to those lesbians who have been isolated because of homophobia, discrimination, location, youth, stigmatising of being lesbian among the young, harassment, vilification, sexual abuse, or just not having lesbian spaces to go to. We want to provide a safe and welcoming space for them and us to gather in celebration of our culture and community - a culture and community that is unique to us as females and as lesbians.

F2 The Commission has a concern that we would be *excluding same-sex attracted women who are transgender, bisexual and queer for whom that celebration may be particularly relevant.*

F3 As we have pointed out previously, transgender, bisexual, and queer people who are born female and are lesbian would be welcome. We ask

- Why would anyone else want to come?
- And why would the day be 'particularly significant' for them?
- Why would they wish to disrespect our boundaries?

Indeed all these questions and considerations are the reason we need the protection of this temporary exemption and the rights it gives us.

F4 If we were organising an event to *showcase* lesbian culture and community it would be different of course. That would be an event when we would welcome all others to come and celebrate with us and appreciate us.

We cannot do this though until we have had the opportunity to publicly gather together en masse as a community again, an opportunity that has been denied us for a long time now.

We can't build or rebuild a community in a closet, with those who wish us harm beating at the door.

(See the addendum of evidence [9.] for examples of harm wished upon us.)

G

In 7.40 the Commission *notes that some submissions in favour of the exemption refer to the risk of violence or harassment if the event is not restricted as requested...* and asks for *compelling evidence* to support this.

G1 We refer the Commission to the personal testimonies of the women submitting letters. They are powerful and compelling testimonies. We wonder if the Commission is doubting the veracity of these testimonies, and if so, on what grounds.

G2 We refer the Commission to the montage of photos in Addendum 9. This is the level of hatred and intimidation we face in public life. We find this to be compelling evidence of a very real threat to our safety.

G3 We note that it is the letter writers opposing our need for an exemption who brought up the need for security and enforcement. (Q+Law, Equality Australia) We suggest that this indicates a clear intention to disrupt, infiltrate and intimidate on their part, or at the very least an expectation that that will happen. Surely this is persuasive evidence as to why lesbians are fearful.

H

In 7.41 The Commission *is not persuaded it is appropriate and reasonable to:*

- *Make distinctions between cisgender and transgender women based on their cisgender or transgender experience, or among same-sex attracted women based on the exclusivity of their same-sex attraction at an event of this kind or*
- *Exclude same-sex attracted women who are transgender, bisexual and queer from an event of this kind'*

H1 We submit that this particular section is very unclear as to its meaning. The Commission uses words such as *same-sex attracted women based on the exclusivity of their same-sex attraction* by which we are assuming, but aren't clear, that you mean bisexual women. Or do you mean trans-identified females who may or may not be attracted to other females, or trans-identified males who may or may not be attracted to other males or to females? Or even transgender people who identify as bisexual?

H2 You use the terms cisgender and transgender women, but do not define them. If indeed you are saying that 'cisgender woman' means born female and 'transgender woman' means born male, then we would suggest that the distinction is already made. The experience of growing up female as opposed to growing up male is distinctly different – indeed it is the reason the Sex Discrimination Act and CEDAW is necessary.

Males in our society grow up with male privilege; with the benefit of puberty endowing them with strength and other body features that are far different to females; without the experiences of menstruation, body shaming, sexual harassment and the effects of historical discrimination that females do. To name but a few differences.

H3 As indicated above (in S A) we do not seek to exclude transgender, bisexual or queer **females** who are lesbian, from our events.

H4 We trust that we have outlined clearly why an '*event of this kind*' is necessary in the circumstances in order to

- undo decades of discrimination and intimidation,
- rebuild lesbian community,
- provide a safe space for lesbians to gather without threat.

I

In 7.42 *The Commission notes that the granting of this exemption may lead to further exclusion and discrimination against same-sex attracted transgender women. Transgender women are a group who have and continue to experience discrimination, harassment and social exclusion.*

11 The Commission has acknowledged in 7.34 and 7.35 of their preliminary view that lesbians are also a group *'that have and continue to experience discrimination, harassment and social exclusion'* just like transgender women.

12 We would submit that it hardly seems appropriate to discriminate against one of these groups in order not to discriminate against the other. Which one do you choose?

13 We suggest in denying this exemption, the Commission is setting up a hierarchy of most discriminated against, which surely is not an intention of the Act.

14 If evidence is needed as to levels of discrimination against the two groups we offer the evidence in addendum 7 and 8 below which clearly shows that lesbians

- get less funding than transgender people
- have fewer social opportunities than transgender people
- have fewer meeting spaces open to them than transgender people [ref Victorian Pride Centre in (7) below, and the refusal of a booking to LAG to celebrate International Lesbian Day]. In relation to this we submit that the VPC has itself discriminated against Lesbian Action Group on the basis of sex and sexual orientation in refusing the provision of their facilities to us. We are contemplating following this up as a complaint against them
- have fewer health services specific to their needs than transgender people (7)
- have less government backing and endorsement than transgender people
- have fewer resources available to them than transgender people
- by virtue of their biological sex, as well as their sexuality, face more harassment and violence than transgender people



Further, we respectfully request compelling and persuasive evidence to the contrary, as the Commission seems to have taken the word, without evidence, of those opposing the exemption.

J

In 7.43 the Commission notes that the *Lesbian Action Group did not describe how it proposes to limit the event, and any future events, to 'lesbians born female'*.

J1 We did not do that because it did not occur to us that we would 'police' people at the door. We do not intend to do so.

J2 We have applied for this exemption so that we can publicly advertise and legally run events for lesbians born female. We hope that people would respect that. And respect us.

J3 We acknowledge that if people choose to disrespect that, then we have little recourse to exclude them. We do not propose to employ security, to vet or question people at the door, to intrude on privacy or dignity, or harass.

J4 If however any attendees are disruptive, display inappropriate behaviour, or are violent, we would notify the relevant authorities.

J5 Hence the accusations of us potentially sexually harassing people and acting inappropriately are totally unfounded and mendacious, as well as insulting to the extreme. And, we would suggest, reflect the intentions and methods of those opposing this exemption rather than our own, as they are the ones who raised the issue (Equality Australia, Q+Law).

K

In 7.44 *The Commission notes that '...future events... are not specified in detail' and the Commission does not consider it reasonable to grant a five year exemption in such broad terms without details of the events.*

K1 We submit that we have given fulsome descriptions of the events we wish to organise in our original application, if not the fine details.

K2 We have said we want to 'provide regular lesbian born female only events... which will include entertainment provided by lesbian writers reading their work, speakers on a range of subjects, music, singing, skits, dancing, food and refreshments... all of the lesbians involved... will be lesbians born female to provide an example to young lesbians...'

K3 It is true that we do not have a five year timetable mapped out, and if that is one of the conditions for the exemption we would certainly discuss it with the

Commission and supply it if required. Although we would suggest that very few groups or organisations would have a five year event plan in place, so we wonder if this might be an unreasonable and/or discriminatory condition to impose.

K4 We consider the need for five years to rebuild a decimated community a completely reasonable ask. After all it is twenty years since we have been able to meet publicly and in numbers, or to do outreach to those lesbians in need.

K5 It is for that reason we ask the Commission to grant us a temporary exemption for a **full five year** period to do the work we need to do.

L

In 7.45 the Commission *does not consider it reasonable to grant a five-year exemption in such broad terms without details of the events and the opportunity for submissions from interested parties to engage with the question of whether it is reasonable in the circumstances to discriminate on the basis of sexual orientation and gender identity at these (future) events.*

L1 Again we note the absence of sex discrimination from this section. And take from that, that the exclusion of males from our future events is not contested.

L2 Therefore, as previously established in A above, we are actually only talking about transgender and queer people who are biological males, but claim their sexual orientation to be lesbian.

Clearly this group would not fit comfortably within the female born lesbian community, and indeed we would question their motives for wanting to do so.

L3 If they chose to come along despite our wishes however, then as also previously established, we acknowledge that we would not have any safe or respectful recourse to exclude them.

We are going through the legal channels in good faith to be able to rebuild our community and support lesbians. We are appealing for respect and integrity from all parties to honour this exemption. The Lesbian Action Group certainly would not endorse intimidation, vilification or disrespect in any way.

L4 Further, this section (7.45) implies that the Commission believes it to be just and reasonable to require lesbians born female to apply for an exemption, to ask permission from 'interested parties', and to go through this lengthy and demeaning process **every time** we wish to organise an event. We submit that this would be a

clear and unmistakeable act of discrimination against us on the basis of our sex and our sexual orientation.

We sincerely trust that this is not your intention.

We, the Lesbian Action Group, therefore respectfully and strongly, request that you overturn your preliminary view, and grant us a temporary five-year exemption to organise publicly advertised events for lesbians born female.

Jean Taylor

Carole Ann

Nicole Mowbray

Sarah Yeomans

Jeannete Carrison

Elizabeth Matthews

Elizabeth Smith

Celia Sexton

APPENDIX

Evidence

In several places, the Commission asks for '*persuasive or compelling evidence*' to support our application and justify the exemption. We have asked people responding to this preliminary view to send you evidence. We hope you will find it persuasive and compelling. We also offer the following:

1. We note that there are 15 organisations and 123 individuals who supported the application and gave personal testimonies as to why it is needed. This, we contend is persuasive evidence in its own right. We believe you will receive even more evidence of this nature in the responses to the preliminary view. We sincerely trust that the Commission is taking these testimonies from women (and men) extremely seriously.
2. There was also a survey sent to readers of LOTL, a Lesbian Magazine with 32K followers on Facebook, asking if they supported the LAG exemption application. The response was 96% yes. We realise that we do not speak for every lesbian, but this survey does indicate overwhelming need and support for our application. [\(9\) Facebook](#)
3. We draw the Commission's attention to the panic that was instilled in those individuals who wrote support letters, when they received the ill-advised and insensitive email about a FOI request. This was the fear and panic of a group of women who have been intimidated and threatened into silence, and have at last spoken up, only to be put in fear again. The fear of malicious intent to 'out' them or to target them was a real fear based on real experiences of harassment, intimidation, gaslighting and actual violence. Your Paralegal and Legal Resource Officer, [REDACTED] will no doubt corroborate this, as he was at the receiving end of the panic.
4. Five members of our initial thirteen members of Lesbian Action Group resigned when they were asked to put their name publicly to the application. How can this be possible in 2023? Why do you think they are afraid? This is compelling evidence that something is not right in Australia for lesbians born female.

5. As evidence of the decimation of the lesbian communities over the past two decades we submit <https://www.lgballiance.org.au/lost-lesbian-space> We are sure you have already seen this. Please take the time to study it carefully and digest the information. It is shocking. This very clearly shows the dire need to be able to rebuild our community by publicly holding events, running groups, and reaching out to lesbians specifically.
6. Financial discrimination. For decades now lesbians born female have been excluded from funding sources. All funding bodies currently require groups and organisations to include biological males who identify as lesbian in their membership or remit. This has contributed immensely to the tragic decline of lesbian events and spaces. Please explain to us how this financial discrimination against lesbians born female has been allowed to go unchallenged.
7. For examples of discrimination against lesbians we do not have to look further than the Victorian Pride Centre.

On an examination of their website we have found the following information:

In their directory they have listed the following groups or organisations:

- 87 LGBTQI+
- 26 unspecified
- 17 trans /gender diverse /gender identity / non binary
- 11 queer
- 7 HIV
- 5 gay men
- 2 bisexual
- 2 intersex
- 2 women and gender diverse
- 2 lesbian (a tennis group and a Jewish group)
- 1 gay and lesbian

We would like to point out that this clearly shows that transgender /queer /gender diverse people are very comprehensively catered for. There are ample support groups, advocacy groups, events, services, and organisations catering to their needs, and many of them funded by government or by grants.

Lesbians on the other hand have a distinct and evident lack of support and access to services, particularly if they want to base their needs in biological reality. Witness the Victorian Pride Centre refusing our booking to celebrate International Lesbian Day there. How are they allowed to discriminate against us in that way?

As outlined in other submissions you will have received note that the VPD has no hesitation in catering to a trans only event, T4T; it also supports a group called Seahorses which is specifically for trans people and vets its members. We in fact support their right to do that, but we wonder why the VPC shows such hypocrisy in denying us our right to do the same.

<https://melbournefringe.com.au/event/t4t-a-transgender-showcase/>

The fact that most of the letters opposing our exemption application came from LGBTQIA+ organisations, who are supposed to be speaking FOR us not against us indicates, we believe, an unhealthy and unhelpful level of lesbophobia and misogyny within the LGBTQIA+ 'community' itself. It is a community we feel excluded from and abandoned by.

The forced teaming with LGBTQI+ in the name of diversity and inclusion does not allow for the huge differences between the groups represented in that acronym. Each group needs space and opportunity to create and build its own community. In that way, we can come together as equals, not competitors or adversaries.

8. We also draw your attention to this study from LGBAA

<https://www.lgballiance.org.au/news/mainstream-lgbtq-orgs-failing-lgb>

The above persuasive and compelling evidence clearly shows the discrimination lesbians born female endure. We sincerely hope the Commission also finds it persuasive and compelling.

9 With regard to the harassment, violence, intimidation and threats lesbian born females face in mixed spaces, we submit the following photographic evidence. This is the level of opposition, misogyny, threat and hatred we are facing. Many of the letters opposing our application likely came from transgender activist and their supporters such as these. Note: TERF is a derogatory term with which the trans-community label anyone who believes in the science that biological sex is binary and immutable.



MrMenno 🇳🇱 🎵 🗨️ @MrMennoTweets · 18m
8 / "Be Kind"

#LetWomenSpeak
#LetWomenSpeakNL



10 We also submit the following supplied to us by **Lesbian Gay Bisexual Alliance Australia**, which, unlike LGBTQIA+ organisations, does represent us and stand up for our rights.

We are confident the Australian Human Rights Commission will already be familiar with these obligations.

International Human Rights Charters Australia is signed up to:

OUR RIGHTS under the **International Covenant on Civil and Political Rights**, Articles 17, 19(2), 17, 21, 22, 26, 27

- The right of freedom of expression, oral, written on all media,
- the right not to be subjected to unlawful attacks on honour and reputation,
- the right not to be discriminated against based on sex, which includes same-sex sexual orientation,
and equal protection under the law,
and freedoms of peaceful assembly
and association with own cultural group
and equal protection under the law to do so.

OUR RIGHTS under **CEDAW - the Convention on the Elimination of All Forms of Discrimination Against Women**,

- Article 1 - the right of women not to have restrictions placed on them based on their sex, which nullify their fundamental human rights to enjoy freedoms in political, economic, social, cultural, civil or any other field.
- AND Article 2(b)(c) - the right for women to have laws that protect them by prohibiting discrimination against women, and competent government and public officials who are effective at protecting women from discrimination.
- AND Article 3 - States are to promote the advancement of women and their enjoyment of fundamental freedoms across all political, economic, social, cultural, civil or any other fields