

Submission in support of the Lesbian Action Group's application

I'm an Australian lesbian who is just old enough to remember the 'Lesbian Golden Age' where lesbians were allowed to meet freely in Australia. I remember the festivals, the womyn's spaces, the markets, the pool parties, the workshops, the concerts, the dances, and so much more of the vibrant lesbian community that once existed in this country. I also remember the confusion and the despair I felt as a young woman when the lesbian community disappeared, forced underground by a society seemingly hellbent on entrenching lesbophobia while pretending such a thing doesn't even exist. The irony is not lost on me that, as soon as I had the legal right to marry, my right to even just meet women like me was gone. What a great little party trick that was, taking one form of lesbophobia and replacing it with another. Amazing.

The effective ban on lesbian-only events in Australia is one facet of a larger problem with systematic lesbophobia in this country, but it is one of the more important facets. After all, if lesbians cannot gather and organise, how can we have community? How can we enjoy social and cultural freedoms? How can we hope to combat the powerful forces behind lesbophobia? There is a dire need to rebuild the lesbian community and allowing lesbians to just gather and organise is crucial to this. That is why it is imperative that the Australian Human Rights Commission allows the Lesbian Action Group to hold lesbian-only events.

I would now like to outline my legal arguments in support of this position:

A) *Is an exemption necessary?*

1) Is there an arguable case that the activities subject of the application constitute discrimination contrary to the Sex Discrimination Act?

It can certainly be said that such cases have been argued in regards to the present application by the Lesbian Action Group. Lesbians have, for decades now, been prevented from holding lesbian-only events by the ever-present threat of harassment, abuse, assault, threats and litigation.¹ While such legal threats against lesbian-only events might be made in regards to sex,² sexual orientation³ and gender identity⁴ it is particularly the characteristic of gender identity that has been weaponised against women, and especially against lesbians.

Claims of women discriminating on the basis of gender identity simply for excluding males from female-only spaces have even made their way to the courts.⁵ Perhaps most famously, the womyn's festival, Michfest, was shut down after accusations of discrimination on the basis of gender identity led to harassment and legal threats.⁶ A prominent trans activist who spearheaded this campaign against Michfest later went on to murder a lesbian couple and their son.⁷ This environment of extreme hostility towards women, lesbians and our exclusive spaces, both in Australia and globally, has time and again led to far more than just legal threats. The legal system, and ironically anti-discrimination laws, have been just one of many tools used to oppress lesbians.

Lesbians in Australia have previously tried to protect themselves from this sort of lesbophobic discrimination at law by going through the due process of obtaining exemptions from anti-discrimination instruments so we can safely hold lesbian-only events. Such applications have been

¹ Lesbian Action Group, Application to Australian Human Rights Commission, *Application for Temporary Exemption Under the Sex Discrimination Act*.

² *Sex Discrimination Act 1984* (Cth), s5.

³ *Sex Discrimination Act 1984* (Cth), s5A.

⁴ *Sex Discrimination Act 1984* (Cth), s5B.

⁵ *Tickle v Giggle For Girls Pty Ltd* [2023] FCA 553

⁶ Jocelyn MacDonald, 'Setting The Record Straight About Michfest', *AfterEllen*, 24 October 2018.

⁷ Jo Bartosch, 'The Shameful Silence Over Dana Rivers', *Spiked*, 25 June 2023.

made in line with the object and purpose of anti-discrimination laws and yet these applications have still been denied.⁸ Most recently in Tasmania, such an application to hold a lesbian-only event was denied because the tribunal incorrectly insisted that sex and sex characteristics were irrelevant at law,⁹ that there was no evidence male violence against lesbians is real¹⁰ and that lesbians continuing to put up with male violence at our events was merely “irksome”¹¹ rather than the serious and potentially life-threatening concern it in fact is.

It can therefore be said that this criteria has been met and that an exemption is necessary, since arguments have repeatedly and successfully been made to stop lesbians from holding lesbian-only events.

2) *Can the circumstances be brought within the ‘special measures’ provision of the Sex Discrimination Act?*

Firstly, given the climate of extreme hostility against lesbians and the impact that litigation has already had in destroying lesbian-only spaces in Australia,¹² I think it’s necessary for the Australian Human Rights Commission to make a declaration on the matter of lesbian-only events, even if such events could be brought within the special measures provision of the Sex Discrimination Act. This is necessary to protect lesbians from the vexatious threats of litigation that have already had such dire impacts on our community.

That said, I do believe that lesbian-only events can be brought within the special measures provision of the Sex Discrimination Act as such events work towards the substantive equality between both a) men and women,¹³ and b) people who have different sexual orientations.¹⁴ Special measures can be used to address demographics who face, or have faced, structural and entrenched discrimination, as is the case for Australian lesbians both historically and in the present day.¹⁵ The special measures provision acknowledges that disadvantaged groups, like lesbians, face structural barriers and that simply adhering to the hard letter of the law is often not enough to effectively eliminate discrimination against them. This should be an important consideration for the Australian Human Rights Commission in either granting an exemption to the Lesbian Action Group or making a declaration that lesbian-only events are within the scope of these special measures.

⁸ Lesbian Action Group, Application to Australian Human Rights Commission, *Application for Temporary Exemption Under the Sex Discrimination Act; Jessica Hoyle and LGB Alliance Australia (Review of Refusal of an Application for Exemption)* [2022] TASCAT 142.

⁹ *Jessica Hoyle and LGB Alliance Australia (Review of Refusal of an Application for Exemption)* [2022] TASCAT 142, 53. Lesbian Action Group, Application to Australian Human Rights Commission, *Application for Temporary Exemption Under the Sex Discrimination Act*.

¹⁰ *Jessica Hoyle and LGB Alliance Australia (Review of Refusal of an Application for Exemption)* [2022] TASCAT 142, 52, 83, 88.

¹¹ *Jessica Hoyle and LGB Alliance Australia (Review of Refusal of an Application for Exemption)* [2022] TASCAT 142, 94; Jo Bartosch, ‘The Shameful Silence Over Dana Rivers’, *Spiked*, 25 June 2023.

¹² Lesbian Action Group, Application to Australian Human Rights Commission, *Application for Temporary Exemption Under the Sex Discrimination Act*.

¹³ *Sex Discrimination Act 1984* (Cth), s7D(1)(a).

¹⁴ *Sex Discrimination Act 1984* (Cth), s7D(1)(aa).

¹⁵ Julia Miller, Clive Moore, Robert Reynolds, Shirleene Robinson, Daniel Vaughan and Graham Willett, *Australian lesbian and gay life stories* (National Library of Australia, 2013-2015); Sue Wills, *Inside the CWA: The Other One* Journal of Australian Lesbian Feminist Studies 4 (1994); Denise Thompson, *Flaws in the Social Fabric: Homosexuals and Society in Sydney* (Sydney: Allen and Unwin, 1985), Chapter 3, ‘Lesbians and the Gay Movement’; Judith Ion, *Degrees of Separation: Lesbian Separatist Communities in Northern New South Wales, 1974-95* (Allen and Unwin, St Leonards, 1997); Lorene Gottschalk *From gender inversion to choice and back: changing perceptions of the aetiology of lesbianism over three historical periods*, Women’s Studies International Forum, Vol. 26, No. 3.

B) Is granting an exemption consistent with the objects of the Sex Discrimination Act?

1) Consistency with the object and spirit of the Convention on the Elimination of All Forms of Discrimination against Women

At the present Australia is currently failing in its obligations to eliminate discrimination against women who are lesbians. Rather, Australia's current legal system is actively working to entrench discrimination against lesbians by effectively banning lesbian-only events. Social and cultural freedoms for women are a central component of the Convention¹⁶ and so the only way to comply with the object and spirit of the Convention is to grant the Lesbian Action Group's application and allow them to hold lesbian-only events.

Lesbians, being women, suffer from the age-old patriarchal problem of people feeling entitled to our spaces, our time, our resources, etc. This entitlement is compounded by the fact that lesbians are very small minority group,¹⁷ even within the LGBTQ+ community itself.¹⁸ Being unable to exclude males, heterosexuals and bisexuals from lesbian events has resulted in such events being overrun by these far larger demographics.¹⁹ If only %3 of males, heterosexuals and bisexuals show up to a lesbian event they will still outnumber the lesbians there. Presently, lesbian events in Australia are no longer by or for lesbians, simply because even at our own events we are a minority.

The impact of discrimination on rural women is another important consideration in respect of the Convention.²⁰ The ban on lesbian-only events in Australia is even more dismal for rural lesbians, who face higher levels of homophobia²¹ and who have fewer opportunities to find a lesbian support network.²² Rural lesbians often rely on advertising of lesbian events and need to travel some distance to find their community. At present, advertising a lesbian-only event is against the law in Australia,²³ so the best a rural lesbian can hope for is to see a "lesbian-themed" event advertised which, as described above, will be mostly attended by people who are not lesbians.

Regardless of whatever the Sex Discrimination Act's purpose is these days, it's actual effect has been to restrict lesbians from gathering, organising, finding community and knowing we're not alone.²⁴ The actual effect of laws is just as important as their purpose under the Convention.²⁵ The only way to comply with the Convention *in effect* is to grant the Lesbian Action Group's application. Continuing to restrict lesbian-only events would be flagrantly against the object and spirit of the Convention.

¹⁶ *Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 18 December 1979 (entered into force 3 September 1981), art 1, art 3.

¹⁷ Australian Institute of Health and Welfare, *Australia's Health 2018*, Australian Government <<https://www.aihw.gov.au/getmedia/61521da0-9892-44a5-85af-857b3eef25c1/aihw-aus-221-chapter-5-5.pdf.aspx>>

¹⁸ Gary J. Gates, 'How Many People Are Lesbian, Gay, Bisexual and Transgender' (April 2011) Williams Institute School of Law.

¹⁹ Australian Institute of Health and Welfare, *Australia's Health 2018*, Australian Government <<https://www.aihw.gov.au/getmedia/61521da0-9892-44a5-85af-857b3eef25c1/aihw-aus-221-chapter-5-5.pdf.aspx>>; Gary J. Gates, 'How Many People Are Lesbian, Gay, Bisexual and Transgender' (April 2011) Williams Institute School of Law.

²⁰ *Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 18 December 1979 (entered into force 3 September 1981), art 14.

²¹ Michael Flood and Clive Hamilton, 'Mapping Homophobia in Australia' (July 2005) The Australia Institute.

²² James Morandini, Alexander Blaszczyński, Ilan Dar-Nimrod and Michael Ross, 'Minority stress and community connectedness among gay, lesbian and bisexual Australians' (June 2015) *Australian and New Zealand Journal of Public Health*.

²³ Lesbian Action Group, Application to Australian Human Rights Commission, *Application for Temporary Exemption Under the Sex Discrimination Act; Jessica Hoyle and LGB Alliance Australia (Review of Refusal of an Application for Exemption)* [2022] TASCAT 142

²⁴ Lesbian Action Group, Application to Australian Human Rights Commission, *Application for Temporary Exemption Under the Sex Discrimination Act; Jessica Hoyle and LGB Alliance Australia (Review of Refusal of an Application for Exemption)* [2022] TASCAT 142

²⁵ *Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 18 December 1979 (entered into force 3 September 1981), art 1.

2) Eliminate discrimination against persons on the ground of sex, marital status, pregnancy, potential pregnancy or family responsibilities, including discrimination involving sexual harassment

Sexual harassment on the basis of female sex and female-centric sexual orientation is rife in lesbian and LGBTQ+ spaces and the perpetrators are, as in the general population, mostly males.²⁶ Studies on the subject show that trans-identified males retain male-pattern offending behaviours²⁷ and this is apparent in the reported experience of lesbians.²⁸ The forced inclusion of heterosexual males who identify as lesbians in lesbian spaces has created an environment where male violence and corrective rape culture thrive.

I personally have had trans-identified males in lesbian spaces harass me, abuse me, threaten to rape me, casually grope me, and one time I even had my drink spiked by a trans-identified male who wouldn't take no for an answer. I ended up in hospital on that particular occasion. Sadly such stories of male-pattern violence and sexual harassment from trans-identified males are not uncommon among lesbians.²⁹ It is in fact a near guarantee that hosting a lesbian-only event will result in these trans-identified males showing up with the intent to sexually harass and assault lesbians. I would not be surprised if the Australian Human Rights Commission has already received threats themselves for even considering this application. In any case, granting an exemption to the Lesbian Action Group to exclude males, regardless of gender identity, would eliminate the rampant problem of sexual harassment, on the grounds of sex and sexual orientation, in lesbian spaces.

3) Promote recognition and acceptance within the community of the principle of the equality of men and women

Australia is failing to address lesbian-only events on the basis of equality with men. Gay men have been granted exemptions from anti-discrimination instruments so as to allow them to refuse entry on the basis of sex, sexual orientation and gender identity.³⁰ It's only lesbians that are being refused such exemptions.

Lesbians share exactly the same problems that gay men do in regards to hosting events for our marginalised demographics. We both run the risk of being outnumbered in our own venues, the threat of homophobic harassment and assault, the discomfort at being gawked at and treated like animals in a zoo, etc.³¹ However when gay men speak on this they're believed, sympathised with and granted an exemption.³² In contrast, when lesbians speak on exactly the same issues we're accused of being dishonest and denied any relief from homophobic and misogynist discrimination.³³

The current anti-discrimination system is operating on the ironically sexist notion that men's requests for an exemption are reasonable but the same request's from women are not. I think that the Lesbian Action Group's application should be considered with the same standards in mind that similar applications from men have been considered. Surely that's fair and in line with the principle of equality between women and men?

²⁶ Australian Bureau of Statistics, *Recorded Crime - Offenders*, Australian Government <<https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-offenders/latest-release>>; Angela C. Wild, 'Lesbians At Ground Zero' (March 2019) Get The L Out Report.

²⁷ Cecilia Dhejne, Paul Lichtenstein, Marcus Boman, Anna L. V. Johansson, Niklas Långström, Mikael Landén, 'Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery' (2011) Plos One.

²⁸ Angela C. Wild, 'Lesbians At Ground Zero' (March 2019) Get The L Out Report.

²⁹ Angela C. Wild, 'Lesbians At Ground Zero' (March 2019) Get The L Out Report.

³⁰ *Peel Hotel Pty Ltd (Anti-Discrimination Exemption)* [2010] VCAT 2005; Redacted Author, 'It's Not A Ban Says Boy's Club', *Star Observer* (20 April 2008).

³¹ *Peel Hotel Pty Ltd (Anti-Discrimination Exemption)* [2010] VCAT 2005.

³² *Peel Hotel Pty Ltd (Anti-Discrimination Exemption)* [2010] VCAT 2005.

³³ *Jessica Hoyle and LGB Alliance Australia (Review of Refusal of an Application for Exemption)* [2022] TASCAT 142.

C) Conclusion

In my view the reasons are clear for granting the Lesbian Action Group's application and allowing lesbians to once again hold lesbian-only events. The Sex Discrimination Act can be a powerful tool to protect the disenfranchised, but only if it's used to that effect. Refusing to grant an exemption to the Lesbian Action Group and continuing to ban lesbian-only events in Australia is against the objective of the Act.³⁴

The inconvenience some people might feel at not being able to attend a lesbian event pales in comparison to the appalling impact that banning lesbian-only events has had on lesbians and our community.³⁵ It is entirely reasonable to subject a group to that small inconvenience, of just having to instead go to a straight event, or to a trans event, or to a gay man event, in order to protect the social and cultural freedoms of lesbians at our own events. It is entirely unreasonable to continue to ban marginalised women from having our own events just so our oppressors can continue to comfortably inflict themselves on us. Granting the Lesbian Action Group's application is the only reasonable outcome in line with the Sex Discrimination Act and the Convention on the Elimination of All Forms of Discrimination against Women.

There was once a vibrant lesbian community in this country but, largely due to the ban on lesbian-only events, we're now entering an era where the younger generation of lesbians have never known that community. I have known it and I feel so incredibly sorry for the next generation of lesbians who are growing up without it. There are lesbians growing up now whose "community" are telling them that their exclusive same-sex attraction is wrong and that they should unlearn their "genital preferences". Lesbians speaking out about lesbophobia face the very real danger of being sued, fired, stalked, threatened and assaulted, all while authorities look the other way. Much of this lesbophobic hatred comes from within the "L" LGBTQ+ community itself, with large cashed-up LGBTQ+ organisations actively working to disenfranchise lesbians. In fact, as I reach my conclusion in this submission I've learned that the Victorian Pride Centre, which was happy enough to take tax-payer money to host LGBTQ+ events, has now refused to hold the lesbian event subject of this application. That's despite them hosting trans-only events in the past and despite the lesbophobic vandalism left on their building for the crime of even considering a lesbian booking.

Now, I understand that acting in the interests of lesbians is unpopular and, at times, downright dangerous. I just hope that the Australian Human Rights Commission can look past the deeply entrenched lesbophobia in this country, and the likely threats they'll receive on this matter, and despite all of it still do the right thing. Which is to use their power under Section 44 of the Sex Discrimination Act to allow lesbians the very small concession of being able to organise lesbian-only events. I strongly urge the Australian Human Rights Commission to grant the Lesbian Action Group's application.

Sincerely,

Lesbian Rights Australia

³⁴ *Sex Discrimination Act 1984* (Cth), s3.

³⁵ Lesbian Action Group, Application to Australian Human Rights Commission, *Application for Temporary Exemption Under the Sex Discrimination Act*.