

**SUBMISSION TO: Australian Human Rights Commission (AHRC)**

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**CLOSING DATE: Tuesday 3 October 2023**

**TOPIC: Application for Temporary Exemption – Lesbian Action Group (LAG)**

**FROM: Coalition of Activist Lesbians Inc (CoAL)**

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**Date: 3 October 2023**

### **About CoAL**

*The Coalition of Activist Lesbians (CoAL) is a United Nations-accredited national organisation advocating for lesbian rights. We were the first lesbian-specific organisation to gain NGO accreditation both with the Economic and Social Council (ECOSOC) and with the Division for the Advancement of Women. We represented Australian lesbians at the 1995 UN 4th World Conference on Women in Beijing.*

*CoAL operates within a human rights-based, women-centric, socio-ecological framework to protect lesbian human rights, and to support all Australian lesbians to participate equally in society in activities for positive social change.*

*CoAL aspires to be part of a society where respect for differences, the rule of law, and the equal dignity of all humans are shared.*

*To fulfil our United Nations accreditation obligations, CoAL monitors Australian, state, and territory legislation - and the public and private sectors - to ensure implementation of principles inherent in international covenants, including freedom of speech and rights to association, and networks internationally, nationally and locally, with other lesbian, women's, and general community groups .*

*In particular, we emphasise that the LGBTQ)+ lobby groups do **not** represent many of our concerns, and our submission will demonstrate how they often work against lesbian human rights.*



## SUMMARY AND RECOMMENDATIONS OF THIS SUBMISSION

### *Summary*

We thank the AHRC for extending a further opportunity to write in support of the application lodged by Lesbian Action Group to the Commission for an exemption under the Sex Discrimination Act (1984), to hold an event for lesbians born female at the Pride Centre in Melbourne.

Although some members of CoAL made individual submissions, CoAL was unable to lodge a submission within the short time frame and we now write in support of the application. We bring to your attention that unfunded NGOs such as ours, which operate on voluntary labour, find ourselves in a very difficult position when we are forced to decide which of many submissions arguing for lesbian rights to work on within clashing deadlines. We have decided that this submission is a priority because it highlights a grave injustice being imposed on lesbians in substantive outcomes from Australian law.

In this submission we set out our reasons for why the AHRC should grant a temporary exemption pursuant to s 44(1) of the *Sex Discrimination Act 1984* (Cth) (SDA). This includes our response to your preliminary view of 25 September 2023 before the Commission makes its final decision in this matter.

Our reasons are based on the human rights of lesbians to substantive equality:

1. to hold and express the following long-held and socio-culturally widespread beliefs:
  - a. humans comprise a binary group comprising female and male, according to their form and function in reproduction as a biological sex;
  - b. a female is an adult human of the female sex;
  - c. a lesbian is defined by her sexuality, or sexual orientation, as a woman born female sex, who is sexually attracted to other natal women.
2. to associate in peaceful assembly in order to pursue our common goals of social interaction, formation of sexual and other relationships and to build and maintain lesbian cultures.
3. to freedom of speech—to freely hold thoughts and ideas, to hold positions based on conscientious political, social and cultural beliefs, and to demonstrate or manifest beliefs, by way of observance and practice.

We and many other lesbians cannot accept the changes to the Sex Discrimination Act since 1984. We find we are still suffering from substantive discrimination and inequalities with respect to men with biologically sexed bodies and attitudes based on that fact, only now they can deny their

biological sex. The law is being imposed upon long-held understandings within lesbian communities that sex is binary according to biologically reproductive body. The SDA law is dividing and complicating sex further to become at least ‘quaternary’ (cis- trans- male, female), and favours an unstable ‘idea’ (gender) that the law can proclaim as a ‘fact’ over that of biological sex.

Many lesbians feel robbed of this biological certainty in our sexual orientation and the SDA returns us to the old days of being less protected from discrimination, harassment and violence from biological men, who, even if they have a new ‘gender identity’, still retain more power than biological women and many cultural values that value biological men over biological women. One major inconsistency in gender identity legislation is that it does not consider that, no matter how much a biological man may try to change his ‘gender identity,’ he is still influenced by a confusion of his gendered experiences in his formative years with his biologically male body, his various reasons for dissatisfaction with his sexed body, and certain sociocultural attitudes such as valuing men over women and holding sexist stereotypes, all of which affect lesbian’s ability to relate to and feel respected by or safe with them.

This confusion has not simply disappeared with the passing of laws. Moral and social values change slowly and must not be forced. The Commission does have some latitude in granting an exemption, including the application of the SDA legislation where conflicting beliefs and values cause confusion. We ask that you act more leniently in order to prevent discrimination of lesbians based on their biological sex, to continue. We would welcome the Commission providing us with further opportunities for dialogue based on free speech and efforts to find mutual understanding on this contentious topic.

***Recommendations:***

1. That the AHRC grant a temporary exemption pursuant to s 44(1) of the *Sex Discrimination Act 1984* (Cth) (SDA) to hold regular lesbians born female only events, starting with a ‘Lesbians Born Female Only’ event to celebrate International Lesbian Day on 15 October 2023, such extension to be for a period of (5) years as requested by LAG.
2. That the AHRC review its Temporary Exemptions under the *Sex Discrimination Act 1984* (Cth) 2009.

**ISSUES ADDRESSED IN THIS SUBMISSION**

1. **Loss of protections for the sex-based rights of females**
  - i. **Terms and objects of the SDA**

We accept and support the United Nations (2023) definition of human rights as ‘rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more. Everyone is entitled to these rights, without discrimination.’ We especially support the retention of sex as a protected characteristic, but one based on biological fact rather than an individual’s subjective and unstable ideas about their sexed body.

We are very concerned by the erosion of sex-based rights for lesbians by the spreading acceptance of gender ideology that promotes men’s rights through homophobic and anti-women laws and attitudes. Women’s efforts to establish our equal rights with men are made difficult by long-standing and culturally entrenched power relations between women and men that have favoured men. Our efforts to create such changes legally have encountered difficulties since the formation of the United Nations—clearly illustrating the substantive effects of sex-based inequality. Anna Kerr (2022) has pointed out that ‘The first draft of the Universal Declaration of Human Rights opened: ‘All men are brothers.’ Australia’s only woman delegate to the United Nations, Jessie Street, worked with other women to have Article 1 amended to instead read: ‘All human beings are born free and equal in dignity and rights.’ Despite these efforts to remove the sexist language and concepts, the Declaration still refers to the ‘conscience of mankind, ‘the spirit of brotherhood’ and uses male pronouns’. In similar vein, the amendments to the SDA since 1983 to accommodate the demands of transgender rights lobby groups, have been made with insufficient attention to the rights of lesbians and other women and the conflict that has been set up as a result of those changes.

This ‘sex-blindness’ to the right of lesbians and women similarly operates in the arguments of transgender rights lobby groups, and in the popular Yogyakarta principles (2007, 2017) that they use, which were set down at a private gathering of self-selected experts in human rights within a framework that implied but had no authority from the UN. Nevertheless, these principles have proved highly influential in the legislative frameworks of many countries, such as Argentina, England, Ireland, Denmark Malta, Canada, the US and Australia. That far-reaching influence can be attributed to what is commonly known as the Denton’s document that promoted methods for bringing about legislative change surreptitiously (IGLYO, Dentons, Thomson Reuters Foundation 2019; Kirkup 2019, 2021).

One of the Yogyakarta panel members, Robert Wintemute, Professor of Human Rights Law at Kings College London, has acknowledged that they were sex-blind. Wintemute is an expert on anti-discrimination law and sexual orientation law and was one of the co-authors. More recently, he has stated ‘the international human rights community got it wrong in merging lesbian and gay rights with the idea of a right to have “gender identity” replace sex. ... women’s rights were not considered during the meeting where the principles were written and the authors “failed to consider” that fully intact males would seek to access female-only spaces’ (Wintemute 2021).

Lesbians' sex-based rights have been eroded over the past few decades due to inconsistencies in the insertion of the unscientific and inconsistently defined concept of 'gender identity' within antidiscrimination frameworks, such as the Sex Discrimination Act (SDA). The result of confusing sex with gender has been that women's sex-based rights have been superseded invariably by gender-based rights assumed by transgender identifying males. As a result, 'Males are now playing in women's and girls' sports teams, are receiving women's prizes, and male criminals are housed in female prisons due to incorrect interpretations of the current NSW legislation. Young girls in NSW schools and organisations such as Girl Guides are being forced to share spaces with males, and all women and girls are experiencing an encroachment on their rights to single-sex toilets, change rooms, health care and other services (AF4WR 2023).

ii. **The Commission Guidelines: *Temporary Exemptions under the Sex Discrimination Act 1984 (Cth) 2009***

In order to make a fair and timely decision on the LAG application for exemption, we ask the AHRC to give greater consideration to the conflicting principles, concepts and injustices in the SDA and in the AHRC preliminary view to not grant the temporary exemption.

Evidence of the erosion of sex-based rights for lesbians in Australia is clearly demonstrated in the AHRC response to the LAG application for exemption and an earlier application by LGB Alliance for exemption under the Tasmanian Anti-Discrimination Act 1998 (Equal Opportunity Tasmania 2021).

We ask that the AHRC review its Temporary Exemptions under the Sex Discrimination Act 1984 (Cth) 2009. We acknowledge that the AHRC seems bound by common perceptions that have infiltrated the SDA and other key legal documents, and we assert that revisions of the SDA and other related state-based laws are well overdue. For example, the NSW government is holding a review of the *Anti-Discrimination Act 1977 (NSW)* with submissions closing today.

In its Notice of preliminary view of LAG's application for exemption, the AHRC stated:

- 'The Commission is not persuaded it is appropriate and reasonable to:
- make distinctions between women based on their cisgender or transgender experience, or among same-sex attracted women based on the exclusivity of their same-sex'.

*In response*, we point out:

- Some sectors of LGBTI **do** have exclusive gatherings eg. The Victorian Pride Centre has allowed exclusive gatherings of transgender identified people and the Harbour City

Bears hold weekly socials, dance parties, dinners and other outings through the year’ (<https://hcbears.com.au/>).

- Separate gatherings occur on grounds of sex and religion, such as Muslim women in women only swimming sessions.
- Lesbians have cultures based on common life experiences that are very different from gay men & transgender identified people, so it is very necessary to acknowledge this positively & support our separate gatherings.
- While many lesbians attend/enjoy LGBTI/queer events & venues, some, such as members of LAG and CoAL do not, and want to be just with others who share similar beliefs and culture (the human right to association).
- Some experts have said people cannot change sex, eg the scientist Professor Lord Robert Winston in the UK (‘Robert Winston Says “You Can’t Change Sex” on BBC Question Time’), and Human Evolutionary Biology lecturer Carole K. Hooven at Harvard holds views that maintain the existence of two sexes and defends the usage of the terms ‘male’ and ‘female’ when referring to biological sex in medical classes (Xu 2021).

The Commission states ‘Many of the submissions opposing the exemption (both from individuals and organisations) state that the Lesbian Action Group does not represent the majority of lesbians who are supportive of trans lesbians, bisexual and queer cisgender women and rights-based inclusion regardless of other intersecting identities. These submissions considered the Application to be divisive, seeking to create sub-categories of women.’ In response, we firstly point out that there are numerous lesbians and women around the world who do not believe in gender ideology—for evidence, see WDI (2023) who state that more than 40 organisations (including CoAL) around the world have signed their Declaration of women’s sex-based rights.

We ask how divisive has it been for the SDA to accept gender ideology claims, which multiply a confusion of numbers of sexes; and what evidence do those submissions provide and what was its quality? We find a lot of the transgender advocates are publishing poor quality biased research. For example, see Trans Justice Project & Victorian Pride Lobby 2023, *Fuelling Hate. Abuse, Harassment, Vilification and Violence Against Trans People In Australia*, <https://transjustice.org.au/wp-content/uploads/2023/08/Fuelling-Hate-Anti-Trans-Abuse-Harassment-and-Vilification-WEB-SINGLES-1-1.pdf>. 27 pp. This report makes claims based on a survey over 9 days in social media targeting members of the trans community and their allies. No other communities (such as those that are members of the Lesbian Action Group belong to) were surveyed for their different views. This is highly likely to have produced biased responses. They state the survey was about escalating anti trans hate, where ‘hate’ could simply be reinterpreted as a political use of language to counteract escalating rejection of gender ideology and stop people from expressing an opinion different from the researchers and their allies. And the report can be viewed as a tool for widening Federal and State anti-vilification laws focused on LGBTQ+

The SDA does not set out in any detail the criteria or procedures that the Commission should use in considering applications for temporary exemptions. Section 44 of the Act simply provides the Commission with a discretion to grant such exemptions. We are grateful that this allows the Commission to change its decision after considering arguments and evidence provided since then, such as in this submission.

The AHRC (2023a) states in its Notice that ‘Lesbians are protected from discrimination by law. The Sex Discrimination Act makes it unlawful to treat a person less favourably than another person in a similar situation because of her sexual orientation.’ While the AHRC adds the proviso ‘There are some limited exemptions,’ these are not clarified and have been leading to unfair decisions. We believe this is because decisions and documents produced by the AHRC demonstrate insufficient consideration of lesbian and other women’s rights when they conflict with those claimed by men who identify as transgender.

We urge the AHRC to implement a review to address the unfair outcome of your Notice of preliminary view on the LAG application for temporary suspension of the SDA. Under sex-based legal protections, women (and men) should not need to seek a legal exemption to gather and associate without the presence of members of the opposite sex; a need driven by inadequate consideration of conflicting rights, concepts and principles.

## **ii. Loss of rights to assembly**

Lesbians have the right to peaceful assembly in order to pursue our common goals of social interaction, formation of sexual and other relationships and to build and maintain lesbian cultures. We note that ‘Australia is a party to seven core international human rights treaties. The right to freedom of assembly and association is contained in articles 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR) and article 8(1)(a) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) (Attorney General’s Department 2023).

Lesbians’ rights to free assembly are currently being challenged by transgender identifying heterosexual males who confuse their gender identity with their male biological state, and state they are lesbians. Their subsequent unwelcome efforts to convince lesbians to have sexual relations with them thus become acts of male harassment and attempted or actual rape. They are being supported by legislative changes based on similar confusions that have not considered contradictions in the inherent conflict of rights between members of protected categories. As a result, lesbians rights to gather without men have been eroded under anti-discrimination legislation that contains this gender-base confusion. Exemption processes, such as those allowed by the AHRC, are not protecting these rights.

## **iii. Loss of protections against violence directed towards lesbians**

CoAL is concerned that the AHR is not giving sufficient consideration to the sociocultural reasons for women's need for protection against male violence. In its Notice on preliminary view of LAG's application for exemption, the AHRC stated 'submissions were not supported by compelling evidence of the risk of violence' if exemption was not granted. It did qualify this statement by adding:

'although reference was made to discrimination experienced by lesbians who publicly speak out, and the need to meet with each other to discuss matters of importance for their own well-being, including only wanting to share personal stories about health issues or domestic violence between lesbians born female.'

We trust that the Commission will find the evidence we provide in this section compelling.

The AHRC had noted earlier that another reason given in LAG's request for exemption was for lesbians to 'meet freely and without being abused for wanting to do so'. CoAL considers protection from abuse a serious concern that deserves more recognition, thought, active acknowledgement and much more research.

In 2013 the United Nations called for an end to violence against lesbians and other sexual minorities. It noted that in December the previous year the OHCHR had published the first official UN report on violence and discrimination against lesbian, gay, bisexual and transgender people (United Nations 2012).

Holly Lawford Smith, a feminist and academic philosopher at the University of Melbourne, who has herself been subjected to harassment and violence because of her gender critical views, has examined the totalizing approach people are increasingly taking over disagreements, such as gender ideology, in terms of two kinds of political polarisation: ideological and affective (Lawford Smith 2023). Lesbians are subject to both in the forms of various expressions of violence.

We agree with Mason (1988) who, in an early study of violence against lesbian and gay men, described 'anti-lesbian/gay violence (as) one form of hate crime. Hate crime refers to crime, most commonly violence, motivated by prejudice, bias or hatred towards a particular group of which the victim is presumed to be a member.'

There have been considerable problems in examining violence against lesbians. A review published in 2018 noted there was a paucity of data and research methods were poor in the data they studied, concluding:

'The evidence base needs to be strengthened. More and better research on the prevalence and adverse outcomes of violence motivated by perception of sexual orientation and gender



identity is needed across many different geographical and cultural settings (especially outside the USA) and different socioeconomic and age groups. Community organizations should be empowered to add scientific value to their existing efforts to map such violence. A consensus is needed on definitions and measures of violence motivated by perception of sexual orientation and gender identity and how to operationalize them to allow for comparisons across studies (Blondeel et Al 2018).’

Furthermore, research has become dominated by a trans research industry that is highly biased and conflates violence into a LGBTQI+ soup that makes it impossible to extract sex-based data specific to lesbians. For example, a recent report about escalating anti trans hate can easily be reinterpreted as an effort to counteract escalating rejection of gender ideology and as a tool for widening Federal and State anti-vilification laws focused on LGBTQ+ (Trans Justice Project & Victorian Pride Lobby 2023).

The report makes unfounded grand claims about results, using undefined terms from a survey of people already with a trans bias, and mistaking large numbers of participants in a poorly designed survey as good research.

It uses a DARVO (Deny, Attack, and Reverse Victim and Offender) model, common among male perpetrators of violence, to criticise trans hate without examining the countless examples of trans use of this very technique, gives no recognition of the politics of a clash between ideologies and is blind to its own DARVO techniques.

Other weaknesses in the report include lack of clarity in results from using the word ‘trans,’ when it reports findings that 50% of respondents identified as ‘nonbinary trans’ compared with trans women 29%; trans men 15%). It was also unclear what was meant by ‘hate speech’ and there was inappropriate definition of ‘online hate’ to include ‘misgendering’(disagreement and possible disrespect becomes ‘hate’).

More useful research, although US-based, is an 2022 study of violence based on sexual orientation and gender identity from 2017 to 2020 revealed an extensive level of violence and that only a little more than 50 % was reported:

- ‘The rate of violent victimization of lesbian or gay persons (43.5 victimizations per 1,000 persons age 16 or older) was more than two times the rate for straight persons (19.0 per 1,000).
- The rate of violent victimization against transgender persons (51.5 victimizations per 1,000 persons age 16 or older) was 2.5 times the rate among cisgender persons (20.5 per 1,000).
- About 58% of violent victimizations of lesbian or gay persons were reported to police.
- Domestic violence was eight times as high among bisexual persons (32.3 victimizations per 1,000 persons age 16 or older) and more than twice as high among lesbian or

persons (10.3 per 1,000) as it was among straight persons (4.2 per 1,000) Truman & Morgan 2022).’

We provide examples below as evidence that lesbians **are** subject to and require protection against a high risk and experience of violence specifically targeted at them because of our sexuality.

- i. A recent sex-based national study in Brazil on the public health effects of ‘lesbophobic’ or ‘biphobic’ events found harmful repercussions for multiple aspects (including mental health) on the lives of women in their sample (Rufino, Filho & Madeiro 2022).
- ii. The web site *TERF is a Slur* has collected and documents a wide array of examples, too numerous to count, from social media and other sources of ‘abuse, harassment and misogyny of transgender identity politics’, listing them under categories:
  - Threats of violence and violent imagery
  - Abuse, harassment and dehumanising language
  - Erasing female biology
  - Centering transwomen in feminism and women’s spaces
  - Cotton ceiling and autogynephilia
  - J K Rowling
- iii. **Lawford Smith (2023) has collected and documents a range of examples on the *No Conflict They Said* website, and we draw your attention to the anonymous letter ‘[Alienation of Young Butch Lesbians](#)’ that describes a shocking litany of abuses a lesbian had experienced in her relations with peers identifying with the LGBTQ+ culture, to conclude:**

‘At least 50 years ago I would have been able to find another lesbian my age who doesn't think I should die for being homosexual. I'm a proudly same-sex attracted, female, homosexual, lesbian woman, and that's never going to change. Hopefully one day I can say that in real life without fear.’

CoAL respectfully asks that the AHRC consider our arguments with an open mind and provide a final decision in favour of LAG's application to the Commission for an exemption under the Sex Discrimination Act (1984), to hold an event for lesbians born female at the Pride Centre in Melbourne.

*Signed:*

Virginia Mansell Lees

Convenor, CoAL

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