
PRIVATE AND CONFIDENTIAL

[REDACTED]
Australian Human Rights Commission
GPO Box 5218
SYDNEY NSW 2001

By email: legal@humanrights.gov.au

Dear [REDACTED]

**Application for temporary exemption to *Sex Discrimination Act 1984 (Cth)* –
Lesbian Action Group**

Thank you for your letter dated 15 August 2023.

I understand this submission will be published in full on the Australian Human Rights Commission website and consent to this occurring. The information referred to below is publicly available.

Under the *Anti-Discrimination Act 1998 (Tas)* (the Tasmanian Act) gender identity is a protected attribute.

Gender identity is defined as follows:

gender identity means the gender-related identity, appearance or mannerisms or other gender-related characteristics of an individual including gender expression (whether by way of medical intervention or not), with or without regard to the individual's designated sex at birth, and may include being transgender or transsexual;

I draw your attention to a particular application for exemption made under the Tasmanian Act.

On 18 May 2021, Ms Jessica Hoyle applied for an exemption to permit discrimination against 'Biological Men on the basis of sex'.

The application set out the exemption was sought to discriminate against 'biological men' for same sex attracted drag show performances as drag kings, because

lesbians 'find it difficult to meet each other and to be in a safe environment away from the "Eyes of Biological men"'.¹

The exemption application set out:

'The exemption that i seek will be for the foreseeable long term as same sex attraction is not something you can change.

The only male aloud (sic) is the DJ and camera man as this is his paid Job.'

I refused to grant the application for exemption as I considered that the concerns outlined as the basis for the exemption were already addressed by existing laws and that the exemption sought, if granted:

- would be directly at odds with promoting the recognition and approval of acceptable attitudes, acts and practices¹ relating to discrimination and prohibited conduct;
- would not further the objectives of the Act, or uphold principles of anti-discrimination; and
- had the potential to cause harm to individuals seeking to attend events covered by the exemption.

Ms Hoyle sought a review of the decision to refuse to grant the exemption.

The Tasmanian Civil and Administrative Tribunal upheld the decision to refuse to grant the exemption, where Tribunal Member Cuthbertson SC responded to the reasons provided by Ms Hoyle and LGB Alliance, in support of the exemption, with the following statement²:

95. Finally, I consider that there are aspects of the applicants' arguments that do a great disservice to transgender and transsexual communities. Many of the assertions, particularly those regarding paraphilias, patterns of criminality and nefarious motivations for attending female-only events were unsupported by empirical research or compelling evidence. The wider public interest in protecting the rights of all members of the community from discrimination and prohibited conduct would not be advanced by the Tribunal yielding to such arguments when considering the current application.

This decision is relevant to the applicant for exemption made under the *Sex Discrimination Act 1984* (Cth) and I encourage a full reading. Thank you for the opportunity to draw your attention to it.

¹ *Anti-Discrimination Act 1998* (Tas) s 6.

² *Jessica Hoyle and LGB Alliance Australia (Review of Refusal of an Application for Exemption) [2022] TASCAT 142 [95]*:
http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/tas/TASCAT/2022/142.html?context=1;query=stream%20w/5%20anti%20discrimination;mask_path=au/cases/tas/TASCAT

If you have any questions, please contact me on (03) 6165 7515 or EOT.Commissioner@equalopportunity.tas.gov.au.

Yours sincerely



Sarah Bolt
ANTI-DISCRIMINATION COMMISSIONER

18 August 2023

CC:  [@humanrights.gov.au](mailto:_____@humanrights.gov.au)