

29 August 2023

Australian Human Rights Commission
By email: legal@humanrights.gov.au

By email

Dear Commission

**SUBMISSION REGARDING AN APPLICATION BY THE 'LESBIAN ACTION GROUP'
FOR AN EXEMPTION UNDER THE SEX DISCRIMINATION ACT 1984 (CTH)**

Thank you for the invitation to make a submission in response to the application from the Lesbian Action Group for a temporary exemption to the *Sex Discrimination Act 1984* (the **Act**) under s 44 of the Act (the **Application**). We make a joint submission on behalf of the organisations listed below.

The Application seeks an exemption for a proposed 'Lesbian Born Female Only' event to celebrate International Lesbian Day to be held at the Victorian Pride Centre in St Kilda on Sunday 15 October 2023 (**ILD Event**). The Application also appears to seek a general exemption for a period of five years to hold further events, although these events are not specified.

Temporary exemptions and special measures play an important role within the anti-discrimination law framework in providing historically marginalised groups with mechanisms by which to redress historical discrimination or disadvantage, or meet special needs unique to the group. This Application does neither, because in truth it is seeking to exclude lesbians who are transgender women, as well as women who experience discrimination and marginalisation based on their sexual orientation, such as bisexual and queer women (whether cis or trans).

In this submission, while we agree that is important and beneficial for lesbians to be able to gather as a community to celebrate their culture and discuss issues that affect their community, it is not appropriate or necessary to exclude same-sex attracted women who are transgender, bisexual and queer in order to do so. For lesbians who are transgender or intersex women, the exemption would also invite the policing of female bodies in ways which are antithetical to the dignity, privacy, safety, bodily integrity and physical autonomy of an individual. The Application should not be granted because it is inconsistent with and would undermine the objects of the Act, it is unnecessary, and the Applicants have not met the Commission's criteria for an exemption.

GRANTING AN EXEMPTION IS INCONSISTENT WITH THE OBJECTS OF THE ACT

We do not believe an exemption should be granted in the manner sought because to do so would be inconsistent with and would undermine the objects of the Act.

The objects of the Act relevantly include:

- to give effect to Australia's international obligations under the Convention on the Elimination of All Forms of Discrimination Against Women and relevant international instruments,¹
- to eliminate, so far as is possible, discrimination against persons on the ground of sex, sexual orientation, gender identity and intersex status in certain areas of public life,

¹ The Committee which oversees CEDAW has consistently reiterated that the Convention covers gender-based discrimination against women which includes lesbian, bisexual, transgender and intersex women: see e.g. Committee on the Elimination of Discrimination against Women (2010) [General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women](#), CEDAW/C/GC/28, 16 December, [5]; Committee on the Elimination of Discrimination against Women (2015) [General recommendation No.33 on women's access to justice](#), CEDAW/C/GC/33, 3 August, [8]; see also 2022 concluding observations in the state reports on Namibia, Senegal and Dominican Republic: [CEDAW/C/NAM/CO/6](#), [42e)]; [CEDAW/C/SEN/CO/8](#), [13(a)] and [CEDAW/C/DOM/CO/8](#), [22(d)].

- to eliminate, so far as is possible, discrimination involving sexual harassment and discrimination involving harassment on the ground of sex in certain areas of public life, and
- to achieve, so far as is practicable, substantive equality as between men and women.²

The potential for sexual and sex-based harassment

First, none of these objects support the idea that distinctions ought to be made *between* women based on their cis or trans experience, or *among* same-sex attracted women based on the exclusivity of their same-sex attraction, insofar as a social event involving singing, dancing or the discussions of ideas is proposed. There is nothing in that proposed event that ought to allow the organiser of an event to interrogate the physical sex characteristics of an attendee or the exclusivity of a woman's sexual attraction to other women as a condition for participation in an event of this kind.

Even if it could be enforced, such an exemption would invite questions about or inquiries of a person that would invariably involve conduct which could amount to sexual or sex-based harassment, being:

- unwelcome conduct of a sexual nature (in asking people about the nature and extent of their same-sex attraction), and/or
- unwelcome conduct of a demeaning nature by reason of the actual or imputed sex-related characteristics of a person (in asking or making assumptions about people based on their sex-related characteristics),

in such circumstances where a person attending a social event celebrating lesbians at the Victorian Pride Centre would reasonably be offended, humiliated or intimidated by such conduct.

The Commission is not able to give an exemption from the prohibitions on sexual harassment or sex-based harassment under Division 3 of the Act, meaning that the exemption could not be enforced in practice without offending the dignity, privacy or safety of potential attendees.

The discriminatory impact on transgender women who are lesbians

Second, although the Application purports to seek an exemption excluding heterosexual, bisexual and queer men and women, as well as gay men, it singles out transgender women who are attracted to women for particular exclusion from among other lesbians. The exemption would further perpetuate discrimination against same-sex attracted transgender women in the one of the few spaces in Victoria which is intended to be safe and welcoming for all members of the LGBTIQ+ community. It does so for no good reason, given the event proposed is a social event for dancing, singing and the discussion of ideas. Why any woman's sex characteristics should be scrutinised or policed by the organisers of any social event, is both disturbing and unexplained by the Applicants.

In the largest study of its kind in Australia, *Private Lives 3* reveals that trans and gender diverse people experience high levels of violence and harassment because of their gender identity and as a result, large health disparities exist between transgender and gender diverse people, compared with cisgender men and women in Australia.³ For example, the study revealed that trans and gender diverse people reported higher levels of harassment than cisgender people, with 51.6% of trans women had experienced verbal abuse in the previous 12 months due to their gender identity.⁴ In addition, 52.4% of trans women reported being socially excluded, compared to 38.6% of cis women, due to their gender identity or sexuality.⁵ Unfortunately, experiences of harassment and social exclusion often lead to poorer health outcomes, with 67.4% of trans women reporting being diagnosed or treated for a mental health condition in the previous 12 months, and 86% of trans women reporting

² *Sex Discrimination Act 1984* (Cth), s 3.

³ Hill et al (2020) *Private Lives 3: The health and wellbeing of LGBTIQ people in Australia* at 41, 92.

⁴ *Ibid*, at 41.

⁵ *Ibid*.

ever having thoughts about suicide.⁶ It would be inconsistent with the objects of the Act, to grant an exemption that would lead to the further exclusion, stigmatisation and discrimination of same-sex attracted transgender women considering the nature of the event which is proposed.

Safety concerns

The Commission also cannot ignore the increasing attacks on and rising fear among LGBTIQ+ Victorians, especially transgender people and drag artists, in a state which has no laws against vilification based on sexual orientation or gender identity. Among the examples of this increasing hostility includes:

- the “Let Women Speak” event organised in March 2023 which attracted protestors, counter protestors and neo-Nazis outside the Victorian Parliament; and
- the cancellation of multiple drag story time events this year out of safety concerns.⁷

Given the publicity afforded to the Application⁸ and the fact that the Applicants appear to have no security plan in place, the Victorian Pride Centre does not have the security or means to protect the safety of people if the Applicants’ event attracts protestors and counter-protestors, as it could be reasonably expected to do.

THE APPLICATION DOES NOT ADDRESS THE COMMISSION’S EXEMPTION CRITERIA

The Application does not address the Commission’s guidelines for making an application. This makes it impossible for the Commission to properly assess the full impact of the Application and the harm it could cause to those it excludes.

First, the Application does not adequately explain who is seeking the exemption. Although it is specified that the exemption is sought by the Lesbian Action Group, the nature and size of the organisation is unclear. This makes it impossible for the Commission to assess the full impact of any exemption in practice, including on the people it excludes.

Second, except for the specified ILD Event, the Application also does not specify what circumstances and activities are to be covered by the general five-year exemption sought, beyond stating that the Lesbian Action Group wishes “*to hold our own events*” and “*we won’t want to stop at one*”. It is not appropriate for an exemption to be granted for a five-year period to cover circumstances that are not sufficiently known to the Commission, potentially allowing discrimination to occur at large.

Third, the Application does not address whether the Lesbian Action Group has sought an exemption under the *Equal Opportunity Act 2010 (Vic)*. According to the Application, the applicant’s last exemption, which was granted under the predecessor 1995 Victorian Act, was revoked while the 1995 Act was in place, and the Applicants have not sought any exemption under the new 2010 Victorian Act which now includes protections against discrimination based on gender identity and sexual orientation. The Commission cannot therefore be satisfied that granting an exemption would provide any benefit to the Applicants.

Finally, based on the scant information provided, an exemption may not even be required for the Lesbian Action Group, given they assert to be a “community based, not-for-profit activist group”. An exemption may not be necessary if they intend to meet as an organisation or to provide services to their members.⁹ An exemption would only be necessary if the group wished to engage in unlawful discrimination under the Act, such as by refusing a good or service to non-members or if it is a club

⁶ Ibid, at 90-91.

⁷ See Cait Kelly (2023) ‘[Councils call off drag storytime and LGBTIQ+ events in Victoria after far-right threats](#)’, *The Guardian*, 13 May.

⁸ See Chip Le Grand (2023) ‘[Lesbian group seeks human rights exemption to exclude trans women from Melbourne event](#)’, *The Age*, 21 August.

⁹ *Sex Discrimination Act 1984 (Cth)*, s 39.

which has more than 30 members.¹⁰ The legislature has already made dispensations for small, community-based organisations that seek to promote particular purposes, and it would be inappropriate for the Commission to seek to extend an exemption carefully prescribed by the legislature without a clear understanding of its impact.

THE EXEMPTION IS NOT NECESSARY

Finally, it is not necessary to discriminate against transgender, bisexual, queer or intersex women in order for the lesbian community to celebrate International Lesbian Day at the Victorian Pride Centre. By way of comparison, one of Sydney WorldPride's premiere events was *Ultra Violet*, an event billed for LGBTQIA+ women which attracted an audience of 2,646 people.¹¹ The event was a huge success, provided a much-needed space for women to celebrate with other women, but that did not need exemptions to exclude certain women in order to achieve its success.

Given the very few spaces in Victoria which are intended to be safe and welcoming of the LGBTIQ+ community as a whole, the Application appears intended to be deliberately provocative in selecting the Victorian Pride Centre as the base for hosting an event designed to exclude transgender lesbian women for no obvious purpose, given the Group asserts that it simply intends to celebrate lesbians through song, dance and the discussion of ideas.

Yours sincerely,

The following organisations (in alphabetical order):

Alexander Teh
President

**Australian GLBTIQ
Multicultural Council Inc.**



Karen Field
CEO

Drummond Street Services

Dykes on Bikes Melbourne



Anna Brown
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Jo Sampford
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Penny McKay
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Karen Bryant
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Midsumma



Meagan Moss
Founder
Parents of Gender Diverse Children



¹⁰ *Sex Discrimination Act 1984* (Cth), s 25.

¹¹ See Sydney WorldPride (2023) *Festival Report*, June 2023, p 41. Available at: <https://www.mardigras.org.au/worldpride/>.

Rainbow Community Angels



Joe Ball
CEO
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Jackie Turner
Director
Trans Justice Project



Son Vivienne
CEO
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Jeremy Wiggins
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