

## Lesbian Rights Australia's response to the Commission's preliminary view

It is difficult to formulate a response to the Commission's preliminary view because it seems that the Commission's mind was set on rejecting the Lesbian Action Group's application from the moment they received it. The majority of submissions were in support of granting the Lesbian Action Group's application.<sup>1</sup> The Commission received mountains of extremely compelling, well-researched, evidence-based submissions in support of the application. If that's not enough to persuade them that lesbian spaces deserve protection then I don't know what is.

As has already been put and proved to the Commission; lesbians are a marginalised minority group who suffer historical, on-going and increasing amounts of discrimination.<sup>2</sup> The Commission might not find it "appropriate or 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 attraction"<sup>3</sup> but nonetheless society still does make those distinctions when it comes to lesbians. Lesbians are discriminated against via the intersecting characteristics of biological female sex, same-sex attraction and exclusive same-sex attraction. Not only does that discrimination come from men and straight people generally, but we can also experience that discrimination from bisexual women, bisexual men, gay men, trans-identified males, trans-identified females, etc. Lesbians, like any other marginalised demographic, can and do experience discrimination from all corners of society. That's why lesbians need lesbian-only events, so that we can for one brief moment of our lives experience some relief from all of these sources of discrimination.

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<sup>1</sup> Australian Human Rights Commission, *Notice of Preliminary View on Application for Temporary Exemption: Lesbian Action Group*, September 2023, 4.2, 4.3, 4.4.

<sup>2</sup> Lesbian Action Group, Application for Temporary Five Year Exemption under the Sex Discrimination Act for a Lesbians Born Female only Event to Celebrate International Lesbian Day; Lesbian Rights Australia, Submission to the Australian Human Rights Commission, *Application for Temporary Exemption: Lesbian Action Group*, September 2023; LGB Alliance Australia, Submission to the Australian Human Rights Commission, *Application for Temporary Exemption: Lesbian Action Group*, September 2023; Visible Lesbian Group, Submission to the Australian Human Rights Commission, *Application for Temporary Exemption: Lesbian Action Group*, September 2023; Affiliation of Australian Women's Action Alliances, Submission to the Australian Human Rights Commission, *Application for Temporary Exemption: Lesbian Action Group*, September 2023; Western Australian Women's Action Alliance, Submission to the Australian Human Rights Commission, *Application for Temporary Exemption: Lesbian Action Group*, September 2023; Queensland Women's Action Alliance, Submission to the Australian Human Rights Commission, *Application for Temporary Exemption: Lesbian Action Group*, September 2023; Women's Rights Network, Submission to the Australian Human Rights Commission, *Application for Temporary Exemption: Lesbian Action Group*, September 2023; Feminist Legal Clinic, Submission to the Australian Human Rights Commission, *Application for Temporary Exemption: Lesbian Action Group*, September 2023; Lesbian Bill of Rights International, Submission to the Australian Human Rights Commission, *Application for Temporary Exemption: Lesbian Action Group*, September 2023; IWD Meanjin Brisbane, Submission to the Australian Human Rights Commission, *Application for Temporary Exemption: Lesbian Action Group*, September 2023; Victorian Women's Guild, Submission to the Australian Human Rights Commission, *Application for Temporary Exemption: Lesbian Action Group*, September 2023.

<sup>3</sup> Australian Human Rights Commission, *Notice of Preliminary View on Application for Temporary Exemption: Lesbian Action Group*, September 2023, 7.41.

Additionally, lesbians are a small minority group who are easily outnumbered by any of these demographics, let alone all of them combined.<sup>4</sup> Even if the Commission would like to pretend that discrimination against lesbians isn't a problem, it's still a matter of basic maths that any event not exclusively for lesbians will quickly become a non-lesbian event. This point has previously been a major factor in anti-discrimination exemptions being granted to gay men on the basis of sex, sexuality and gender identity.<sup>5</sup> Restricting entry to a venue so as to protect its character as one primarily for a marginalised minority is already an accepted point of law, at least for men.

The Commission also expressed a specific concern about the impacts that lesbian-only events would have on trans-identified males. There was discussion about how granting the Lesbian Action Group's application would, in some vague and unexplained way, result in further discrimination against trans-identified males.<sup>6</sup> This same demographic who we are supposed to think are so hard done by have spent the weeks since my original submission stalking me, mass reporting my social accounts and even accessing them so as to attempt to locate me. Not exactly the behaviour of a very oppressed minority which needs protecting from us lesbians, but I digress.

While the Commission seemed very concerned about the vaguely defined suffering of trans-identified males, they didn't seem concerned about the mountains of solid evidence provided regarding the discrimination that lesbians experience at the hands of these trans-identified males. Violence which has and continues to be an issue of grave concern at lesbian events. I would think that protecting lesbians from the clear, evidence-based threat posed to us by trans-identified males would outweigh whatever it is that trans-identified males suffer in having one less event they can go to. However it's pretty clear that the Commission gives just as much a damn about male violence against women as any other Australian authority. Which is no damn at all, to be concise. I particularly didn't appreciate how the Commission dismissed the common theme in the submissions of trans-identified male violence against lesbians,<sup>7</sup> and then went on to express concern about the highly fictitious issue of lesbians sexually harassing these males.<sup>8</sup> I'm not sure what I'm supposed to take away from that other than the Commission is apparently more concerned about the theoretical and very ludicrous

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<sup>4</sup> 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.

<sup>5</sup> *Peel Hotel Pty Ltd (Anti-Discrimination Exemption)* [2010] VCAT 2005; *National Management Plus Pty Ltd (Anti-Discrimination Exemption)* [2007] VCAT 1983 (19 October 2007); *Netkey Pty Ltd (exemption)* [2003] VCAT 2007 (15 December 2003); Redacted Author, 'It's Not A Ban Says Boy's Club', *Star Observer* (20 April 2008).

<sup>6</sup> Australian Human Rights Commission, *Notice of Preliminary View on Application for Temporary Exemption: Lesbian Action Group*, September 2023, 7.42.

<sup>7</sup> Australian Human Rights Commission, *Notice of Preliminary View on Application for Temporary Exemption: Lesbian Action Group*, September 2023, 7.40.

<sup>8</sup> Australian Human Rights Commission, *Notice of Preliminary View on Application for Temporary Exemption: Lesbian Action Group*, September 2023, 7.43.

concept of lesbians sexually harassing males rather than the actual, proven, very obvious existence of males who identify in whatever way will allow them to harass and discriminate against lesbians.

On that note, I would also like to once again point out the comparatively preferential treatment that men have received when they apply for exemptions to protect their spaces on the basis of sex, sexuality and gender identity. Often little more than anecdotal evidence has been considered compelling enough to support such applications for men.<sup>9</sup> The Peel, The Laird and The Sircuit Bar operate venues and events where they can rightfully exclude would-be patrons on the basis of sex, sexuality and gender identity. The Peel, a venue exclusively for gay men, even happily advertises itself as “exempt from anti-discrimination laws”.<sup>10</sup> Meanwhile, in regards to the Lesbian Action Group’s application (and other similar applications in regards to lesbian-only events<sup>11</sup>), dozens of submissions from experts, containing tomes of studies and references on the subject, are apparently not compelling enough to the Commission.<sup>12</sup> The irony is not lost on me that the Commission’s sexist double standards will be a primary reason for refusing this exemption under the Sex Discrimination Act.

In conclusion: I have little hope that the Commission will rethink its stance in regards to protecting lesbian spaces. As a lesbian I’ve spent decades watching the systematic entrenchment of lesbophobia in Australia, often aided by self-proclaimed “L”GBTQ+ organisations. Indeed I think it’s rather telling that most of the submissions opposing the protection of lesbian spaces came from “L”GBTQ+ groups and mens groups. Whereas the majority of submissions in support were from lesbian and womens groups. So it’s no surprise to me to see the so-called Australian “Human Rights” Commission decide, against the purpose and objective of the Sex Discrimination Act, to further entrench discrimination against lesbians. I’ve been a marginalised minority long enough to know the system doesn’t work for people like me. I certainly cannot share the entitlement of trans activists when they don’t even bother applying for exemptions to host their exclusionary trans-only events because they know the law will always bend over backwards for them. For a group who so loudly claim to be oppressed they sure don’t suffer any of the problems actually oppressed minorities do. As a lesbian I’ve had to fight tooth and nail for every right I’ve ever had and today that fight seems to be for the basic right to assemble, associate, gather and organise. I can only hope the Australian Human Rights Commission does better, but I have no expectations.

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<sup>9</sup> *Peel Hotel Pty Ltd (Anti-Discrimination Exemption)* [2010] VCAT 2005; *National Management Plus Pty Ltd (Anti-Discrimination Exemption)* [2007] VCAT 1983 (19 October 2007); *Netkey Pty Ltd (exemption)* [2003] VCAT 2007 (15 December 2003); Redacted Author, ‘It’s Not A Ban Says Boy’s Club’, *Star Observer* (20 April 2008).

<sup>10</sup> LGBTIQ Directory, *LGBTIQ Melbourne Clubs* (2023) <<https://lgbtiq.directory/index.php/connect-with-community-groups/item/gay-melbourne>>.

<sup>11</sup> *Jessica Hoyle and LGB Alliance Australia (Review of Refusal of an Application for Exemption)* [2022] TASCAT 142.

<sup>12</sup> Australian Human Rights Commission, *Notice of Preliminary View on Application for Temporary Exemption: Lesbian Action Group*, September 2023.