

The Human Rights Commission  
GPO Box 5218  
Sydney NSW 2001

**By email:** [legal@humanrights.gov.au](mailto:legal@humanrights.gov.au)

Dear Human Rights Commission,

**Re: Lesbian Action Group temporary exemption application**

We thank you for the opportunity to participate in the interested party's submission of this exemption application ('the application') by the Lesbian Action Group ('LAG').

This submission sets out Q+ Law's response to the application.

**Who we are**

Fitzroy Legal Service (FLS) provides legal services (advice, casework, community legal education, court appearances, systemic advocacy) to the Victorian community in a wide range of practice areas. FLS provides services to approximately 5,000 Victorians per annum, and the Law Handbook Online is the most relied upon legal resource in the state.

Queerspace is an LGBTIQ+ health and wellbeing support service established in 2009 by LGBTIQ+ communities for LGBTIQ+ communities. Queerspace has a focus on relationships, families, parenting and young people and offers co-located services across north-west metropolitan regions of Victoria.

In 2023, FLS and Queerspace, supported by the Victorian Government, established Q+ Law. Q+Law is LGBTIQ+ community-led and ensures the complex intersectional voices of the LGBTIQ+ communities is enshrined in the work our service undertakes. We are dedicated to upholding the legal rights and well-being of Victoria's LGBTIQ+ community.

We provide a free state-wide safe entry point to accessing legal assistance for all individuals who identify as part of LGBTIQ+ communities. Individuals identifying as LGBTIQ+ can contact our service for initial advice, case management, or referral to other services. We are located at the Victorian Pride Centre with outreach partners statewide. The types of issues we assist the LGBTIQ+ community with include but are not limited to, discrimination, harassment, and violence based on LGBTIQ+ identity, issues affecting gender affirmation, family violence, family law, employment law, tenancy, and criminal law.

**Background**

International Lesbian Day occurs on 8 October every year globally and is a day for lesbians to come together to celebrate lesbian history, diversity and culture. The day is considered to be an opportunity for lesbians to connect with their friends and families to celebrate and raise awareness

about the importance of the community.<sup>1</sup> International Lesbian Day is considered an inclusive event to be shared by lesbians and allies of lesbian rights.

### **The application**

LAG seeks an exemption from the Commission pursuant to section 44(1) of the *Sex Discrimination Act 1984* (Cth) “the Act”.

LAG seek the exemption to be able to hold an event on International Lesbian Day, events in the future, and to advertise group memberships. LAG seeks to have these events for ‘Lesbians Born Female’ to the exclusion of all other groups. LAG has identified the affected group to be heterosexual, bisexual and gay males, heterosexual and bisexual females, transgender people and queer plus people. LAG submits the exemption is necessary to be able to advertise their events publicly without fear of litigation or discrimination.

### **Q+Law views about the application**

Lesbians are an important group within the LGBTIQ+ communities. Lesbians have played a vital role in the progression of LGBTIQ+ rights as a whole and women’s rights more broadly. Lesbians deserve respect, equal opportunities and protections from discrimination. Q+Law supports, advocates, and celebrates the rights of all lesbians to live openly and freely without fear of discrimination or prosecution, including transgender, intersex, and non-binary lesbians.

It is important to note that lesbians are not a homogenous group. The lesbian community as a whole is made up of intersectional experiences and diversities including but not limited to race, religion, socioeconomic background and gender. Q+Law supports rights-based inclusion and seeks to improve the well-being of lesbians regardless of other intersecting identities.

Q+Law has reviewed the application made by LAG and their reasons for seeking the application and is of the view that the reasons for exemption are inconsistent with the objects of the Act and the intention of Parliament. Q+Law submits the considerations that favour the grant of the exemption are outweighed by the considerations that favour the refusal of the application, and **the Commission should not grant the exemption.**

The Act should not be used to discriminate between subcategories of women.

Section 3 of the Act sets out the Act’s objectives, which are to:

- Give effect to certain provisions of the Convention on the Elimination of All Forms of Discrimination Against Women and to the provision of other relevant international instruments;
- eliminate discrimination against persons on the grounds of sex and gender identity; and
- to achieve, so far as practicable, substantive equality *between men and women*.

It is important to note that the Act does not differentiate between transgender and cisgender women or men, or men and women with intersex variations. Therefore, the gender categories referred to in the Act should be interpreted broadly to include **all women** and **all men**; the Act aims to achieve substantive equality between all men and all women. The *Convention on the Elimination of All Forms of Discrimination Against Women*<sup>2</sup> ('CEDAW') also draws no distinction between subcategories of women. Meyer argues that CEDAW's preferred interpretation of 'woman' should be read at its broadest to include anyone who is biologically, anatomically or genetically female and/or someone who performs or identifies as a woman.<sup>3</sup>

The exemption sought by the applicant seeks to differentiate between 'lesbians born female' and other lesbians. Lesbian is a term used to describe women who are sexually attracted to other women. Since LAG has not clearly defined the term 'born female' within its submission, Q+Law assumes the exemption is sought to allow the applicant to discriminate against all people who are not cis-gendered women sexually attracted to only other cis-gendered women. Therefore, the exemption seeks the right to be able to differentiate between sub-categories of women.

Q+Law submits there are no distinctions between subcategories of women in the CEDAW or the Act, and both instruments aim to achieve substantive equality for all women in all forms and diversity. Women who have intersex variations and/or are transgender are women under both instruments. They are also the subcategory of women who experience the most discrimination, exclusion, and marginalisation within society.<sup>4</sup> To carve out this portion of women is to leave behind our most vulnerable women and does not further the equality of women as a whole. In the interest of preserving the Act's purpose, applications that seek to further discriminate against some sub-categories of women should not be granted an exemption.

#### Enforcing the exemption further disadvantages women and creates opportunities for further discrimination against women.

If granted an exemption to differentiate between female born lesbians<sup>2</sup> and other lesbians, LAG has failed to explain how it intends to enforce the exemption. Whether or not a lesbian is cisgender, transgender, intersex, or gender nonconforming cannot be ascertained based on public physical presentation alone. Women who were assigned female at birth have diverse bodies, sex characteristics, voices, frames, statures and so on. It is impossible to tell who is 'born female' and who is not without intrusion on an individual's privacy, bodily integrity, and dignity.

There is also the concern that the exemption will lead to greater discrimination against women because it would expose them to the subjective opinions of others on their bodies. That is, the group with the exemption would be able to assess who fit the assumed physical traits of 'born female' and those who did not. In the pursuit of identifying women 'born female', all women, cisgender or otherwise, experience more gender-based violence and discrimination based on their physical attributes.<sup>5</sup> This creates situations where women could experience violations of their bodily integrity in seeking to enforce the exemption. Exemptions like the applicants do not fulfil the purpose of the Act because it will further increase public judgement and policing of women's bodies.

#### The applicant has not identified how the exemption will progress the equality of lesbians and women in society.

In general, Q+Law agrees with LAG's claim that lesbians in Victoria experience discrimination.. However, while the applicant broadly addresses the discrimination lesbians face, the application has failed to explain how the exemption will eliminate that discrimination. In their submission, the

applicant talks at length that the discrimination they have suffered has been from transgender women seeking to enforce their protections under the Act. For example, on page 8 of the submission, the applicant says:

“this exemption is absolutely necessary to enable lesbians to once again advertise our events in order to once again meet publicly without fear of litigation or discrimination.”

Transgender, intersex, and non-binary lesbians are entitled to pursue discrimination claims if they believe their protections under the Act are being infringed upon. To grant an exemption on this ground alone undermines the existence of the Act altogether.

Q+Law supports marginalised communities' right to meet in safe spaces where they can celebrate their community and discuss issues that are of importance and significance to the community. In line with rights-based inclusion, this space should not come at the cost of other minorities within the community.

Yours Sincerely,

**Q+Law**

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For further comment please contact:

[Redacted contact information]