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Update on case of *Jessica Hoyle v Tasmanian Anti-Discrimination Commissioner*

The final hearing of the case of *Jessica Hoyle v Tasmanian Anti-Discrimination Commissioner* was today adjourned by the Tasmanian Civil & Administrative Tribunal (TasCAT) because of uncertainty in relation to their jurisdictional powers to determine the matter.

Jessica Hoyle is a lesbian woman who planned to organise an event in Launceston exclusively for females. Hoyle applied for an exemption under section 56 of the *Tasmanian Anti-Discrimination Act 1998* so that she could refuse entry to males. Her application was refused by Sarah Bolt, the Anti-Discrimination Commissioner (“the Commissioner”) on 6 July 2021. Hoyle has requested that TasCAT review and quash the Commissioner’s decision.

In her reasons for the decision, the Commissioner observed: *As I understand it, the exemption is sought to permit discrimination on the basis of sex, specifically against 'biological men'. Sex is not a protected attribute.*

Despite acknowledging that the exemption related to an attribute not protected by the Tasmanian legislation, the Commissioner proceeded to refuse the application on the grounds that granting the exemption would permit discrimination on the basis of gender identity or intersex variation.

However, Hoyle states *“I just want to exclude individuals who are male, regardless of their gender identity. Females are welcome no matter how they identify and regardless of any intersex variation.”*

Lawyers for Ms Hoyle have submitted that the Commissioner erred in her determination of the application and that constitutional questions are raised by this application of the protections in relation to gender identity which creates a conflict with provisions of the *Commonwealth Sex Discrimination Act*.

Kat Karena of LGB Alliance Australia says: *“We support Jessica’s application because we support the right of lesbians to have events which are exclusively for females and for there to continue to be single sex spaces and facilities for women generally.”*

“Gender or Gender identity is a socially constructed concept that should not be confused or conflated with sex which is a biological reality. Women’s right to single sex toilets, changerooms, domestic violence services and lesbian meetups should not be undermined by the protections against gender identity discrimination.”

The Tribunal has adjourned the matter while awaiting the outcome of the High Court case of *Citta Hobart Pty Ltd & Anor v Cawthorn* in which some relevant jurisdictional questions are under consideration.

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