

Lesbian Action Group
Applicant

Australian Human Rights Commission
Respondent

REASONS FOR THE APPLICATION: PARTICULARS¹

1. The Lesbian Action Group (**LAG**) is an association of lesbian women who subscribe to a lesbian feminist critique. LAG's objective for associating is to assert and fight for the human rights of lesbians - LAG fights for freedom of association, freedom of speech, freedom from discrimination, freedom from violence, and freedom in law, for all lesbians.
2. To achieve its objectives, LAG intends to (amongst other things) -
 - (1) be a political advocacy group for, by, and about, lesbians in Australia and internationally;
 - (2) assert the biological fact that sex is binary and immutable;
 - (3) fight the oppression of, and discrimination against, lesbians;
 - (4) raise lesbian visibility, both in the general community and within LGB groups;
 - (5) promote outlets for lesbians to meet, have discussions and organise events for the political, social, cultural, physical and mental wellbeing of lesbians; and
 - (6) lobby relevant parties to raise awareness of lesbian needs and interests.
3. LAG applied to the Australian Human Rights Commission (**AHRC**) for a five-year exemption under section 44 of the *Sex Discrimination Act 1984* (Cth) (**SD Act**), so that it could organise public events for the above purposes. The exemption was sought so that LAG could exclude people of the opposite sex, and those who are not lesbians. The exclusion was proposed to extend to all males irrespective of the gender they identify with.
4. The holding of public events is essential to LAG for two reasons -
 - (1) Public events are critical for LAG's objective of accruing political influence in order

¹ This document is filed to supplement the "Reasons for the Application" answer given in LAG's application form (see T5).

to promote its movement and advance its key objectives. Public events will also assist LAG to accrue membership, which, in turn, assists LAG to broaden community awareness and build political influence.

- (2) Public events are the most obvious and practical means by which LAG can provide an outlet for lesbians to explore their sexual, political, cultural and health-based needs and interests.
5. LAG initially applied for an exemption so that it could hold a public event to celebrate International Lesbian Day on 8 October 2023. This particular event was intended to have a celebratory purpose. Cultural activities were planned, and it was intended to engender a sense of lesbian pride amongst attendees.
6. The exemption decision was finalised on 12 October 2023, after the date by which the named the event could have been organised. The AHRC nonetheless considered LAG's application on the basis that LAG indicated that it intended to hold public events for the duration of the five-year exemption period sought.

The AHRC decision

7. President Croucher rejected LAG's application. In her written reasons (**D**), she concluded it was not '*appropriate or reasonable to make distinctions between women based on their biological sex at birth or transgender experience at a community event ... and to exclude transgender lesbians from a community event*': D[9.55].
8. To make good that conclusion, President Croucher primarily used the following inference -

9.58 The Commission notes that the grant of this exemption may lead to the further exclusion of and discrimination against transgender women who are lesbians. Transgender women are a group who have and continue to experience discrimination, harassment and social exclusion. Recent studies within Australia reveal that transgender and gender diverse people report high levels of harassment and social exclusion due to their gender identity or sexuality. Experiences of harassment and social exclusion often lead to poorer health outcomes, with 67.4% of transgender women reporting being diagnosed or treated for a mental health condition in the previous 12 months, and 86% of trans women reporting ever having thoughts about suicide.

9. The second finding President Croucher made in support of her conclusion was that the abuse and harassment experienced by lesbians, as identified in submissions, was '*anecdotal*' and '*not supported by persuasive empirical evidence*': D[9.59].
10. With respect, this path of reasoning was erroneous. The primary inference drawn – being that LAG's proposed public events would lead to poor health outcomes and suicidal

ideation within the cohort of males who identify as transgender women – was not a logical or available inference to draw. Adjudicating the application was not a matter of comparing which group of people were more susceptible to be harassed or abused (although in this respect, compare the evidence at www.terfisaslur.com, which was brought to the President’s attention at T277 and T351, and extracted in part at T313-T314).

11. The President failed to have adequate regard to the political, sexual, social and cultural needs and interests of lesbians sought to be advanced by LAG’s application, for which there was ample evidence. The AHRC’s decision appears to establish an impermissible hierarchy of protected attributes that places the protection of gender identity above protection of sex and sexual orientation.

The correct and preferable decision

12. The *correct* decision would have placed the power to grant an exemption under section 44 of the SD Act in its true setting - against a backdrop of common law freedoms of expression, assembly and thought. The correct decision would have likewise placed the exemption power against the International Conventions that protect the same freedoms. The correct decision would have acknowledged that discrimination is to be eliminated ‘*so far as is possible*’ (section 3(b) SD Act) and that discrimination is, in some circumstances, justifiable in the public interest.
13. The *correct* decision would have also identified LAG’s proposed exemption as a special measure. Properly construed, the application of s 7D(1)(aa) supports LAG’s application since it would have contributed towards lesbians attaining substantive equality vis-à-vis other sexual orientations. Lesbians need safe public places to meet with persons of the same sex, free of males and harassment.
14. The *preferable* decision would have been to conclude that the exemption would have allowed lesbians who identify with LAG’s objectives to further these objectives. Simply put, no legally recognisable harm is to be occasioned, on anyone, by LAG holding public events of the kind it wishes to pursue. The preferable decision would have been to conclude that the political, sexual, and cultural needs and interests that LAG wishes to pursue through the holding of public events attracts the public interest to a significant degree. This public interest justifies the exemption.

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