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Dear Ms Alsalem

### **The impact of gender identity ideology on the safety of lesbian women and girls**

Feminist Legal Clinic Inc. is a community legal service and registered charity based in Sydney and established with the purpose of advancing the human rights of women and girls. In 2023 our organization was granted Special Consultative Status with the United Nation's Economic and Social Council (ECOSOC).

We have been asked to write to you on behalf of our client, Lesbian Action Group Inc., and other Australian lesbians who have found that extreme gender identity ideology has eroded their human rights, including their freedom of association and safety from violence and harassment. The failure of the Australian Government to uphold women's sex-based rights is exposing women to male violence and sexually predatory behaviour in contexts where they would otherwise be safe from men, including at lesbian gatherings.

According to the latest release by the Australian Bureau of Statistics based on two-year violence prevalence rates: *Women who identified as gay, lesbian, bisexual or who used a different term such as asexual, pansexual or queer were more likely to have experienced sexual violence (13%) than women who identified as heterosexual (2.4%). For both groups, 98% of those who experienced sexual violence in the last two years experienced it by a male perpetrator.*<sup>1</sup>

Our clients describe how the actions of extreme trans activists have prevented lesbians from meeting safely over many years.<sup>2</sup> We are instructed that lesbian groups have been increasingly disrupted by males who claim to be women and who threaten discrimination complaints and become aggressive if they are excluded. As a result, lesbian groups have been driven underground over a period of many years and have

<sup>1</sup> <https://www.abs.gov.au/statistics/people/crime-and-justice/sexual-violence/latest-release>

<sup>2</sup> [https://humanrights.gov.au/sites/default/files/lesbian\\_action\\_group\\_application\\_for\\_a\\_temporary\\_exemption\\_redacted\\_0.pdf](https://humanrights.gov.au/sites/default/files/lesbian_action_group_application_for_a_temporary_exemption_redacted_0.pdf); <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/sa/SAEOT/2009/50.html>

discovered that Australian laws not only fail to protect them from male violence and abuse, but, in fact, facilitate it.

We therefore request your intervention with the Australian Government to ensure that women's sex-based rights, including the right of lesbians to meet safely in the absence of males, are upheld and are not subverted by laws recognising socially constructed gender identity.

### **The Conflation of Sex and Gender in Australian Law**

The CEDAW Committee states in General Recommendation 28:

*The term "sex" here refers to biological differences between men and women. The term "gender" refers to socially constructed identities, attributes and roles for women and men<sup>3</sup>*

Consistent with this, the Australian Government Guidelines on Sex and Gender (the Guidelines) published 1 July 2013 and updated 18 November 2015 state:

*For the purposes of these Guidelines, sex refers to the chromosomal, gonadal and anatomical characteristics associated with biological sex.*

*Gender is part of a person's personal and social identity. It refers to the way a person feels, presents and is recognised within the community. A person's gender may be reflected in outward social markers, including their name, outward appearance, mannerisms and dress.*

However, the Guidelines go on to state:

*Although sex and gender are conceptually distinct, these terms are commonly used interchangeably, including in legislation.<sup>4</sup>*

And herein lies the problem. In Australian legislation the terms 'sex' and 'gender' or 'gender identity' are frequently confused and conflated in law and policy around the country. We attach a table with links to the various 'gender recognition' laws in which this confusion is legislatively embedded with provisions that suggest that sex is indistinguishable from gender or gender identity and which defy science by allowing for sex to be 'changed' or 'reassigned'.

In NSW and the ACT, the Births, Deaths and Marriages Registration Act allows for 'change of sex', while Queensland law provides for 'sexual reassignment' and in Victoria a person can apply to have their record of sex altered every 12 months. South Australia and the Northern Territory cover their bets by referring to 'change of sex or gender identity' or 'change of sex or gender' respectively. Western Australia has an entire *Gender Reassignment Act 2000*, while Tasmania provides a nonsensical and circular definition for 'gender' in section 3A of the *Births, Deaths and Marriages Registration Act 1999* (Tas), which illustrates the extent of the confusion. It states:

<sup>3</sup> 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, paragraph 5. - <https://digitallibrary.un.org/record/711350?ln=en>

<sup>4</sup> <https://www.ag.gov.au/sites/default/files/2020-03/AustralianGovernmentGuidelinesontheRecognitionofSexandGender.pdf>

(1) *In this Act – gender means –*

(a) *male; or*

(b) *female; or*

(c) *indeterminate gender; or*

(d) *non-binary; or*

(e) *a word, or a phrase, that is used to indicate a person's perception of the person's self as being neither entirely male nor entirely female and that is prescribed; or*

(f) *a word or phrase that is used to indicate a person's perception of the person's self as being neither entirely male nor entirely female.*

(2) *For the purposes of the definition of gender in subsection (1) –*

(a) *a reference, in paragraph (a) of the definition, to "male" is to be taken to be a reference to the male gender; and*

(b) *a reference, in paragraph (b) of that definition, to "female" is to be taken to be a reference to the female gender.*

The discrimination laws covering gender identity, transgender status or gender history are equally confusing and inconsistent and are also being applied in a manner that undermines the provisions relating to sex discrimination. There is an urgent need for a national review of gender recognition laws and their impact before more harm is done. There are current bills before the NSW Parliament that will further entrench the problem if allowed to pass.<sup>5</sup>

### **Recent cases demonstrating the erasure of ‘sex’ by gender identity ideology**

#### ***Lesbian Action Group v Sex Discrimination Commissioner (ongoing)***

The newly appointed Sex Discrimination Commissioner, Dr Anna Cody, recently made the following comments in a decision refusing Lesbian Action Group (LAG) an exemption under the Commonwealth *Sex Discrimination Act 1984* (Cth) (SDA) to hold a lesbian event exclusively for ‘female born lesbians’. Her decision states:

*The Commission notes that the word ‘sex’ is not defined in the SDA. It should take its ordinary meaning, informed by its context (including previous court cases and other Australian legislation) and the purpose of the SDA (particularly, to eliminate discrimination). The SDA was amended in 2013 by the Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013 (Cth) (the Amending Act). The Amending Act introduced protections against discrimination on the ground of sexual orientation, gender identity and intersex status, and replaced references in the SDA to ‘opposite sex’ with ‘different sex’. The explanation given for this in the Explanatory Memorandum for the Amending Act was that ‘sex is not a binary concept’. Importantly, for present purposes, the provisions of the SDA also suggest that a person’s ‘sex’ can be changed. This interpretation is consistent with the way ‘sex’ has been used as a legal concept throughout Australia, including in legislation dealing with birth registers.<sup>6</sup>*

<sup>5</sup> [https://www.alexgreenwich.com/lgbtiqa\\_equality\\_bills\\_2023](https://www.alexgreenwich.com/lgbtiqa_equality_bills_2023)

<sup>6</sup> [https://humanrights.gov.au/sites/default/files/lesbian\\_action\\_group\\_exemption\\_decision\\_1\\_0.pdf](https://humanrights.gov.au/sites/default/files/lesbian_action_group_exemption_decision_1_0.pdf)

Unfortunately, the Commission's need to interpret sex consistently with the 2013 amendments to the SDA and state legislation dealing with birth registers necessarily constrained logical decision making in this matter. We would strongly support your intervention as amicus curiae in the proceedings to review this decision. The matter is listed before the Administrative Appeals Tribunal for a first telephone conference on the 13 March 2024.

### ***Tickle v Giggle (ongoing)***

This case involves a discrimination complaint by Queensland trans activist Roxanne Tickle who wishes to access Giggle for Girls, a social media app intended to provide a safe space online for women and girls who want to network free of male harassment. This litigation is ongoing in the Australian Federal Court and is listed for hearing in April 2024. On 10 August 2023 submissions filed on behalf of the Sex Discrimination Commissioner in these proceedings contained the following statement of her position:

*In summary, the Commissioner submits that the word "sex" is not a biological concept referring to whether a person at birth had male or female physical traits. Nor is it a binary concept, limited to the "male" or "female" sex. The word "sex" takes its ordinary meaning, which is informed by how that term is used throughout Australia including in State and Territory legislation (discussed further below). "Sex" can refer to a person being male, female, or another non-binary status. It is also broad enough to encompass the idea that a person's "sex" can be changed.<sup>7</sup>*

The opinions expressed by the Sex Discrimination Commissioner in these matters are likely to be influential and the decisions could have far-reaching consequences for women who want to have safe spaces for women and girls. Clearly the implications for the lesbian community may be devastating.

### ***Jessica Hoyle v Tasmanian Anti-Discrimination Commissioner<sup>8</sup>***

In a slightly earlier case Jessica Hoyle made an application to Equal Opportunity Tasmania for an exemption under the *Anti-Discrimination Act 1998* (Tas) to hold a lesbian event for females only at a club in Launceston, Tasmania. The application was rejected by the Tasmanian Anti-Discrimination Commissioner, Sarah Bolt, on the basis that to grant it would allow discrimination against persons with the protected attribute of 'gender identity'. A review of this decision by the Tasmanian Civil and Administrative Tribunal (TASCAT) was unsuccessful and the risks and costs of an appeal proved prohibitive for Ms Hoyle.

Ms Hoyle also brought a complaint to the Tasmanian Anti-Discrimination Commissioner in relation to an incident when she was called a TERF, an insult meaning Trans Exclusionary Radical Feminist (her garment featured the LGB Tasmania logo) and was asked to leave a department store by a staff member. The Tribunal found that Ms Hoyle's gender critical beliefs were not a political activity, belief or affiliation and therefore not a protected attribute under the legislation.<sup>9</sup> Again, this decision was not appealed due to Ms Hoyle's limited resources.

<sup>7</sup> [https://www.fedcourt.gov.au/\\_data/assets/pdf\\_file/0006/112299/Submission-of-the-Australian-Human-Rights-Commission.pdf](https://www.fedcourt.gov.au/_data/assets/pdf_file/0006/112299/Submission-of-the-Australian-Human-Rights-Commission.pdf)

<sup>8</sup> <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/tas/TASCAT/2022/142.html>

<sup>9</sup> <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/tas/TASCAT/2023/10.html>

***Jay Langadinos v Patrick Toohey (ongoing)***

Aside from the impact on the ability of lesbians to meet safely together without males, extreme gender identity ideology is also responsible for the fraudulent sex change industry causing irreparable harm to many young women and girls who are still coming to terms with their sexual orientation. This is an area requiring even more urgent intervention in view of the exponential increase in young females undergoing these misconceived medical interventions, which are being actively facilitated by government health and education departments.

On 6 May 2022, proceedings were filed in the NSW Supreme Court in the case of Jay Langadinos who is suing the doctors responsible for fast-tracking her onto male hormones and into having a mastectomy and hysterectomy. While this is the first Australian case of this nature to be reported, we are aware of other cases on behalf of detransitioners in the pipeline, but which cannot be discussed here for reasons of legal confidentiality. However, what is increasingly apparent is that in many cases there is an element of ‘transing the gay away’ which needs to be urgently addressed.

We thank you for considering these few examples and we would be very happy to expand on any element if required. We do hope you are able to assist the Australian lesbian community by intervening on their behalf with the Australian Government.

Yours faithfully



Anna Kerr

Principal Solicitor

Feminist Legal Clinic Inc.

*Organization in Special Consultative Status with the Economic and Social Council (ECOSOC) since 2023.*

This letter is endorsed by the following groups whose logos appear on this and the following pages:



Women's Declaration International  
Australia

**LGB ALLIANCE AUSTRALIA**



Lesbian Rights Australia



VISIBLE Lesbian Group



Woman Up Queensland



**QUEENSLAND WOMEN'S ACTION ALLIANCE  
IQWAAI**





Lesbian Bill of Rights International



Lesbisches Aktionszentrum (LAZ) reloaded e.V.  
DER Verein für lesbische Sichtbarkeit.



THE COUNTESS



Lesbian Resistance NZ

**Table of Australian legislation providing gender recognition**

Australian Jurisdiction	Provisions recognising change of sex/gender	Discrimination protections for gender identity	Hate speech or vilification provisions	Provisions mandating medicalisation
<b>Federal</b>	<a href="#">Australian Government Guidelines on Recognition of Sex and Gender</a>	<a href="#">Commonwealth Sex Discrimination Act 1984 – section 5B</a> – ‘gender identity’	-	-
<b>NSW</b>	<a href="#">Births, Deaths and Marriages Registration Act 1995 – Part 5A – s32B</a> . Recording a change of sex requires a ‘ <a href="#">sex affirmation procedure</a> ’ which is defined to mean a surgical procedure on reproductive organs.	<a href="#">Anti-Discrimination Act 1977 – Part 3A</a> – discrimination on transgender grounds	<a href="#">Anti-Discrimination Act 1977 – Division 5</a> Transgender vilification. <a href="#">Section 93Z of the Crimes Act</a> – offence to publicly threaten or incite violence on grounds of gender identity.	NSW Premier Chris <a href="#">Minns</a> has <a href="#">pledged to ban conversion therapy</a> . Independent MP <a href="#">Alex Greenwich’s Equality Bill</a> will be <a href="#">tabled when parliament resumes in 2024</a> .
<b>Victoria</b>	<a href="#">Births, Deaths and Marriages Registration Act 1996 – Part 4A</a> - Acknowledge ment of Sex – allows for altering sex by self-declaration every 12 months.	<a href="#">Equal Opportunity Act 2010</a> – section 6 – protected attribute ‘gender identity’, defined in section 4.		<a href="#">Change or Suppression (Conversion) Practices Prohibition Act 2021</a>
<b>Queensland</b>	<a href="#">Births, Deaths and Marriages Registration Act 2003 – Part 4</a> Reassignment of sex currently still requires <a href="#">sexual</a>	<a href="#">Anti-Discrimination Act 1991</a> – section 7(m) – ‘gender identity’	<a href="#">Anti-Discrimination Act 1991</a> – section 124A and 131A	<a href="#">Public Health Act - Chapter 5B</a>



	<a href="#">reassignment surgery.</a>			
<b>South Australia</b>	<a href="#">Births, Deaths and Marriages Registration Act 1996</a> – Part 4A – clinical treatment required only.	<a href="#">Equal Opportunity Act 1984</a> – section 29(2a) – ‘gender identity’		<a href="#">SA plans to ban conversion therapy were reported in 2020.</a> Legislation has not yet been introduced.
<b>Western Australia</b>	<a href="#">Gender Reassignment Act 2000</a> requires a medical <i>or</i> surgical procedure to alter the genitals for applications to change registered sex.	<a href="#">Equal Opportunity Act 1984</a> - Part IIAA – discrimination prohibited on ‘gender history grounds’		<a href="#">Media Statement 01.12.2022</a> - WA government plans to ban ‘conversion therapy’.
<b>Tasmania</b>	<a href="#">Births, Deaths and Marriages Registration Act 1999</a> – Part 4A - requires gender change application but no medical certificate.	<a href="#">Anti-Discrimination Act 1998</a> - section 16 – ‘gender’ and ‘gender identity’ are protected attributes, ‘sex’ is not a protected attribute.	<a href="#">Anti-Discrimination Act 1998</a> – section 19 – inciting hatred	<a href="#">Draft conversion therapy bill released for public consultation 13.12.2023</a>
<b>ACT</b>	<a href="#">Births, Deaths and Marriages Registration Act 1997</a> – <a href="#">Part 4</a> -requires only appropriate clinical treatment.	<a href="#">Discrimination Act 1991</a> – section 7(g) ‘gender identity’	<a href="#">Discrimination Act 1991</a> – <a href="#">section 67A</a> – unlawful vilification	<a href="#">Sexuality and Gender Identity Conversion Practices Act 2020</a>
<b>Northern Territory</b>	<a href="#">Births, Deaths and Marriages Registration Act 1996</a> – Part 4A – requires only appropriate clinical treatment.	<a href="#">Anti-Discrimination Act 1992</a> – <a href="#">section 19</a> – ‘gender identity’		