



October 2nd 2023

Australian Human Rights Commission
GPO Box 5218
Sydney NSW 2001
Australia

Dear Members of the Australian Human Rights Commission,

Re: Additional Submission Contesting Interim Judgment - Application on Behalf of the Lesbian Action Group

We are writing an additional submission to contest the interim judgement of the Australian Human Rights Commission (AHRC) in relation to an application made on behalf of the members of the Lesbian Action Group for a temporary exemption under s 44(1) of the Sex Discrimination Act 1984 (Cth). as we noticed a further glaring inconsistency within the interim judgement and would be grateful if you could treat this additional submission with equal weight to our initial one.

We respectfully reiterate that the interim judgement is biased, unreasonable, and irrational. Furthermore, that it fails to adhere to universally accepted definitions of "woman" and "sex," as recognised by the United Nations, and it avoids using any accurate legal definition of these terms, including the definition of "sex" provided in the Sex Discrimination Act (SDA). This divergence from established legal definitions, while simultaneously relying on the SDA for other aspects - a definition of "transgender" for example, raises perplexing inconsistencies and undermines the fundamental principles of fair and equitable treatment.

1. Biased Interpretation:

The interim judgement appears to be influenced by a bias that promotes an ideology above scientifically established facts. While the application is grounded in biological sex, the judgement inappropriately incorporates terminology related to gender identity that is unrelated to the core matter at hand. This bias is evident in the inconsistent use of terminology, which does not align with the application's focus on biological sex.

2. Failure To Use UN or Other Legally Accepted Definitions

The AHRC's decision-making process should align with international human rights standards and definitions.¹ However, the interim judgement does not consistently adhere to the United Nations' accepted definitions of "woman" and "sex." This inconsistency raises concerns about the application of universal human rights principles in the decision-making process.²

3. Avoidance of Legal Definitions:

The AHRC's failure to use correct legal definitions, particularly for "sex," is perplexing. The SDA defines "sex" as a biological characteristic, and it is worth noting that this definition also applies to the concept of "transgender" within the SDA, however, the interim judgement lacks this clarity, resulting in unnecessary confusion and contradiction within the decision.

The SDA guidelines define gender as a personal and social identity that includes various outward markers such as appearance, mannerisms, and dress:

"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."³

Given this definition and the inherent ability of the community - each individual in society - it is clear that humans can instinctively and quickly identify the biological sex of others. This ability is a result of evolutionary biology, and it is unaffected by gender identity or expression.

¹ Australia is a signatory to the United Nations Charter of Human Rights and has international treaty obligations related to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which was adopted by the United Nations General Assembly in 1979.

² *ibid.*

³ Sex Discrimination Act Australian Government Guidelines

Humans, like many other mammals, can detect the sex of others instinctively using a combination of visual, olfactory, and auditory cues. These cues are frequently linked to secondary sexual characteristics, which are physical differences between males and females of the same species. These characteristics are largely determined by differences in reproductive roles and physiology in mammals, including humans.

- a. **Visual cues:** Humans use physical characteristics such as the presence of facial hair, a prominent Adam's apple, specific facial features such as a pronounced brow ridge and square jawline, higher muscle mass and a more muscular appearance, and differences in body size and proportions to identify another human as male.
- b. **Olfactory Cues:** Animals, particularly mammals, emit pheromones, which are chemical substances that convey information about a person's biological state, including sex. While olfactory cues are more important for some mammals, it is acknowledged that human males have distinct body odours, though the extent to which these odours influence social interactions and mate selection in humans is still being researched.
- c. **Auditory Cues:** Differences in vocal pitch, resonance, and speech patterns are examples of auditory and linguistic cues that humans use to identify males. Males have lower-pitched voices with a deeper resonance than females. Additionally, linguistic characteristics such as word choice, intonation patterns, and speech rhythm can all help to identify someone as male. These cues, when combined with visual and other sensory information, aid humans in recognising the sex of others in social interactions.

Instinctive recognition of these cues happens rapidly and is often nearly instantaneous. This ability is an evolutionary adaptation that aids in essential behaviours such as mate selection, reproduction, and social interactions. The brain processes these visual, olfactory, and auditory cues very quickly, allowing animals, including humans, to make split-second decisions about social interactions and potential reproductive partners. This rapid identification is vital for the survival and reproduction of many species including humans.

Given the Australian Human Rights Commission's selective reliance on the SDA guidelines, it is clear that the Commission is, at best, contradicting the spirit of Sex Discrimination laws, and, at worst, willfully misrepresenting them and using them selectively to actively discriminate against lesbians, which is not only illegal but also inherently homophobic and misogynistic. According to the SDA's own definition of "transgender," i.e., that we all know the sex of the person regardless of how they present, the "'transgender women' who are attracted to women" referred to in the interim judgement are, directly according to the SDA's guidelines - the AHRC is clearly promoting the interests of heterosexual males! By deliberately ignoring individuals' natural, scientifically supported instincts to identify biological sex, the Commission is misinterpreting and misapplying the very laws it seeks to uphold. This selective interpretation not only undermines the essence of the Sex Discrimination laws, but also calls into question the AHRC's credibility as a human rights body and runs counter to individuals' universally recognised and biologically ingrained ability to distinguish biological sex.

Given these considerations, we respectfully request that the interim judgement be reconsidered. It is critical that the AHRC ensures a fair and equitable application of the law, particularly in cases involving biological sex discrimination. Inconsistencies and deviations from established legal definitions only serve to confuse and undermine the Commission's decisions.

Finally, we respectfully submit this appeal in the interests of fairness, justice, and adherence to established legal definitions and international standards. We strongly urge the Australian Human Rights Commission to reconsider and directly address the issues raised in this submission.

Thank you for taking the time to read this.

Sincerely,

A handwritten signature in black ink, appearing to read 'Fraser Anderson', with a stylized flourish at the end.

Fraser Anderson

On behalf of Fair Game Australia
www.fairgameau.com