



29th, September, 2023

Australian Human Rights Commission
Level 3, 175 Pitt St,
Sydney NSW 2000

Dear Commissioners,

**Re: Appeal Against Interim Judgement - Lesbian Action Group
Application for a temporary exemption under s 44(1) of the Sex
Discrimination Act 1984 (Cth).**

We are writing to express profound concerns regarding the interim judgement dated 25th September 2023 in the matter of the Lesbian¹ Action Group Application for a temporary exemption under s 44(1) of the *Sex Discrimination Act 1984* (Cth) and to formally appeal this interim judgement. The primary contention of this appeal is that the interim judgement is that it violates the fundamental principles of judicial review on three counts, in that it is biased, unreasonable and irrational. It does however, clearly, even if inadvertently, highlights the irreconcilable contradiction that exists between biological sex, sexual attraction, and gender identity in law.

¹ "relating to homosexual relations between women, characterized by erotic interest in other women" (in continuous use from 1890; the noun lesbianism from this sense is attested from 1870) and the noun, which is first recorded 1925."Lesbian | Etymology, Origin and Meaning of Lesbian by Etymonline."

The interim judgement is deeply worrying and appears to be legally unsound as it employs specious terms from gender identity beliefs that are not only irrelevant but also demonstrate clear bias on the part of the commission, especially given that the application has nothing whatsoever to do with gender identity.

I. Misses A Key Legal Point:

The interim judgement in the Lesbian Action Group Application for a temporary exemption under s 44(1) of the *Sex Discrimination Act 1984* (Cth) has clearly underscored the irreconcilable differences between biological sex based attraction and gender identity in the context of law. It is disappointing to note that there is no discussion of this fundamentally important legal point. This appeal seeks to establish that, given the application's basis in biological sex based attraction, all submissions and arguments related to gender identity are fundamentally irrelevant and should be dismissed.

II. Irreconcilable Nature of Biological Sex and Gender Identity:

The interim judgement employs terminology such as "cisgender"² and "transgender" without acknowledging the inherent disparities between biological sex, sex based attraction and gender identity:

Biological Sex: Biological sex is a scientifically established fact and the foundation of the application in question. It is determined by physical attributes and cannot be altered. It is immutable which makes discrimination on this basis unavoidable.

Gender Identity: Gender identity is a claimed personal and subjective identification that may or may not be true and cannot be scientifically proved. It is merely a matter of self-perception and belief.³ A belief is not fixed and is something which can, and often does change over time, therefore it is possible to change a belief to avoid discrimination and therefore discrimination is avoidable.

III. The Case's Foundation in Biological Sex:

As the application is grounded in biological same sex attraction, the irrelevance of gender identity to the matter becomes evident:

² The term cisgender was coined in 1994 in a Usenet newsgroup about transgender topics. German sexologist Volkmar Sigusch used the neologism cissexual (zissexuell in German) in his 1998 essay "The Neosexual Revolution".

³ Australian Commonwealth Government. (2013, July 1). Attorney General's Department. <https://www.ag.gov.au/>

Legal Basis: The application relies on established legal principles related to biological same sex attraction, including anti-discrimination statutes that have protected individuals based on their biological same sex attraction for well over half a century.

Scientific Foundation: Biological sex is an empirically verifiable concept, while gender identity is a matter of claimed personal belief and self-identification. Any submissions related to gender identity are, therefore, incongruous with the application's scientific and legal underpinnings.

IV. Request for Irrelevant Submissions to be Dismissed:

Given the incontrovertible differences between biological sex, sex based attraction and gender identity, we formally request that all submissions and arguments pertaining to gender identity be deemed irrelevant to the matter at hand and dismissed without further consideration. This ensures that the application remains rooted in its scientific and legal foundation.

V. Concerns Regarding Unsuitable Terminology and Bias:

It is concerning that the interim judgement employs unsound terminology associated with gender identity beliefs. These terms, such as "cisgender"⁴ and "transgender," are not only irrelevant but also demonstrate a very clear bias and lack of partiality on the part of the commission, especially when the application has nothing whatsoever to do with gender identity. The use of such terminology threatens to compromise the impartiality of the judgement.

VI. Conclusion:

This appeal underscores that the interim judgement highlights the stark contrast between biological sex, same sex attraction and gender identity in the context of law. We contend that, as the application is firmly based on biological sex, all submissions and arguments related to gender identity are fundamentally irrelevant and should be dismissed out of hand. This approach ensures the application's adherence to scientific accuracy and legal integrity, while also addressing concerns about bias introduced by unsuitable terminology.

⁴ Op. cit.

Of most concern is that having reflected on the interim judgement is that this ruling violates the fundamental principles of judicial review on three counts:

1. BIAS - The prioritisation of gender identity over homosexuality as a protected characteristic is evident.

2. UNREASONABLE - The omission of consideration for the submissions made by lesbians⁵ is unreasonable and unjust.

3. IRRATIONAL - The failure to engage in a meaningful debate on conflicting rights further underscores the irrationality of this decision.

We urge you to revisit this judgement and rectify the highlighted errors to avoid charges of deliberate bias and failure to actually address the initial application at all. We eagerly await your response and the opportunity to engage in further discussion on this matter should the need arise. We are of the opinion that any other course of action would render your decision fatally flawed and open to almost certain legal challenges.

Sincerely,

A handwritten signature in black ink, appearing to read 'Fraser Anderson', with a stylized, cursive script.

Fraser Anderson

On behalf of Fair Game Australia

www.fairgameau.com

⁵ Op. Cit.