

Summary of the Australian Human Rights Commission's decision on the exemption application made by the Lesbian Action Group.

The Australian Human Rights Commission ('Commission') has today given notice of its decision on the application made by the Lesbian Action Group for a temporary exemption to the *Sex Discrimination Act 1984* (Cth) ('SDA').

The Commission has decided that it will not grant the temporary exemption sought by the applicants in this matter.

The Lesbian Action Group applied for a five-year exemption to hold regular publicly advertised 'lesbians born female only events', starting with a 'Lesbians Born Female Only' event to celebrate International Lesbian Day on 15 October 2023. The events are intended to be community social events, involving singing, dancing, celebrations and the discussion of ideas. They aim to build a sense of pride, recognition and wellbeing amongst the lesbian community.

Holding these events exclusively for members of the Lesbian Action Group or in private would be lawful under the SDA. Excluding men and heterosexual women from these events may also be lawful as a special measure under the SDA.

The Lesbian Action Group also seeks to exclude transgender women who are lesbians from these events.

The Commission acknowledges that lesbians in Australia have faced significant structural and entrenched discrimination, both historically and in the present day. The Commission agrees that it is important and beneficial for lesbians to gather as a community to celebrate their culture and discuss issues of special relevance to their community.

The Commission notes that the SDA protects individuals from discrimination on the basis of both sexual orientation and gender identity. Transgender women, as a group, also face significant structural and entrenched discrimination. One way in which gender identity discrimination can manifest is by treating a person less favourably, and contrary to their gender identity, because of their transgender experience.

The Commission considers that exemptions to the law should not be granted lightly. The grant of an exemption has the effect of taking relevant conduct out of the SDA's prohibitions and denying redress to a person who is affected by that conduct for the period of the exemption. Given the significant legal consequences for potential complainants, the Commission must be satisfied that a temporary exemption is appropriate and reasonable, and persuasive evidence is needed to justify an exemption.

The Commission is not persuaded it is appropriate and reasonable to make distinctions between women based on their biological sex at birth or transgender experience, and to exclude transgender lesbians, from a community event of this kind.

The Commission notes that if this exemption had been granted, it may have led to the further exclusion of and discrimination against transgender women who are lesbian.

Pursuant to s 45 of the SDA, and subject to the *Administrative Appeals Tribunal Act 1975* (Cth), an application may be made to the Administrative Appeals Tribunal for a review of the decision to which this notice relates by or on behalf of any person or persons whose interests are affected by the decision.

12 October 2023

Please note that this statement is not intended to be a substitute for the reasons of the Commission as set out in its decision or to be used in any later consideration of the Commission's reasons.