

Committee member
Committee on the Elimination of Discrimination against Women (CEDAW)
Human Rights Council and Treaty Mechanisms Division
Office of the United Nations High Commissioner for Human Rights (OHCHR)

23 February 2024

Dear CEDAW Committee member,

Re: Consideration of sex self-identification as a legal right

We are a coalition of Australian women's and LGB groups. Our groups include teachers, lawyers, nurses, doctors, scientists, academics, researchers, professionals, retirees, mothers, and lesbians. We are not aligned with any political party or religion, and we have come together out of concern and frustration that sex self-identification ('sex self-ID') and gender ideology more broadly are undermining women's human rights and sex-based protections. We are especially concerned for women who need the services of rape crisis refuges, for women in prison, for women in single-sex hospital wards, and for all women and girls where we are disadvantaged and vulnerable because of our sex.

We are writing to you as a matter of urgency because we understand that the CEDAW Committee is considering the legal recognition of sex self-ID. We believe that the Australian experience demonstrates the very real risks of legally recognising sex self-ID to the human rights and protections of women and girls. We want to contribute constructively to any considerations you might have, and we stand ready to answer your questions or provide more information, should that assist.

We also hope that any considerations you might have on this issue are open and transparent and that you actively seek out the perspectives of women who have been directly impacted by sex self-ID, including female prisoners, sexual abuse survivors, lesbians, detransitioners, as well as sportswomen and girls. It is critical to the rights of women – and to CEDAW's credibility – that the committee takes no action that would pre-empt an open and transparent consideration of this issue, including in the committee's observations to states parties during their universal periodic reviews.

Members of our groups have come to the realisation that sex self-ID is hurting Australian women and girls through different pathways. Last year, many of our members gathered and collated our experiences in submissions we – and others – made to an Australian parliamentary inquiry into human rights. We attach these submissions to this letter and update and summarise the key issues here.¹

¹ The inquiry was into a possible human rights act for Australia. [See our and others' submissions](#): Affiliation of Australian Women's Action Alliances (138), Women's Rights Network Australia (177), LGB Alliance Australia (181), Australian Feminists For Women's Rights (211), Coalition of Activist Lesbians (167), Feminist Legal Clinic Inc (183), Single Sex Prisons Australia (154), Victorian Women's Guild (45), Women Speak Tasmania (72), WA Feminist Lobby Network (125) and others from individuals (submissions 289, 295, 296, 312). Other critics of sex self-ID, including religious groups, also provided submissions.

Our civil and political rights

While the erosion has been gradual – almost imperceptible at times – the reality is that Australian women no longer have the right to meet without the presence of men. The Australian Human Rights Commission (AHRC) formalised this state of affairs when in October 2023 it rejected an application from a Victorian lesbian group for an exemption under the *Sex Discrimination Act 1984* to exclude people born male – but who identify themselves as lesbian – from events that the group proposed to hold to share their culture and experiences.² This group (the Lesbian Action Group) had sought this exemption to ensure both their safety and their dignity, having been forced over years to go underground to meet in the face of harassment from trans rights activists and predatory men.

The AHRC decision drew on 2013 amendments to the *Sex Discrimination Act 1984* that introduced protections against discrimination on the basis of sexual orientation, gender identity, and intersex status, as well as on the legal recognition of sex self-ID in Victoria and elsewhere. The AHRC decision followed other recent instances where state tribunals had disallowed female-only gatherings.³

We hope in time that legal action may see the AHRC decision overturned, but this outcome is far from certain. Until then, the rights of *all* Australian women are in jeopardy: we feel trapped in a legal bind where we are no longer free to meet as women to engage in the very discussions that we need to have in order to work together to address the causes of our new oppression – including those causes that are rooted in our biological sex.

Freedoms of speech, conscience, and belief

Even in advance of our realisation that we could no longer meet exclusively as females, we were beginning to see more and more instances of women losing their rights to express their views on matters of biological sex and its importance to our rights. Women have been de-platformed, lost their jobs, or their philanthropic positions, and investigated and fined for expressing ‘gender critical’ views. Others have lost positions within or been dismissed from political parties, or felt compelled to resign for their views. A senior academic has been the subject of multiple investigations – and menacing student protests – and a senior journalist recently lost her job for reporting on gender issues and her experiences with ‘trans censorship’; a senior doctor was stood down from a government hospital after questioning gender medicine; an artist was expelled from an arts festival; an animal welfare volunteer was expelled from her charity for attending a women’s rights event; a city councillor is facing ‘hate speech’ investigations for speaking at such an event; an organiser of a women’s rights rally was repeatedly defamed by leaders of state political parties because she is gender critical; a breastfeeding advocate was censored for questioning the ethics of a biological male attempting to breastfeed a newborn baby.⁴

² Australian Human Rights Commission, [Notice of decision on application for temporary exemption: Lesbian Action Group](#), October 2023.

³ [Jessica Hoyle and LGB Alliance Australia \(Review of Refusal of an Application for Exemption\) \[2022\] TASCAT 142 \(24 November 2022\)](#). An earlier tribunal decision in Victoria has allowed an exemption for a commercial venue to operate specifically for gay men: [Peel Hotel Pty Ltd \(Anti-Discrimination Exemption\) \[2010\] VCAT 2005 \(13 December 2010\)](#).

⁴ For links to each of these instances see pp 4-5 in [Submission 177](#) (Women’s Rights Network Australia) to the Parliamentary Joint Committee on Human Rights. On what constitutes ‘gender critical’ views, we note the explanation of Australian journalist, Edie Wyatt: “Gender critical people accept the existence of gender identity as a legal fiction to protect transgender-identified people and as a psychological category, but they reject the philosophical definition as ‘gender identity’ as a type of soul that everyone has. Gender-critical people especially reject that we should teach

Some of these instances have been overturned on review, while other appeals are on foot; others lack recourse to procedural fairness. The overall effect on women is chilling. Many women, including women in senior leadership positions, have told us that they agree with us about biological sex but they dare not speak out for fear of reprimand or worse.

Single-sex spaces and services

We have also witnessed with concern women losing the confidence to defend rights that we previously enjoyed, to single-sex spaces and services.⁵ From around 2018, but accelerating since 2021, providers of female-only services for victims of sexual abuse and family violence began to adjust their operational models to accommodate men who identify as women. Most have made these adjustments in as low-key a manner as possible to preserve their public funding; those who held to their principles suffered public rebuke and loss of resources and funding.⁶ Unlike our counterparts in the UK, we have not the means to conduct our own survey, but the recent UK report, *Women's Services – a sector silenced*, also speaks to the Australian experience.⁷

Special measures

Although these spaces and services were already disappearing, we fear that the AHRC's October 2023 decision against the Lesbian Action Group (LAG) has codified their demise. In that decision, the AHRC advised that the exclusion of men from the LAG's proposed events might constitute a legal 'special measure' for the purpose of achieving equality between men and women – but the exclusion of people who were born male but who identify as women could not.⁸ To do so, the AHRC explained, would be contrary to the clear intention of the 2013 amendments to the *Sex Discrimination Act*, which established that sex was not a binary concept and could be changed, and thus distinctions based on biological sex are not reasonable or appropriate.

The AHRC's decision has significant implications for others who want to guarantee the safety of vulnerable women. But because they rely on public funding and are committed first to provide for those in their care, it is unlikely that Australian rape crisis refuge providers will step forward to test the AHRC claim, even as it challenges their capacity to provide trauma-sensitive care for female victims of violence. Women in Australian prisons face similar barriers asserting their rights,⁹ even though Australia has previously assured the CEDAW Committee that Australia accommodates female and male prisoners separately to provide "a measure of protection against gender-based violence."¹⁰

children that sexed-bodies should be medicalised to conform to gender stereotypes. They usually advocate that biological sex should be given priority and protection in law, especially in regard to the protection of women and children." See [Gender-critical Tasmanian women are given permission to speak](#), *Spectator*, December 2021.

⁵ Australian law and practice has not required providers of single-sex services to seek prior approval, although the AHRC previously assured providers that special measures covered female-only services for these purposes. See Australian Human Rights Commission, [Notice of refusal of a temporary exemption, Deli Women & Children's Centre](#), September 2009.

⁶ See the experiences of the [Leichhardt Women's Health Centre](#) and the [Feminist Legal Clinic](#).

⁷ [Women's services: a sector silenced – new report](#), Sex Matters, January 2024.

⁸ Australian Human Rights Commission, [Notice of decision on application for temporary exemption: Lesbian Action Group](#), October 2023, paragraph 9.56, and throughout.

⁹ [Demand the removal of men from women's prisons in Victoria](#), Women's Forum Australia.

¹⁰ [List of issues and questions in relation to the eighth periodic report of Australia, Replies of Australia](#) to CEDAW, Australian Government, March 2018. List of issues and questions in relation to the eighth periodic report of Australia, para 138: "In all states and territories, female prisoners are accommodated separately to male prisoners, often in separate facilities. This separation provides a measure of protection against gender-based violence."

How did we get here?

When we look back on our recent history and try to understand how we found ourselves in this predicament, we realise how much Australian authorities have breached what we now understand are article 7 CEDAW obligations to allow women to participate on equal terms with men in the formulation and implementation of government decision-making and policy.

Of course, we are proud of the Australian women who have overcome gender stereotypes and have played key leadership roles in our politics and history, but we suspect that they, too, did not know the extent to which our institutions had excluded them – by accident or design – from the most basic questions of all: what it means to be a woman and the minimum women need to assure our rights to safety, non-discrimination, and dignity.

The AHRC has told us that the clear intention of the Australian parliament in 2013 in amending the *Sex Discrimination Act* was to establish that sex is not a binary concept and can be changed. But reading Hansard, we find that parliament never debated a definition of sex or of woman, while the minister introducing the bill told parliament and the Australian people that the proposed amendments were simply to introduce new protections against discrimination – on the grounds of sexual orientation, gender identity, and intersex status – in defined areas including employment and education, and in accessing goods and services. These measures enjoyed widespread support in the parliament and the community. Both the government and the AHRC explicitly stated that the amendments would have no impact on the other objectives of the *Sex Discrimination Act*, and specifically to special measures to achieve equality as mandated by our CEDAW obligations.¹¹

When our states and territories developed our sex self-ID laws, women were engaged only as an afterthought. The first movers to introduce sex self-ID laws in Australia – the Australian Capital Territory and South Australia – conducted ‘targeted consultations’ with LGBTQ communities¹² but not with women’s groups nor, as far as we are aware, with experts in child safeguarding and care. States that followed widened consultations to include women and others but only after the bills had been tabled or very late in their development. In Queensland – the latest state to pass sex self-ID legislation – the government began consultations with LGBT groups in 2018 but engaged women’s groups only in 2022 and then only in response to public pressure, with one information session rather than substantive consultation.¹³ The governments of New South Wales and Western Australia have announced their intention to introduce self sex-ID bills to their parliaments but have not explained what, if any, public consultations they intend to conduct.

Women who have raised questions about sex self-ID have been ignored or marginalised in other forums. The parliamentary human rights committee for which we and many other

¹¹ [Sex Discrimination Amendment \(Sexual orientation, gender identity and intersex status\) Bill 2013, Explanatory memorandum](#); Australian Human Rights Commission submission to the Australian Senate Legal and Constitutional Affairs Committee on the Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013, Submissions received by the Committee, [Submission 9](#), para 28.

¹² Noah Riseman, *Transgender Australia: A History Since 1910*, Melbourne University Press, p 58 ff.

¹³ See statements of reservation contained in [Inquiry into the Births, Deaths and Marriages Registration Bill 2022, Report No. 41](#), 57th Parliament Legal Affairs and Safety Committee, Queensland Parliament, February 2023.

gender-critical groups prepared our submissions, invited only advocates of sex self-ID to testify on the subject – an approach that we believe breaches the ICCPR rights of *all* Australians “to seek and receive information and ideas of all kinds.” Many commentators (intentionally or otherwise) have also mischaracterised us as conservative or religious, when neither is often the case.¹⁴

Sport

Australian women are experiencing the impact of sex self-ID in other fields of our lives. In sport we are seeing individuals who were born male but who now identify as women enter and win female competitions – a result that discourages women’s and girls’ participation in competitive sport.¹⁵ On paper, the *Sex Discrimination Act* and most – but not all – state and territory anti-discrimination laws allow for single-sex sport. But our government-funded sporting bodies actively discourage it at the club level, again on the basis of guidelines developed through “targeted consultations”.¹⁶ Once more, sporting organisations that rely on government funds and that are managed by hard-working volunteers are unlikely to overtly challenge these guidelines, even when the safety of women and girls – and our dignity and privacy in female-only change rooms – is at risk.

Health care

We are also seeing the impact of sex self-ID in health care, including through the introduction of de-sexed language. Such language includes the terms ‘pregnant people’ and ‘chest feeders’ in reproductive health care. As academic researchers have noted, this practice results in confused messaging, with serious implications for the sex-specific health care that women and girls need, messaging that can be especially confounding for migrant and refugee women.¹⁷ Doctors have also warned that blurred lines between biological sex and gender identity can lead to serious medical errors.¹⁸ Nurses in Australia report finding themselves in the position of having to engage in unsafe clinical practice by hospital and clinic protocols and procedures that are based on ‘gender identity’ and not on sex (our own members have conveyed these concerns directly to us). Incredibly, our Commonwealth Department of Health and Aged Care also claimed measures it had taken to degender language to win ‘status points’ in a scheme administered by an LGBT advocacy group – raising questions about the government’s commitment to advance women’s health based on the robust scientific evidence.¹⁹

¹⁴ See [Gender anxiety on the right](#), Pearls and Irritations, May 2022 and [New report profiles far-right hate and extremist groups in Australia](#), GPAHE, October 2022. We are disappointed the UN Working Group on discrimination against women and girls has also characterised critics on the question of sex and gender as essentially conservative and religious. See [Gender equality and gender backlash](#), Working Group on discrimination against women and girls, OHCHR.

¹⁵ [Australian sport’s transgender policy is still as clear as mud](#), *The Sydney Morning Herald*, June 2023; [Breanna Gill causes transgender debate after winning an Australian Women’s Tour](#), *Golf Monthly*, April 2023); [Aussie trans surfer makes history by winning title as a woman three years after taking out the same competition as a man](#), *Daily Mail*, May 2022. See, also, [Thousands of complaints filed after trans Youtuber allowed to play on women’s football league reportedly injured players](#), *Reduxx*, April 2023.

¹⁶ [Did ACON cook the books on sport inclusion guidelines?](#), Lady Kit Kowalski, April 2022.

¹⁷ [Effective communication about pregnancy, birth, lactation, breastfeeding and newborn care: The importance of sexed language](#), *Frontiers in Global Women’s Health*, February 2022.

¹⁸ [Don’t de-sex the language. Doctors warn of danger over gender-inclusive terms](#), *Sydney Morning Herald*, December 2023.

¹⁹ Joint Committee of Public Accounts and Audit, Inquiry into probity and ethics in the public sector, [Submission 10](#), Coalition of Women’s and LGB Organisations, August 2023. Other Australian federal and state government departments are also members of this scheme, meaning that they have structured conflicted relationships that make it impossible for Australians to know if the advice that is being provided by government is based on the best-available evidence (as legally

Gender medicine

Sex self-ID and the ideology underpinning it are also sadly impacting the health of many young girls including many who are autistic, suffering from trauma, or struggling to come to terms with their same-sex attraction.²⁰

Advocates for sex self-ID in Australia, like those in other countries, have made the case for legislative change on the grounds that it would alleviate the requirement for transgender and gender-diverse individuals, including children, to undergo medical interventions to actualise their gender identities.²¹ Of course, no fair-minded person would object to well-considered measures that genuinely reduced rates of irreversible and risky medical interventions, especially in light of emerging cases of regret. But the reality is that the recognition of sex self-ID in law and in practice in Australia has coincided with a marked *increase* in the demand for medical interventions, including for cross-sex hormones and surgery.²² In fact in the case of children, research is emerging that social transition can actually exacerbate gender dysphoria. Increased rates of gender dysphoria are likely to make medical interventions more, not less, likely.

Australian governments are in any case failing in their duty of care to Australians who identify as transgender or gender-diverse – particularly children.²³ Our clinics universally practise the ‘gender-affirming’ model of care now rejected by an increasing number of progressive countries (Sweden, Finland, England, Denmark, Norway, and others²⁴) and

required) or on striving to win points under the scheme. These relationships, we believe, breach public service standards, and risk both damage to public confidence as well as improper decision-making. See [3 steps that will help manage and keep your conflicts up to date](#), Australian Public Service Commission, September, 2023.

²⁰ We don’t have sex-disaggregated statistics for youth presentations at Australian gender clinics but we understand that, [as with clinics overseas](#), there has been a sharp increase in the number of girls. On the issue of children and young people with autism, obsessive compulsive disorders, and other comorbidities, as well as the incidence of same sex attraction, we recommend the committee consult [Stats for Gender](#). On the state of research in this field and the highly unsettled nature of debates in gender medicine more generally, we recommend the committee consult the [Society for Evidence Based Gender Medicine](#). Specifically for Australian research on comorbidities, see [Australian children and adolescents with gender dysphoria: Clinical presentations and challenges experienced by a multidisciplinary team and gender service](#), *Human Systems*, April 2021.

²¹ The CEDAW Committee’s July 2018 [Concluding observations on the eighth periodic report of Australia](#) recommended that Australia “Abolish requirements regarding medical treatment for transgender women who wish to obtain legal recognition of their gender, ensure that those requirements are abolished throughout the State party’s territory and guarantee the rights of transgender women to bodily integrity, autonomy and self-determination.” The committee sought further information on this matter in its [List of issues and questions prior to the submission of the ninth periodic report of Australia](#), CEDAW Committee, March 2023. With respect, we consider these actions by the CEDAW Committee in advance of any thorough consideration of the matter of sex self-ID, inappropriate. At a minimum, we would expect CEDAW to clarify that this request does not relate to children, noting concerns that social affirmation of a gender identity risks locking children into a particular identity path making it difficult for the child to explore alternative identities and coping strategies. See [Independent review of gender identity services for children and young people: Interim report](#), February 2022. More broadly on health, we recommend the committee focus on the health of girls who present at gender clinics in Australia.

²² The Australian Society of Plastic Surgeons estimated in 2023 that 128,145 Australians would be candidates for subsidised ‘gender affirming medical interventions’ and 47087 people would make use of the technology in its first full year. See p.5, MSAC application 1754, [PICO set](#), [Patient consultations and surgical procedures for gender affirmation in adults with gender incongruence](#). Australia recorded very few surgeries of this nature even 15 years earlier.

²³ [Society for Evidence Based Gender Medicine](#).

²⁴ [Society for Evidence Based Gender Medicine](#).

that is acknowledged by the World Health Organisation to lack an evidence base.²⁵ But Australian federal and state and territory governments have so far rejected calls to investigate the practices in Australian gender clinics. (This remained the status quo until this month, when Queensland confirmed it was undertaking a review of its gender clinic – a review that follows whistleblower claims of inappropriate treatment.)

Australian governments have also propagated discredited claims about the risk of medical interventions, maintaining, for example, that the effects of puberty blockers are reversible.²⁶ They also fund advocacy groups for medical interventions on whom they then rely for advice.²⁷

‘Conversion therapy’ bans

State and territory governments have also legislated ‘conversion bans’ that in one state criminalises – and in other states and territories discourages – alternative treatments for gender dysphoria, such as psychotherapy. The impact of these laws is to deny trans-identifying people the fundamental right that other Australians enjoy to access psychological services for their needs. This is especially cruel since many of these people are about to embark on a course of action that could result in long-term and irreversible harm, including to fertility, sexual function, and mental health.²⁸

As with women’s access to gender-critical views and to access single-sex spaces, lawsuits – of which there are a number underway – may eventually temper the gender ideology that permeates our medical and education institutions; however, the process will be slow, uncertain, and likely to harm many individuals in the meantime. In time, we hope our governments – and, with respect, UN agencies – will also recognise a duty of care to those who have been harmed by (or who are in danger of being harmed by) gender medicine.

Data

Finally, most sex self-ID legislation in Australia – unlike that in many jurisdictions overseas – allows for adults (and children) to change the actual sex marker on their birth certificate rather than provide for a change of gender recognition via certificate, as is the process in the UK, for example. Although this issue requires much closer investigation, it is possible that the Australian approach is already distorting our national statistics, for example in relation to rates of sexual assault perpetrated by ‘females’.²⁹ It is also very

²⁵ [WHO development of a guideline on the health of trans and gender diverse people](#), January 2024.

²⁶ [Gender incongruence](#), Health Direct, a Commonwealth and state government website, June 2022.

²⁷ For an example of such advocacy see an influential transgender activist group’s [letter to the Medical Services Advisory Committee Secretariat](#), November 2023. This group is principally funded by the NSW Government.

²⁸ The claims – which are not supported by peer-reviewed evidence that medical interventions improve health outcomes and that denying medical interventions increases the risk of suicide – also breach the rights of parents and children to provide genuinely informed consent about their care, in potential breach of the UN Convention of the rights of the child. See [Suicide](#), Stats for Gender. See also Belle Lane [Gender questioning children and family law: an evolving landscape](#), Paper for the Australian Family Law profession, Belle Lane, p 54 ff.

²⁹ See p 2, [Submission 177](#) (Women’s Rights Network Australia) to the Parliamentary Joint Committee on Human Rights, which speculates on the reason ABS statistics for 2021-22 demonstrated a 35% increase in the rate of female sexual assault.

possible that as numbers increase at the rate so far recorded,³⁰ Australia will not be able to adequately track changes in the status and well-being of women and men over time – an outcome that, among other things, will impact our reporting responsibilities to CEDAW.

CEDAW's past and future

Members of this committee need no reminding of the original purpose of CEDAW to ensure that women can enjoy their fundamental rights as humans on an equal basis with men. CEDAW was conceived to address the shortcomings of pre-existing human rights instruments including the UDHR and the ICCPR to achieve this equality by eliminating “any distinction, exclusion or restriction made on the *basis of sex* which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women ... on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field” (our emphasis).

We recognise that international conventions are not static instruments, and that the committee has a responsibility to ensure their contemporary value and use. But by breaking down distinctions between women and men in those fields where women are most vulnerable *because of our sex*, sex self-ID turns on its head the very purpose of CEDAW. Sex-based distinctions remain material to the safety and dignity of females in critical domains of our lives. Tragically, sex self-ID is creating new forms of discrimination, with real-life consequences for women and girls.

We stand ready to assist the committee.



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³⁰ In the first 20 months of sex self-ID in Victoria for example, 920 Victorian-born people amended their birth certificates – a rate that we understand has since increased, see [Priority area 1: Equal rights and freedoms](#), Victorian Government, November 2023.