

**Inquiry into the potential for a
Human Rights Act for South Australia
by the
Social Development Committee
Parliament of South Australia**

**Submission from
Australian Feminists for Women's Rights (AF4WR)
Coalition of Activist Lesbians (CoAL)
South Australian Women's Action Alliance (SAWAA)
Women's Rights Network Australia (WRNA)**

23 February 2024

OVERVIEW

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, and have members in South Australia; we are secular and not aligned with any political party. We have come together out of concern that current interpretations of law are undermining women’s human rights and protections.

We are enthusiastic about the prospect of an open, constructive, and respectful discussion of human rights in South Australia. We believe that a well-considered human rights act could greatly improve protections for South Australian women, girls, and LGB people as well as young people who identify as transgender or gender-diverse. We also assess there is much that can be achieved to address gaps in our human protections even in advance of a possible human rights act.

A. THE EFFECTIVENESS OF CURRENT LAWS AND MECHANISMS FOR PROTECTING HUMAN RIGHTS IN SOUTH AUSTRALIA AND ANY POSSIBLE IMPROVEMENTS TO THESE MECHANISMS

Our coalition is concerned that South Australia is failing to adequately protect women and girls where we are vulnerable because of our sex. Specifically, we are concerned about the adequacy of law and policy in our state to ensure single-sex spaces and services for women escaping domestic violence, as well as for women in prison, hospital wards, health care, and changing rooms. We are especially concerned about freedoms of association for lesbians and freedom of speech more generally for women to advocate for our rights.

We are not here referring to the rights of all South Australians to privacy and to live our lives free from discrimination in employment, education, and other domains that are the proper object of the *Sex Discrimination Act 1984*¹ and the South Australian *Equal Opportunities Act 1984*.² We support these rights and protections. Rather, our concerns relate to the conflict of rights that has arisen as a result of our institutions prioritising gender identity over sex-based protections and rights without proper safeguards in a range of new domains. This prioritisation, which has been implemented with little consultation, is eroding protections women previously fought for.

This reality is already starkly evident for lesbians and increasingly for all women.

The rights of lesbians

In October 2023, the Australian Human Rights Commission (AHRC) rejected an application by the Melbourne-based Lesbian Action Group for an exemption under the Commonwealth *Sex Discrimination Act 1984* to exclude people born male – but who identify as lesbian – from events that the group proposed to hold to share their culture and experiences.³ The AHRC decision followed instances where state tribunals had also disallowed female-only gatherings for lesbians.⁴ The AHRC acknowledged that lesbians in Australia face structural and entrenched discrimination both historically and in the present day, but still determined a hierarchy of rights that placed protections of a self-declared

¹ [Sex Discrimination Act 1984](#).

² [Equal Opportunities Act 1984](#).

³ [Notice of decision on application for temporary exemption: Lesbian Action Group](#), Australian Human Rights Commission, October 2023.

⁴ [Jessica Hoyle and LGB Alliance Australia \(Review of Refusal of an Application for Exemption\)](#), Tasmanian Civil and Administrative Tribunal, November 2024. An earlier tribunal decision in Victoria has allowed an exemption for a commercial venue to operate specifically for gay men, see [Peel Hotel Pty Ltd \(Anti-Discrimination Exemption\)](#), Victorian Civil and Administrative Tribunal, December 2023. See also, [Lesbian Action Group — LGB Alliance Australia](#).

lesbian identity above protections for same-sex attracted females, even though granting an exemption to the LAG would not have impacted other groups' freedoms of association.

This outcome is deeply concerning to lesbians in South Australia. Like our sisters in Victoria,⁵ lesbians in South Australia have retreated to the shadows organising underground to avoid harassment and the chilling threat of legal challenge, even to our private events.⁶ This has significantly impacted the once-thriving lesbian scene in Adelaide, as well as our ability to support young lesbians seeking to understand themselves. It is disheartening that regaining previously established rights that were supported by South Australians at large may now require lengthy and expensive legal battles, with an uncertain outcome.

Single-sex spaces and services

We believe that women's protections and rights in other domains are also at risk, though sadly the women most impacted are those with few means to assert those protections and rights. During the INSERT FOOTNOTE last periodic review of Australia's compliance with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Commonwealth assured the CEDAW committee that "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."⁷

Unfortunately, South Australian law does not appear to provide any clear guarantee for female prisoners. Rather, these women – many of whom are survivors of male violence and sexual assault⁸ – must rely on the discretion of prison authorities to shield them from situations that may be re-traumatising for them.⁹ Similar arrangements have failed women in other states and overseas.¹⁰

We are relieved in this regard that our authorities have recently clarified guidance that in South Australia's criminal justice system a victim of crime would not be placed in a situation in relation to an accused person that caused the victim distress. However, an initial lack of reassurance on this point underscores our ongoing concerns that women's safety and well-being do not always receive the primary consideration they deserve.¹¹

Our coalition is also concerned that essential single-sex services for victims of domestic violence in South Australia that may choose to cater for females, or employ only female staff, lack adequate legal protections from discrimination claims. These services are already stretched for resources and could not afford the cost of litigation to defend what we believe should be clear in law.

⁵ This loss of lesbian spaces is being documented online. See [Lost Lesbian Space](#), LGB Alliance Australia, and [Reclaiming Lesbian Space](#), CoAL.

⁶ [O'Keefe v Sappho's Party Inc \[2009\]](#), SA Equal Opportunity Tribunal, April 2009.

⁷ CEDAW Committee's July 2018 [Concluding observations on the eighth periodic report of Australia](#) of Australia.

⁸ [A 2021 Monash University study](#) estimated that some 85% of all female prisoners in Australia have suffered violence at some point in their lives, and Indigenous women are disproportionately affected, in terms both of experience of violence and rate of incarceration.

⁹ [Correctional Services Act 1982](#), South Australia.

¹⁰ [Isla Bryson: What is the transgender prisoners row all about?](#) BBC News, February 2023; [Prisoners at Victorian women's jail launch petition over transgender inmate](#), *Herald Sun*, August 2022; [Karen White: How "manipulative" transgender inmate attacked again](#), *The Guardian*, October 2018.

¹¹ [Rowling hits back at Judge over pronoun claims](#), *The Australian*, November 2023; [Right to choose gender pronoun a 'matter of respect': court](#), *The Australian*, November 2023.

While we cannot speak directly for South Australian providers, services in other jurisdictions have pre-emptively but reluctantly adjusted their operating model to avoid controversy and preserve their funding.¹² Similar adjustments in South Australia would potentially affect all women and girls but especially those facing additional vulnerabilities, such as migrant and refugee women who may have few alternatives to community-funded domestic violence refuges.

In this regard we note a trend, including in South Australia, towards providing unisex toilets and changing facilities. We have no issue with this trend so long as these adjustments are not made at the expense of female-only services. We are concerned, however, that providers who must make considered judgements that their responsibilities to safeguard children require them to exclude male-bodied individuals in certain situations – such as in girls' changing rooms – may lack the legal protection to do so. We forget at our peril the lengths to which men who wish to abuse children will go.

We ask the committee not to mischaracterise our concerns: our starting point is that male sexual violence and sexual harassment is a reality with which women and girls have had to contend since time immemorial. Progressive laws and social norms have delivered varying degrees of protection. But we would be naive to believe that women and girls have escaped the reality of male violence and that we can afford to break down the sex-based distinction between male and female in all dimensions of our lives.

Dignity and safety in healthcare

We are further concerned about a trend to remove sex-specific language in health care, which confuses messaging and can also lead to medical errors.¹³ Thankfully, in this regard South Australian health authorities have not followed the lead of our interstate counterparts in replacing, for example, 'breastfeeding' with 'chest-feeding.'¹⁴ We are, however, concerned that South Australian directives on hospital accommodation emphasise gender identity ahead of the safety, privacy, and dignity of women and girls. And, like our interstate sisters, we are concerned that disabled South Australians may not have the option to choose the sex of their intimate carers.¹⁵

Improving existing mechanisms to address current gaps in human rights protections

Our coalition does not believe that in expanding protections in our *Equal Opportunities Act 1984* and other legislation the South Australian Parliament anticipated or intended to create gaps in the human rights protections of women and LGB people. At the same time, we firmly believe that a responsible parliament in a caring and progressive society can correct these oversights now.

In advance of a potential human rights act for South Australia, we believe a review of the *Equal Opportunities Act 1984* is essential. We believe that the act needs now to provide a more extensive framework of exemptions to address the situation where the protection of one attribute may impact the protection of another: in other words, to address conflicting protections.

¹² [Women's services: a sector silenced – new report](#), Sex Matters, January 2024.

¹³ [Effective communication about pregnancy, birth, lactation, breastfeeding and newborn care: The importance of sexed language](#), *Frontiers in Global Women's Health*, February 2022. [Don't de-sex the language. Doctors warn of danger over gender-inclusive terms](#), *Sydney Morning Herald*, December 2023.

¹⁴ At the same time, we commend South Australia's effort to 'de-gender' language to address societal stereotypes, especially when language implies women should not occupy positions of authority, such as 'chairman.'

¹⁵ [The Sex Discrimination Commissioner has confirmed my fears: I do NOT have a right to same sex intimate disability care in Australia](#), Twitter post, Lee Hazel, December 2023.

This review should consider exemptions that

- Safeguard the rights of lesbians (and gay men) to associate based on their sexual orientation,
- Allow females to choose the sex of their intimate carers based on personal preference,
- Enable reasonable measures to ensure safety and privacy for *all* users of public facilities and services, and
- Provide protections for providers of single-sex rape crisis and other services to ensure the well-being of their clients.

B: A SOUTH AUSTRALIAN HUMAN RIGHTS ACT? WHAT DO WE NEED AND WHAT CAN WE LEARN FROM OTHERS?

Though a longer-term prospect, our coalition sees significant benefits in South Australia developing a human rights act that would go beyond anti-discrimination law to endorse fundamental freedoms, as well as impose a positive duty on governments to act compatibly with human rights and to hold them accountable for doing so.

We would especially favour an act that recognised the values outlined below.

Freedom of expression

We and other advocates of women's rights are concerned about emerging restrictions on expression for Australian women. We note instances where women have faced repercussions for expressing 'gender critical' views, including instances of women being de-platformed, losing their jobs – or their philanthropic positions – and being investigated or fined for expressing these views.¹⁶

A legal recognition of freedom of expression in a human rights act would support a respectful dialogue on the complex issues of sex and gender, moving beyond simplistic attempts to dismiss sex-realist views as conservative, right-wing, or hateful. It would benefit both those who wish to express these views as well as the rights of *all* South Australians to hear them, as enshrined in article 19 of the International Covenant on Civil and Political Rights (ICCPR).¹⁷

Freedoms of association and peaceful assembly

Our coalition is concerned that the erosion of freedom of association and peaceful assembly now extends beyond the lesbian community and is impacting other women who want to meet exclusively as women to advocate for our protections and rights. In this regard, we draw your attention to comments by the United Nations Special Rapporteur on violence against women, its causes and consequences about “decreasing space available for women and women's organisations to organise ... in several countries in the Global North”.¹⁸

¹⁶ Details of these and other instances can be found in [submissions to the \(Commonwealth\) Parliamentary Committee on Australia's Human Rights Framework](#). See pp 4-5 in Submission 177 (Women's Rights Network Australia). See also submissions by the Affiliation of Australian Women's Action Alliances (138), LGB Alliance Australia (181), Feminist Legal Clinic Inc (183) Australian Feminists For Women's Rights (211), Coalition of Activist Lesbians (167), Single Sex Prisons Australia (154), Victorian Women's Guild (45), Women Speak Tasmania (72), WA Feminist Lobby Network (125) and other from individuals (289, 295, 296, 312). Other critics of gender sex self-ID including religious groups also provided submissions.

¹⁷ In this regard, we were disappointed that the recent Commonwealth parliamentary inquiry into a possible Australian human rights act chose to invite only advocates of gender identity rights to provide testimony, despite receiving submissions from over 13 organisations advocating women's sex-based protections and rights.

¹⁸ [Statement by Ms Reem Alsalem](#), Special Rapporteur on violence against women and girls, May 2023.

Freedoms of association and peaceful assembly are essential corollaries to freedoms of expression. The lack of clear legal guarantees of these freedoms places women in potential legal jeopardy when organising to address issues specific to our sex, including those rooted in biological realities.

Participatory rights and duties

We are also deeply concerned about the lack of meaningful consultation with women on critical issues impacting our fundamental human rights, including those related to minimum requirements for our safety, non-discrimination, and dignity. This lack of engagement extends to both government and to a lesser extent, parliamentary processes.

As a recent example, despite possessing a human rights charter requiring the government to “act compatibly with human rights,” the Queensland Government did not engage women’s groups until four years after initiating consultations with LGBTQIA+ groups regarding amendments to Queensland’s *Births, Deaths and Marriages Registration Act*. This engagement, prompted by public pressure, consisted of a single information session rather than substantive consultations.¹⁹

The principle of proportionality or a limitations clause

While firmly committed to comprehensive rights and protections that ensure everyone can live free from discrimination, our coalition emphasises that new rights for specific groups must not come at the expense of pre-existing fundamental rights and protections, particularly the right of women and girls to safety, privacy, fairness, and dignity.

A South Australian human rights act must incorporate a robust limitations clause that ensures that limitations to rights are demonstrably justified, proportionate to achieving a legitimate aim, and respectful of pre-existing fundamental rights.

A limitations clause would also help South Australians achieve balance between freedoms of expression and anti-vilification laws.

Ratified international human rights instruments

Our coalition supports a human rights act that incorporates the seven core human rights instruments ratified by Australia, including the ICCPR and CEDAW; however, we urge caution against validating arguments by reference to agreements that have not undergone thorough public debate and evaluation by the Australian people. We are concerned in particular about the ‘Yogyakarta Principles on the Application of International Law in Relation to Sexual Orientation and Gender Identity,’ which were developed by activists and are antithetical to the rights of women.²⁰

Mandated periodic reviews of all human rights legislation

Our coalition advocates for incorporating regular reviews into all legislation addressing sensitive human rights issues. These reviews should aim to identify and address any unintended consequences arising from the implementation of the legislation.

¹⁹ See statement of reservation contained in inquiry into the [Births, Deaths and Marriages Registration Bill 2022](#).

²⁰ The Queensland Department of Justice and Attorney General relied on these principles in its advice to the Queensland Parliament (see [Report No. 41, 57th Parliament - Births, Deaths and Marriages Registration Bill 2022](#)) though they have not been endorsed by any Australian parliament. They have also faced increasing criticism from human rights experts for ignoring the interests of women. One of the authors of the original principles – Robert Wintermute, Professor of human rights law at King’s College London – recalls that women’s rights were not considered during the negotiations of the principles. See [The trans rights that trump all](#), The Critic Magazine, April 2021. An updated (2017) version of the principles directly calls on states to end the registration of the sex and gender of the person in identity documents – an outcome that is directly antithetical to the success of CEDAW.

Ideally, such reviews should be conducted by bodies with a degree of independence from the executive branch, such as parliamentary committees. This approach could help ensure objectivity and impartiality in the review process, fostering greater confidence in its findings and recommendations. Faulty conversion ban legislation in other jurisdictions provides an object lesson in the risks of basing legislation on evidence and assumptions that may subsequently prove flawed. (See Appendix 1)

CONCLUDING STATEMENT

South Australians hold a well-deserved pride in our history of pioneering progressive social reforms. As the first state to grant women the right to vote and the first to decriminalise homosexuality, South Australia has set a strong precedent for positive change. We hope this legacy can inspire progressive reforms to guarantee these protections and equal opportunities for all.



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APPENDIX 1. THE LESSON OF CONVERSION BAN LEGISLATION

It is not uncommon for well-intentioned parliaments to enact faulty laws based on evidence and assumptions that later prove unreliable. A case in point are the ‘conversion therapy bans’ legislated in other states. These bans aim to eliminate the abhorrent and thankfully rare practice of attempting to change a person’s sexual orientation, but by also targeting practices relating to the care of transgender people, they may actually violate the rights of the very people they aim to protect.

This is because the needs of people, especially young people who identify as transgender or gender-diverse, are extremely complex. Their identities are sometimes transient and those who embrace them are often suffering comorbidities such as autism and trauma. A large majority may also be lesbian and gay – and some later come to realise that their transgender identity masked internalised homophobia. Social pressures may also contribute to the decision to embrace a transgender identity especially for girls.²¹

Legislators have supported these bans in the belief that *not* affirming a child’s declared gender identity could cause irreparable harm. However, a growing body of expert opinion now questions the evidence supporting the efficacy of this model of gender-affirming medicine – and after thorough investigations, a growing number of countries have mandated alternative approaches to the care of these young people. These include exploratory – rather than simply affirming – psychological interventions. At the same time, concerns are mounting regarding potential risks associated with both the social and medical aspects of the gender affirmation model.²²

Our coalition is deeply concerned that restricting or discouraging treatment options for transgender and gender-diverse young people is especially harmful if that person – or their parents/guardians – is considering long-term and irreversible medical interventions that could impact fertility, sexual function, and mental health, among other deleterious physical health impacts such as premature and unusually severe osteoporosis. We are also concerned that these bans may constitute indirect discrimination, as they disproportionately affect young lesbian or gay people, as well as neurodivergent children. They may in fact be producing in many cases the very ‘gay conversion’ that the initial legislation was designed to prohibit.

Strengthening parliamentary oversight through mandated review provisions would equip parliaments to effectively identify and address the potential negative impacts of legislation when they occur.

²¹ Specialist literature on these issues is vast and growing. See the [Society for Evidence Based Medicine](#) and [Stats for Gender](#).

²² [Submission to the NSW Department of Communities and Justice and the NSW Ministry of Health regarding Banning LGBTQ+ Conversion Practices: Consultation Paper](#), National Association of Practising Psychiatrists, July 2023. The [World Health Organisation](#) has also recently acknowledged that “the evidence base for children and adolescents is limited and variable regarding the longer-term outcomes of gender affirming care for children and adolescents.” The Society for Evidence-Based Gender Medicine has compiled a [compendium of literature on the medical and health risks of ‘Gender-affirming care’](#). On the risks of ‘social affirmation’ see [Independent review of gender identity services for children and young people: Interim report](#), CASS, February 2022 (the ‘Cass Review’), which explains that social affirmation (that is, the practice of changing a child’s name, pronouns, and presentation to align with their gender identity) should be considered a psychological intervention with potentially significant and long lasting effects. The practice risks locking children into a particular identity path making it difficult for the child to explore alternative identities and coping strategies.