



2 October 2024

The Hon. Anthony Albanese MP
Prime Minister
Parliament House
CANBERRA ACT 2600
a.albanese.mp@aph.gov.au

Dear Mr Albanese,

Re: Legislative Reform for Women's Rights

We are writing to you as a feminist association from the political left. Our association, Australian Feminists for Women's Rights (AF4WR), campaigns for the sex-based rights of women and girls. In this letter we outline the urgent requirement for legislative reform to protect Australian women's rights.

The current wording and applications of the Sex Discrimination Act 1984 (the Act), as amended in 2013, do not provide adequate protection of the sex-based rights of Australian women and girls. The failure to correctly define "sex" or "woman" means that we now have a legal framework that is not fit for purpose.

The 2013 amendments introducing "gender identity" to the Act provide for an interpretation of "sex" as synonymous with "gender identity". Gender identity is a concept that is based on gender stereotypes, as demonstrated in the "definition" contained in the Act.

There are two legal matters that have attracted international attention in recent months and that highlight the issues with the 2013 amendments. The first is *Tickle vs Giggle*, in which the Federal Court decided in *Tickle's* favour, with the respondent, Ms Sally Grover, being ordered to pay compensation for her refusal to allow a male access to her female only mobile application. The judge determined that *Tickle*, a male, was a woman with a transgender identity for the purposes of the Act, and therefore experienced gender identity discrimination which has thus been deemed to take precedence over the sex-based rights of women on which Ms Grover relied.

The second matter is *Lesbian Action Group (LAG) vs the Australian Human Rights Commission (AHRC)* heard at the Administrative Appeals Tribunal in Melbourne on 2 and 3 September. LAG appealed the AHRC refusal to grant an exemption under the Act to hold public lesbian only events - that is, events that do not admit males with a "woman" gender identity. The decision on the appeal is pending.

In 1984 Bob Hawke stated on the passing of the Act: “This Bill enables us to say that ... we regard discrimination against women on the ground of their sex, their condition or pregnancy or their marital status as being equally repugnant and impermissible” and went on to add “...the Bill before parliament today is faithful to its primary object, and that is to outlaw discrimination on the grounds of sex, marital status or pregnancy”.

The AHRC and Federal Court are currently interpreting that legislation to enable precedence to be afforded to males who claim to have a gender identity over the sex-based rights, safety and dignity of Australian women. The Act is hence no longer fulfilling its primary object.

The United Nations Special Rapporteur on violence against women and girls, Ms Reem Alsalem, in her position paper on the interpretation of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW, 1979), states:

where tension may arise between the right to non-discrimination based on sex and non-discrimination based on gender identity, international human rights law does not endorse an interpretation that allows either for derogations from the obligation to ensure non-discrimination based on sex or the subordination of this obligation not to discriminate based on sex to other rights.

Ms Alsalem submitted a version of this paper to the AHRC in relation to Tickle vs Giggie, on the request of the Federal Court.

Women and girls experience oppression and discrimination based on their sex, and it is this experience to which the Act must respond if it is to achieve the commitment to CEDAW on which it was founded.

The failure of federal and state Labor governments to amend, or even allow discussion, on legislation that negatively impacts women, is creating a hostile backlash of public sentiment towards all diversity, equity and inclusion efforts, particularly where they are pursued by the Labor party. To simply dismiss women’s concerns on this matter as ignorance or bigotry flies in the face of Labor’s ten-year strategy commitment to “get things working for women in Australia”. Such dismissal also overlooks the long-term impacts that stifling public debate on this matter could have on the success or otherwise of state and federal Labor governments’ attempts to address other critical justice issues, including those of reconciliation and the reduction of racism in our communities.

We are aware of increasing numbers of longstanding ALP voters, as well as swinging voters, who are indicating that they will not vote for Labor at future elections because of the perception that Labor policy in this space is sexist and regressive and fails to respect and protect women. We believe this issue could lose Labor the next Federal election.

It is thus urgent that the Federal government commits to reviewing the Act with the intent of ensuring sex-based rights and protections are reinstated.

Key problems as we see them with the Act as it currently stands are:

1. Absence of definitions of sex and of woman/women;
2. A circular definition of the protected attribute of “gender identity”;
3. No guidance on how actual or perceived conflicts of rights should be addressed; and
4. Failure to respect the legal obligation to ensure the provisions of CEDAW are enacted.

The Australian Government’s recent commitments to addressing violence against women demonstrate the importance you attach to protecting women’s rights, safety and dignity. Those rights include the right to assert and hold spaces and access services absent of males, whatever the self-identification of those males.

The Sex Discrimination Act remains Australia’s key instrument for protecting the rights, freedoms and safety of women, in a society that sadly remains deeply sexist, indeed misogynist. In its current form, the Act is no longer fit for purpose in enabling those protections under law. As left-wing women we seek to stem the tide of public opinion driving voters to the right on this issue, about which we believe concerns to be deeply and widely felt. A conservative government is not the answer to the fundamental protections Australian women need. Ignoring calls for women to be heard will not resolve this problem.

AF4WR requests that you provide availability to meet and discuss the review of the Sex Discrimination Act.

Yours sincerely



Emeritus Professor Bronwyn Winter
Co-Convenor and Public Officer
On behalf of AF4WR
Ph: [REDACTED]

**cc: The Hon. Mark Dreyfus KC, MP
Attorney-General**