Tribunal transcript for website

Recorded and written by Kat Karena

Day 1

1. Preliminaries <https://t.co/yNNXB5zcKY>
2. Cross exam of Carole Ann <https://t.co/QZA7qQmRzZ>
3. Cross exam of Elena Jeffries <https://x.com/KatKarena/status/1831934741198831880>
4. Cross exam of Sheila Jeffries <https://t.co/Bppv9lBWuR>

Day 2

**Day 2 Preliminaries:** Prelude to the Cross Examination Elena Jeffrey – 2nd Day. On the morning of the second day there was first a conversation that was a prelude to the cross-examination of the expert witnesses, Elena Jeffrey. Leigh Howard and Stewart Fenwick discuss the role of expert testimony, the application of law, and the weight of evidence. **Key Points:** **1. Dr. Blake and Dr. Jeffrey:** Leigh Howard notes that Dr. Blake's evidence will stand as is without cross-examination, and they are now prepared to cross-examine Dr. Jeffrey. However, Dr. Gerber's affidavit and expert report are also discussed, with Howard objecting to certain parts. **2. Role of Experts in Law:** A central theme is Howard’s argument that questions of law should not be addressed through expert testimony, as this is the domain of the independent tribunal and the bar, not witnesses. Howard emphasizes that law should not be treated as if it were a subject for experts, which could create a misleading sense of authority. HOWARD: "So, questions of law is for Dr. Gang and me, the independent bar and the independent tribunal. Not the witness in this box. So, I'm not cross-examining anybody about questions of law."…."The danger of pretending, which it is, that law is the field of an expert, not the independent bar, not the independent tribunal, gives it a superficial wrong and incorrect air of authenticity." **3. CEDAW and Legal Interpretations:** Fenwick mentions a contradiction between positions, specifically the Al Salam perspective on CEDAW, and asks if this should be accepted without opposing viewpoints. Howard insists this is a matter for legal submission, not something for witnesses to address, and that it is the role of the bar to clarify legal issues. **4. Distinction Between Law and Facts:** Howard repeatedly emphasizes that witnesses can provide facts, but not legal interpretations, which should come from legal counsel. Fenwick agrees but notes that as a tribunal member, he must gather information from various sources, including written submissions and independent research. **5. Gerber's Report:** Howard questions the relevance of Professor Gerber's input, asserting that it has been rendered irrelevant by the court's decision in Tickle v Giggle and that Gerber is not an authoritative interpreter of law. i.e. LEIGH HOWARD Dr. Gerber? No. Right. No. So, questions of law for Dr. Gang and me, the independent bar and the independent tribunal. Not the witness in this box. So, I'm not cross-examining anybody about questions of law. STEWART FENWICK You don't want to cross-examine about different perspectives of international law, which is not common fare? LEIGH HOWARD No. STEWART FENWICK Right. LEIGH HOWARD That's not the province of a witness. It's just not. I have a lot to say about it. STEWART FENWICK I look forward to that, Mr. Howard. Thank you. Thank you. I think we will sink out to the end. You're aware there's a slight contradiction in that we've got the - one way or another -we've got the Al Salam position paper and perspective on CEDAW. Should I just accept that without contrary opinion? LEIGH HOWARD That's a legal submission put forward by Ms. Chaligoy yesterday. And it's Dr. Gang's responsibility to inform you about its correctness. This is really problematic. It's very problematic. For centuries, tribunals have operated this way. To say that questions of law for the witness box is very problematic. Very problematic. STEWART FENWICK But what's the difference between written and oral evidence? I'm saying written documents speak for themselves and I just digest them and then form my own opinion. LEIGH HOWARD Or fact. STEWART FENWICK Yeah. LEIGH HOWARD Facts. Finding facts, not law. STEWART FENWICK Well, what's the law? LEIGH HOWARD That's for me to assist you with. STEWART FENWICK Sure. LEIGH HOWARD And that's why the bar exists and why you exist. That's how we've operated for centuries Tickle v Giggle Case: Howard highlights that certain issues in this case have been overtaken by the Tickle v Giggle jurisprudence. While Howard acknowledges that some of the arguments may be problematic or wrong, they remain binding legal authority, and political debates should not interfere with legal obligations. STEWART FENWICK Well, I need sources of information to inform the decision, if I need to make it, about the scope of CEDAW, don't I? I can do my own research, but if it's not discussed openly in the hearing, it might be wrong. LEIGH HOWARD But it's my duty to tell you what it means from Dr. Gang, the air of experts; it gives a wrong, legally wrong, procedurally actually, jurisdictionally wrong air of authenticity. It's advocacy; it's advocacy of the witness- is being an advocate. I will address this in further detail once I understand whether and what is to be made of Dr. Gerber’s report, because I don't, I cannot seek to convince you out of Tickle and Giggle. It's binding; it's plainly wrong. I accept it's not plainly wrong in the sense that I can't and convince you that it's just so wrong that you can't have regard to it. Of course, I can't when it's not assumption, I'm going to make. It's just it's a court authority that we have to accept; we'd like to discuss it politically, that's another point so why are we even hearing Dr. Gerber on the meaning of sex well I think.. STEWART FENWICK It was all prepared in advance of the decision, but anyway I'm fine, I'm not like wishing to be difficult, I'm just trying to find out, given the flexibility afforded the tribunal about informing itself from the - you're telling me it's fine, LEIGH HOWARD So, let's deal with that. **6. Rights of Different Groups**: Both Howard and Fenwick recognize the human rights of the transgender community, with Howard asserting that the dispute is not about denying rights but about balancing them, particularly in the context of protecting lesbian rights under CEDAW. Howard emphasises that there is no hierarchy of rights in this case. **Agreements:** Leigh Howard and Stewart Fenwick reach a general agreement that the role of expert witnesses is limited to providing factual evidence, not legal interpretation. Legal questions must be addressed by legal counsel and the tribunal, not through expert reports or testimony. They also agree on the importance of balancing human rights and the need for a clear legal framework, rather than relying on potentially misleading expert opinions. Fenwick acknowledges the challenge of navigating international law and rights-related issues but appreciates Howard's clarifications.

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Overview of the cross examination of Elena Jeffreys by Howard on day 2; I would say Leigh Howard's main thread of arguments during the cross-examination of Dr. Elena Jeffreys focused on undermining her credibility as an impartial expert witness and challenging the validity of her assertions about sex work, feminism, and her comparisons of exclusionary feminist groups (Option A) with Nazi fascist ideology. Here’s a breakdown of his main lines of argument and specific sections of the conversation that illustrate them: **1. Conflict of Interest and Bias:** **Main Argument**: Howard sought to establish that Jeffreys was biased and had a conflict of interest due to her strong advocacy for sex workers' rights and opposition to "Trans Exclusive Radical Lesbian feminist" groups (such as those in LAG), which could compromise her ability to serve as an impartial expert witness. Howard: "You didn't think of declaring your conflicts of interest vis-à-vis your views on sex work and option A lesbianism?" Jeffreys: "I don't see that as a conflict of interest... I am a recognized expert in my field... I'm now being called on to explain the history of that in this hearing." Howard: "It would have been nice though for you to explain your conflict of opinion and therefore interest to the tribunal. Do you accept that?" Jeffreys: "No I don't accept that." **2. Questioning Jeffreys' Expertise and Research**: Main Argument: Howard questioned the thoroughness of Jeffreys' research, particularly her claims regarding the leadership of the Let Women Speak rally and her comparison of the Lesbian Action Group (LAG) to Nazi fascists. He implied that her conclusions were not based on solid research but rather on personal bias. Howard: "You didn't attend this rally did you?" Jeffreys: "No, I did not." Howard: "And it wasn't organized by a subset of option A lesbian feminists, was it?" Jeffreys: "I believe it was. Yeah, I believe it was." Howard: "It's not a lesbian organization, is it?" Jeffreys: "I could not tell you if it's a lesbian organization or not." Howard: "You didn't bother researching that literature before making the statement in the first sentence, did you?" Jeffreys: "I did research it... I did actually." <<<<<<PAUSE FOR A REALITY CHECK>>>>> I don't know what the people in the gallery were thinking, but this was laughable. Jeffreys made false statements: 1. Let Women Speak is not an association; it has no constitution. It's an event run by a UK-based group called Standing for Women, with affiliated groups formed in Australia under that banner. 2. In the transcript, she stated it was a lesbian group. It was not a lesbian event. All organizers were heterosexual women, either married or divorced. The majority of the speakers were heterosexual. 3. The Nazis stated in interviews on the day (I have video recordings) and on their Telegram accounts that they were going to support a rally called Protect the Children, organized by the Freedom Fighters and Matt Trihey. They had supported this group before the Let Women Speak event and at subsequent events. They also stated that they did not support Let Women Speak and acted to protect the Protect the Children rally from trans rights activists. 4. It was widely broadcast in mainstream media, via TV and newspapers, that Moira Deeming was ousted from the Liberal Party for attending and being accused of associating with Nazis. This was common knowledge.

**Nazi Comparisons and Hyperbole:** **Main Argument:** Howard attempted to portray Jeffreys' comparison of exclusionary feminist groups (like LAG) to Nazi fascists as hyperbolic and unfounded. He sought to show that Jeffreys' statements were inflammatory and not based on legitimate evidence or reasoning. Howard: "You have no basis at all to equate my client's interests with the interests of Nazis." Jeffreys: "Well, I mean I disagree obviously... I'm saying they have more in common with Nazi fascist ideology... instead of engagement or inclusion, they believe in an exclusionary approach." Howard: "Are you prepared to apologize to the Lesbian Action Group for associating them with Nazism?" Jeffreys: "I can't apologize for that. It's an analytical logical fact that I've reached."

**Undermining Jeffreys' Academic Framework ("Options Approach"):** *Main Argument:* Howard also challenged Jeffreys' "options approach" (the categorization of feminist groups as A, B, C), questioning whether this was a widely accepted academic framework or a personal invention. He aimed to undermine the academic rigor of her analysis. Howard: "Have you deployed this theoretical framework? The options approach in your academic writing?" Jeffreys: "I have not deployed it... but other writers have deployed it in their work..." Howard: "So you're saying it's not part of your published writing, but it’s something you're now deploying here?" Howard I think attempted to discredit Jeffreys’ use of the options framework by suggesting it was not rigorously established in her academic work, implying it was an ad hoc methodology for this case. Which it was - its of her own invention, that's cited by no one else. Summary: Anyway, Howard challenged Jeffreys' impartiality, the sufficiency of her research, and the validity of her claims about the Lesbian Action Group and Nazi fascism. I may be biased but I think he succeeded in depicting her as a biased advocate whose opinions were influenced by her activism and lacked sufficient academic rigor to qualify her as an objective expert in this case.

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Leigh Howard: "So, the conclusion of that cross-examination points. First, is that LAG means no harm to anyone. Secondly, all LAG wants to do is to exercise the same human rights that we do. Thirdly, all LAG wants to do is to exercise the same human rights to expression, association, culture, sexual health that others have in the LGBTI community and society more broadly. The third point is that LAG is not asking for anything else; no assimilation, no resources, nothing. Fourthly, that there is no harm. There are groups that don't want that to happen. And that includes the Human Rights Commission."

Leigh Howard continues: "So, my closing, I'll just address in two topics: what's fallen out of the evidence in light of cross-examination, and then secondly, apply that evidence to the legal principles that I've set out in my SOFIC. And the SOFIC's a really good guide to the disposition of the dispute and how to address the dispute. So, turning to the evidence, the commission's questioning covered three topics. The first was why is LAG associative? And why does it need to associate in all public events? That's answered comprehensively by Ms Anne's annexure, where she annexes the constitution of LAG. And that's answered comprehensively by Ms. And it's not really a matter for debate, given that's the source document. Now, that's at page 21 of Ms. Ann's statement, page 22, and the Constitution states, and I quote, 'Freedom of association, freedom of speech, freedom from discrimination, freedom from violence, and freedom in law.' That's their purpose. And then they articulate a dozen ways to fulfill that, the first being a political advocacy group asserting their biological fact, that sex is binary and immutable, so on and so forth. So, this is a political lobby organisation, but also, as you see in the middle of the dot points, an organisation wants to promote outlets for lesbians to meet, to have discussion and organise events for political, social, cultural, physical and mental wellbeing of lesbians specifically. So that's answered. That's the finding.

Leigh Howard continues: "The …the third line of questioning engaged in by the Commission was try to explore what L.A.G is... You have the benefit now of Dr Blake's affidavit, which has extracted the social media from [http://terfistheslur.com](https://t.co/Qrs69BNXnD) and Twitter, and you have Professor Jeffrey's evidence. Where Professor Jeffrey speaks to global events, where this is materialising, and also public... sorry, local events. So, she speaks of an event in Melbourne. You have additionally Ms Ann's voice evidence about Let Women Speak and the young feminist that was admitted to hospital, so on and so forth. So that's the factual findings in relation to that second question, about why do we... what are you talking about when there's violence and abuse? **The third line of questioning the Commission** explored with Ms Ann in particular was, why is an exemption necessary? I mean, what's the point of an exemption? And you'll find the evidence of that at paragraphs 71 to 75 of Ms Ann's statement. So, at 71, she says, '*We need this application as our primary focus for now. Without it, our needs and our wants will be suppressed and subordinated*.' At 74, she says, '*If the lesbian group had an exemption, this would be legal recognition of our right to organise and associate for our own unique political, social and cultural needs. The broader community would respect the legal force of that exemption, and things like this wouldn't happen*.' Right now, the de facto reaction to events that seek to advance the sex-based rights of women, such as Let Women Speak, are taken to be opportunities for trans lobbyists to demonstrate their own cause and to intimidate those who are opposed by them. So, everyone's entitled to a presumption, in other words, that if there is a legal instrument allowing this to occur, that they would respect it. The rule of law requires no less. And so that's the benefit an exemption is going to deliver to my client..."

Leigh Howard continues: "The …the third line of questioning engaged in by the Commission was try to explore what L.A.G is... You have the benefit now of Dr Blake's affidavit, which has extracted the social media from [http://terfistheslur.com](https://t.co/Qrs69BNXnD) and Twitter, and you have Professor Jeffrey's evidence. Where Professor Jeffrey speaks to global events, where this is materialising, and also public... sorry, local events. So, she speaks of an event in Melbourne. You have additionally Ms Ann's voice evidence about Let Women Speak and the young feminist that was admitted to hospital, so on and so forth. So that's the factual findings in relation to that second question, about why do we... what are you talking about when there's violence and abuse? **The third line of questioning the Commission** explored with Ms Ann in particular was, why is an exemption necessary? I mean, what's the point of an exemption? And you'll find the evidence of that at paragraphs 71 to 75 of Ms Ann's statement. So, at 71, she says, '*We need this application as our primary focus for now. Without it, our needs and our wants will be suppressed and subordinated*.' At 74, she says, '*If the lesbian group had an exemption, this would be legal recognition of our right to organise and associate for our own unique political, social and cultural needs. The broader community would respect the legal force of that exemption, and things like this wouldn't happen*.' Right now, the de facto reaction to events that seek to advance the sex-based rights of women, such as Let Women Speak, are taken to be opportunities for trans lobbyists to demonstrate their own cause and to intimidate those who are opposed by them. So, everyone's entitled to a presumption, in other words, that if there is a legal instrument allowing this to occur, that they would respect it. The rule of law requires no less. And so that's the benefit an exemption is going to deliver to my client..."

Leigh Howard: Importantly, the Commission didn't cover this essential topic with Ms Anne or with Professor Jefferys. Not a single question to Professor Jefferys or Carol Anne to the effect that that's not right and we don't accept your tenets and your movement. It wasn't put to them that they made this up. And accordingly, it's to be accepted in full. Now, you know how Ms Anne –how helpful she has been to date. But can I just bring you to something else? She's fully done. Paragraph 7 of her statement, she summarises tenets of her movement, the Lesbian Action Group's movement, in order to form the tribunal of this movement. We went global and found the leading scholar in the field, Professor (Sheila) Jefferys. And you'll see Ms Anne associates the tenets of lesbian feminism with Professor Jefferys, and so did Dr (Elena) Jefferys this morning. But the usefulness is Ms Ann summarised it in four points for us. This is it, this is us, and this is our movement: Yeah. "Lesbians are women loving. A lesbian's sense of self, her energies, and her sexual centre around women. A lesbian feminist orbits the moon, not the sun. The woman. A lesbian feminist orbits the moon and not the sun. A lesbian feminist and their world is all about the woman, protecting women at the cost, upholding the rights of women at all costs. " That is their movement. It's women, protecting them, upholding them, caring for them. That's the first point.

Leigh Howard continues: "Second point is separatism. They distinguish themselves from the politics, institutions and culture of men and what predominates today. So, they see themselves as separatist and they say separation is necessary because of the patriarchal state of society. They subscribe to the thought that the personal is political. So, for true equality between the sexes and the erasure of the sex hierarchy requires lesbians not only have equality in public life, but in personal life. And you heard a little bit of that coming from Professor Jeffrey yesterday, about hair flicking and the expectations that are forced on women about how to behave. They reject that. Shaving legs is another example. They reject this out of hand. They reject the eroticisation of equality. These, my client, these lesbian feminists, object to this; they reject the objectification of women in society. They say this is a social construct arisen out of - for men and out of their position of dominance. And so, this extends to a disagreement that they may have with other people in the LGBTIQ+ community about how to express themselves, and they don't agree with the emphasis on expressionism, fetishism, sadomasochism, etc. So, that's another core tenet. So, this political philosophy exists. It's unchallenged by the Commission. You can accept it in full."

Leigh Howard continues: "And you are to reject this Favelle's statement in her declaration at page 3, that this movement constitutes reams of unstated bigotry. Must reject that. Unchallenged. So that is what I thought this case was about. But no questions asked. Now, turning to the witnesses and their credibility and reliability… Miss Anne is obviously credible, reliable. She answered everything to the best of her ability. She was helpful. She was careful. You can accept her evidence. Professor (Sheila) Jeffreys, who was called to give expert evidence about our movement, was never challenged on it. She's the world-leading political scholar on the very issue, as confirmed by Dr. Jeffreys this morning. Her evidence on the movement can be accepted in full. Dr. (Elena) Jeffreys, you must reject in its entirety. Now, I need to make something very clear because of the movement we come from. We are not critical of Dr. Jeffreys in any way. Scarlet Alliance is an organisation. That protects women. And that is to be applauded. That is consistent with our tenets and our doctrines. *But the expertise was completely irrelevant to the facts issuing in this proceeding*."

Leigh Howard (LH) continues: "Can I hand up a bundle of authorities? …and I've shaded in yellow just passages of the particular things I wish to cite. If you could turn to page 35 in red. Stewart Fenwick (SF) It'd be nice to read authorities on a disability before you ask me to make a decision about a disability, but I'll let that go. LH …. "So Dr. Jeffries, the *gravement \** of her evidence seems to be that lesbians can disagree with each other. We accept that. there are lesbians that disagree with our movement. But to adopt our philosophy and then typecast it as a subset of option A, that type of thing is to be rejected. Okay. So to adopt our philosophy and then typecast it as a subset of option A, that type of thing is to be rejected out of hand. And I just want to take it to the rest as well. Can I start with paragraph 64 of the seminal decision of *Magida\**? So, the *basal\** principle is that Dr. Jeffries is supposed to give opinion based on facts. Because of that, Dr. Jeffries must either prove by admissible means the facts upon which the opinion is based. , if other admissible evidence establishes sufficiently like the matters to render the opinion of the expert of any value, even though they may not correspond with complete precision, the opinion was still admissible. Dr. Jeffries has gone uh to look and talk to what she calls informants; she's not provided their names, it's hearsay, it's untestable hearsay. She's not proven anything about them. SF We're not talking about you know a concrete proof or a strength of the bridge or something. ]This is sociology, where there's no ground for growing on facts in that case. LH I have been denied an opportunity to put to test these informants; it's an inadmissible hearsay and she's not proven anything what they said, so to the extent, , I mean it's there, it's in evidence. You can't give it any weight, it's just not testable." \* ( *Some of these words I wrote them as I heard them, not sure if they're correct, but I've tried to not make sense of them, I don't think I misspelt them on the paper, haven't had a chance to though to correct with the rest of the women. I'm pretty sure I got 90% of what Howard said, he was VERY easy to hear and write, he was well paced, structured and had a one-two, one-two type of cadence the second beat is where he spoke a word. He didn't speed up too much when he got excited - he got loud So really easy to follow - did I mention Im a fan?)*

Stewart Fenwick (SF) "yeah, so , so just apply to all when you said there are things you agree with her. you want me to reject all of her evidence, or…" Leigh Howard (LH) "I invite you to give it little to no weight other than to accept that the communities disagree with each other on particular points. ..Now, at the bottom of the page (38), at this Court of Appeal here is extracting the observations of Justice Gleeson, and at the bottom of the page, at Justice Gleeson's paragraph 44, you see this: *“In trials for judge's loan and jury, it's important that the opinions of the expert with this be confined, in accordance with section 79, to opinions which are wholly or substantially based on their specialised knowledge. Experts who venture opinions outside their specialised knowledge may invest those opinions with a spuriousappearance of authority, and the legitimate process of fact-finding may be subverted."* So clearly the expertise that Dr (Elena) Jeffries has developed in the advancement of sex worker rights is not a legitimate specialised field of knowledge for her to comment carte blanche lesbian feminism philosophy. It's only relevant to two things, sex workers and their rights, and sex worker politics. So little to no weight. SF 'And Sheila Jeffries can because? ' LH 'She's the world-leading scholar in Dr. (Elena) Jeffreys own evidence of lesbian feminism.' SF 'Yeah' LH 'So, and it goes, and when I challenge too. So that's how we deal with Dr. Jeffreys.' Dr. Jeffreys wasn't impartial. She couldn't accept basic propositions. She was disruptive. She couldn't answer my questions. She couldn't confirm what - she tried to explain to the tribunal. (*LH said something here I couldn't quite catch : That politics was not just private but public* (?) She was disruptive. She was an advocate, not a witness, an expert witness. To the point where she has, and she didn't apologise for it, and she stood behind it; assimilate\* the beliefs of my client with Nazi's. *(\*not sure if that's the word he used. Didn't sound like 'associated' , but thats the meaning)*

SF Just remind me: Did either or both of the Jeffries make submissions to the commission? LH Dr. Jeffries did, and Dr. Gung identified that to you one morning, and it's now subject to that. That was the additional order. But she wasn't cross-examined on it, but it really is just a shorthand version of what she's provided in, in apparently expert form. So, so that's the evidence, and that's how we say it should be treated.

Leigh Howard: And I deal now with Professor Gerber's report, which it is spurious to lead propositions of law on the witness box. That's advocacy, clearly. Yeah. I'm not interested in dealing with it because it shouldn't be given any respect. It's you can't, you can't do this. The air of superficiality, to say that Mr. Howard and your Dr. Gung, a member of the tribunal, it's not for you, it's for the experts. Is. It's never happened in my 15 years of legal practice. It should be called out for what it is. But in any event, can I just say three things about Professor Gerber's report? It adopts a common law approach of overt dicta to cede all rulings. And we all know that rulings of committees aren't binding and not over to dicta. It's not a common law system. That's the first point.

Steward Fenwick: The second point is that In the same sense as we'd say the text of a treaty is the primary source. Leigh Howard: Yeah, exactly. There's no binding status to these rulings where she's extracted little sentences and things. Secondly, she's treating the Yogyakarta principles as law. Now, it's not a treaty, but it's not to diminish the rights of anybody that are expressed in the Yogyakarta principles. What Professor Gerber has misrepresented to you is that it's some sort of body of law. It's not. SF I did note that it's sort of stood out there without much. LH Yes, it's not a treaty. You would be surprised or unsurprised that the national community can't agree on this at the moment. And it's been debated there. And hence, we have it intervening in the Australian Administrative Appeals Tribunal.

Leigh Howard Thirdly, it's not relevant because what we're seeking to avail of ourselves here is our rights. And they're conflicting at the moment. It needs to be resolved. I'm not sure why the Commission, through this proceeding, needs to tell you what gender identity means and what gender means under CEDAW and what sex means under CEDAW. Because we have a sex. ‘ We're female, and we'd liked some rights please’. That's the real issue. And that's what Ms. Alsalem is directing herself to. Stewart Fenwick And why do I rely on Alsalem and no one else? LH All Ms. Alsalem is saying, and I'll come to this shortly when I go through... is state parties need to establish measures to ensure that lesbians realise their full human rights in full when there is such a conflict. But can I just read to you, and you can look at it? This really gets the nub of Professor Gerber's report. There is an annexture from the Kaleidoscope Foundation. As a forward to the publication that's signed off by Professor Gerber. At the second paragraph, Professor Gerber says, 'since the establishment of the UN, international law has developed. To protect women's rights and in doing so, has inadvertently established a gender binary that often addresses inequality and discrimination on the basis of sex, such that gender identity, sexuality and bodily diversity have been neglected. That's the truth: That's Professor Gerber's statement. Her own words. So don't give it any credit to the advocacy of the witness box. Address the closing of the discretion, why the exemption is justified by reference to the SOFI."

Leigh Howard (LH): Member, do you have the folder I provided to the Tribunal? I've got the SOFI GiniWave (*? what it sounded like*) LH: I said in my opening, jurisdiction issues, nothing arises beyond what I say about Section 10A. Now, I've provided you with 10A in the authorities extract, my friend, opening took you to Section 10A, which says, and I quote, ‘nothing in this section imposes a duty on the Commission that is enforceable by proceedings in a court.’ Now, I'm not sure what the submission actually was about that, but is Your Honour aware of the principles of a ‘ tort of breach of statutory duty’? SF: Possibly once upon a time in a previous life. LH: sometimes legislatures can declare something, like Section 1, like, we have this duty. And if they don't specify a remedy for that, then sometimes courts can infer that you've created a private right of action and value to comply with the duties of tort that entitles a plaintiff to damages and injunctions. So, it's because this Act is in place, it's in place. It's created such a broad-ranging duty in one. What the Parliament has done is to make sure and to cut off any allegation down the track that that's a private right of action - the grounds in a tort. That's what 10A 2 is doing. Can you see that it's enforceable by proceedings in a court? SF Mm. LH That they’re relevant to a tribunal. SF Right. Okay. LH We go back to our first principles. Right. A tribunal is standing in the shoes of the Commission, and you have a duty under 1. Please, we would like you to follow it. And we say that if you don't, that's error, because there is a duty there that has to be followed. And that's why we have preferred the statute and the statutory analysis to the guidelines. The guidelines completely ignore section 10A, and it's an open question as to the validity of the guidelines. That could be collectively challenged. It's probably unlawful, but not a question for this tribunal. All the tribunal can do is follow the Act, and that's the rubric we adopt."

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Views

Leigh Howard (LH) - The guidelines don't really assist us. They don't take matters further. Reasonable and necessary are just adjectival, unhelpful things. Stewart Fenwick (SF) Have you addressed the Drake point or not? LH So, paragraph 14. - Oh, sure. Yeah. - And no one disputes that short statement of principle there. But it would be an omission to analyse things other than in accordance with Section 10A. That's the statute, the duty. SF Yes. And you've made a particular issue with reasonable and necessary concepts. LH Sidelining and undermining of the duty engaged in by the Commission itself. It's their own duty. SF - Oh, I'm sorry. Sorry, I didn't write that point down. That's the 10A point. LH Okay. - Now... Dr. Gung and I have supplied you with, authorities about the wide discretion. Section 44 and its unconfined nature. , Dr. Gung didn't take issue with the applicability of Browning, which is my next authority bundle. But she also supplied you with two additional authorities of Winnikee. (*??*) And a holding's, which we also embrace. And I've just provided you with those authorities. So, page 7, you'll see Hot (*?*) holdings. And the extract, that Dr. Gung referred to. And I quote: “Courts do not readily classify as absolute or unfettered a statutory discretion, the exercise of which will affect the rights and if the legislature attends that result, it should do so by the very plain itself. Thus, apart from express provision, a statute may impliedly require the repository of power to have regard to certain considerations in deciding on its exercise.” Agree with all of that. Absolutely embrace it, because we have human rights, we have civil rights, political rights that have not been abrogated by Section 44. That makes our point. Just in, much better language. So it's our rights to association, expression, culture and stuff. So on and so forth, haven't been abrogated by Section 44."

Leigh Howard (LH): The next authority. Those broader rights. Stewart Fenwick (SF) Presumably you say those broader rights are in the objects statement to other convention. LH That's right. It's linked in - sourced in the objects. And those conventions give effect to all of our human rights, political, social, cultural, economic, social. And so, the next authority, Dr Gung, took you to is Winnikee. And that's at page 10, of Mason, Justice Mason. And, Justice Mason there is saying the same thing. Quite apart from regulation 202. The court will not ordinarily regard it as absolute unfettered Armour *(?)* intends to make such. And rules discretionary powers of ascertainment by reference to scope and statutory enactment. And they all helpfully, bring us back to Browning. So that they're all speaking in uniformity. So that's the way we approach discretion. And.. I've set that out at paragraph 16 to 18 of my closing. So, uh, then be one step ahead of me and you need, you are asking what the subject matter and scope of the SDA act is. And I provided that to you in a power (para?) of 20. And I've given, , you, , some guidance is to how the act is established and set up. And so -we say consistently with section 10(a) and the duty that's on the tribunal, and consistent with the objects that refer to our human rights in the international instruments, and consistent with the common law, that the exercise of your discretion is to be informed by all of our rights. And I quote section 10(a), **all of our rights**, with regard for the indivisibility of them. So my lesbian action group cannot realise **all of their rights unless they're all promoted as a bundle.** That's what indivisibility means. And the universality of their human rights. So, they have rights just as much any other, sex or a sex orientation. And, for these rights freely and equally. And with dignity. So that's their concern. And their rights. I'm just reading from 10 a."

SF Yeah, Look, it's interesting. We're passing about indivisibility. But what you're saying is that an action that splits or prioritizes amongst rights of, in this case, an applicant group is offending against indivisibility. Whereas I would have thought the other approach may be. I'll wait to hear from the commission that the challenge is the clash, ,with other rights holders. And that's where indivisibility…that's a priority, perhaps. LH Yeah. SF But not within the rights of the applicants – consideration of the exemption (?) LH So indivisibility is really a concept of, well, I have ‘20 human rights in the ICCPR’. And 20, I’m just inventing numbers. Yeah. 20 human rights in the I-E- S-E-R, the government. And they are.. all of them are to be enjoyed by everyone. So they can’t sanction, you know, cut them up and say, you can have a little bit of freedom of expression, but not freedom of… So, indivisibility of human rights is a priority. It’s a concept that all of them are to be considered together and promoted. So, the clash point, which is Professor Jeffrey's evidence is what needs to be reconciled. In line with Section 10. No one is denying that you heard the evidence. You've heard Ms. Anne she said it a number of times in, in writing. No one is denying, communities other than **ours** need rights and resources and support. What's strange about this from a, from a man on the street perspective is that for some reason this is all about the trans community, not other orientations and sexes. And obviously, the trans community is at the top of the tree. This is a hierarchy. That's what's happening. So, if you read the decision of the precedent\* *(?)*, she gives us a green light to go and discriminate against everyone except them. Now, that is that's more about equality. So that's 10. **So we're equal in rights with each other.** (*my highlight)*

Stewart Fenwick (SF) Sorry. That's an interesting point. I don't know if you're going to come back to it, but it's an issue about the well, it's partly an issue about the guidelines. And I've mentioned this issue about the unfortunate effect of interpretation of the statute as a whole. We end up with this unfortunate hierarchy of trans versus lesbian women. What do you say about that issue? You said it was a green light to discriminate because of that, if you like, filtering process. Yeah, we, we men are covered by the special measures or, you know. What do you say about that process? Leigh Howard (LH) Yeah, so we, we oppose, uh, a construction (??). SF Now tell me how I can do that? LH I can do that. SF But only if it's coming to, you know.. LH but it's just borne out by the text of the Act. So, , the, the text of the Act, I don't need to take you to it, but establishes principles such as: women aren't to be discriminated. Those with sexual orientations aren't to be discriminated. Those with gender identity. It doesn’t establish a hierarchy like this is the top consideration, this is the bottom. Lesbian feminists are not at the bottom. We just want equality. And the Act doesn’t establish. It just doesn’t. SF I’m not sure that’s going to solve the problem for me, but anyway. LH Well, it’s pursuing, , equality. So Section 3 E. Its an object is to achieve. SF Well, this is the funny thing about the Act is that it's still a bit, uh, avowedly binary in terms of, , and equality between men and women. But we’ve now inserted a range of other considerations which complicates… LH Yes, the situation. **The inverse to equality is discrimination. (Comment:** ) So, they're the same thing. So B says to eliminate so far as discrimination, on, against persons on all sorts.' So, they're, they're two sides of the same coin. The SD Act, the SD Act cannot be interpreted to establish the primacy of gender identity identities to, others. And nor is it a principle of human rights law to do that. Because we've got 10A. It resolves the question for you. SF .. and 44 there to prevent? LH Not to prevent discrimination, is that what just fell out of your mouth? SF **Permit**. Permit. LH And so, wherever you get this clash, then that's where we can have a valve to relieve it. SF Oh, okay. Yeah. Fair enough. Yeah. That's pretty simple.

Leigh Howard (LH) So, at part C4, sorry, I should go back to a more fundamental proposition in light of what's been said by the Commission about the common law, so paragraph 19 of the SOC. So, we live in a liberal tradition and a liberal society, and democracy under which, quote, everyone is free to do everything subject only to the provisions of law and where liberty ends. The law begins, and where the law ends, liberty begins. So, liberty is, as we understand it in Western societies, seeking to protect freedom of expression and association. It's amazing that I have to clarify this, but can I just clarify it with case law? In my bundle, I provided you with two things. I have two authorities that I've cited. The first is Brown at page read 11, decision of the full Federal Court, where Justice French, as his Honour then was, provides a very useful summary of what freedom of expression means in the common law. And also, in and by reference to the human rights treaties. And over the page I’ve highlighted the other important passage.. The second authority I rely upon for this basic proposition; Evans, and that's at read 15, another decision of the full Federal Court. And it has a particular use in this case. And the para (power?) of 72 is speaking of when it might be said that a statutory provision or a discretion might interfere with freedom of expression and what we are to do about that. And the quote that's given from TRS Allen. It says this, ” *liberty is not merely what remains when the meaning of the statute and the scope of executive powers have been settled, authoritative by the courts. The traditional civil and political liberties, like liberty of the person, freedom of speech, have their own independent intrinsic weight. Their importance justifies interpretation of common law and statute, serves to protect them from unwise and ill-considered references, interference or restriction*.” So, I'm going to read this. So, this is a principle that exists at common law. And then the next paragraph makes that to the principle of legality, and Lord Hoffman's infamous statement in Sims. SF So, Hang on. Infamous?

Leigh Howard (LH) Yeah, this is quite important. Ex parte Sims is a very useful statement of the principle of legality. It says, Basically, if you're going to curtail lesbian action groups' freedom of action or freedom of association, you must do so with clearness. You must bring it to the Parliament. You must say that you're doing this, and you must accept the political cost of it, that's the basic working of… Stewart Fenwick (SF) Yeah. LH So, at part C4. I have provided you with a summary of what the international treaties provide my clients. And again, they have freedom of expression, assembly, association, the ICCPR, and equality before the law under the ICCPR. So that's international recognition of the same thing. That the common law is identifying. Now, can I just make this point? **Freedom of association also has a freedom *not* to associate.** We cannot force members of society to join trade unions. We cannot force members of society to adopt state-based religions. So, you have a freedom not to associate. So, but we're apparently forced to assimilate. If you read the Commission's submissions, we're apparently only allowed to discuss our political views in the presence of people who vehemently disagree with it, vehemently, as the evidence recalls."

Leigh Howard (LH) So, can I just take you to some guidance on our cultural rights? That’s the next authority. So, my clients enjoy a bundle of cultural rights under the IESCR, and I provided to you in this bundle the general comment of the Committee who's got power to issue interpretations which are not binding but authoritative, and Dr. Gung has provided you with authorities about that. So, they're not; they're entitled to some weight. Stewart Fenwick (SF) Just like the CEDAW commentary is entitled to some weight? LH Unfortunately, and it's the fault of everybody, you have been provided with commentaries from a special rapporteur, a professor of law at Monash University, and the CEDAW Committee. So, to answer your question. The CEDAW Committee has the same capacity. SF No, no, just checking. LH Yep, yep, so, under the IESCR, the cultural rights have been interpreted paragraph 49 of this general recommendation. It says, and I quote, “the obligation to respect includes the adoption of obligation to respect cultural rights includes the adoption of specific measures aimed at achieving respect for the right of everyone, individually or in association with others, or within a community group, A, to freely choose their own cultural identity, to belong or not to belong in a community, to have their choices respected, B, to enjoy freedom of opinion, freedom of expression in the language or languages of their choice, and the right to seek, receive and impart information, ideas and all kinds of art forms regardless of frontiers of any kind, to enjoy the freedom to create individually in association with others, a community or group, which implies that states parties must abolish censorship and cultural activities in the arts, et cetera, and to have access to their own cultural linguistic heritage to, and to that of others.” So international human rights law is against assimilation, so you find that at the paragraph 8. So, the committee says, this includes the lesbian activist's right not to be subject to any form of discrimination based on cultural identity, exclusion or forced assimilation. So, whilst. Miss Favell and others want to exclude us and call us TERFs and things, the reality is we can't, if we have a separate view, then that's to be respected and we can't assimilate, and we shouldn't be forced to assimilate with the umbrella movement by the commission. But that's how we apply our cultural rights."

Leigh Howard (LH) Then CEDAW is brought into account next. I invite you to only take into account, to the extent that you want to take into account, the committee recommendations. Which Ms. Alsalam tried to explain. She tried to helpfully summarise, but for some reason, that's not okay? So that's Red 19. This is Recommendation 28. Can I just identify to you the controversy? I don't really want to say anything about it. This is what's caused all the kerfuffle in the Australian courts and tribunals. At the moment - Just paragraph five. Second sentence. “The term sex here refers to biological differences between men and women. The term gender refers to socially constructed identities, attributes, and roles for women and men, and society's societal cultural meaning for those biological differences result in the distribution of power and rights favouring men and disadvantaged women.” Okay, so that's the interpretation that's been given. That's fine. It's not relevant to this case. We didn't need Rheem’s big report about it. We are seeking to discriminate on the basis of sex and also gender identity. Now, over the page at paragraph 31, the Committee advises that the Commission take steps to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women; certain groups of women, including women deprived of their liberty, refugees, et cetera, and lesbian women, are particularly vulnerable. So, the committee has identified that given the intersectional discrimination my client faces, being a lesbian and also being a group of lesbians and also being a group of women, they face a double disadvantage. So that's the vulnerability."

…. (they both spend some time sorting out who’s got what on their table, and discussing printer issues) Leigh Howard (LH) Ms. Al-Salam referred to paragraph 12 of this, where they say, they pick up that passage I just took you to, and they say that the committee, discrimination against women is inextricably linked to other factors, including their lesbianism, et cetera, and all of their other characteristics. Their indigeneity. So on and so forth. And they say, accordingly, because women experience varying and intersecting forms of discrimination which are aggravating negative impact, the committee acknowledge in different ways - meaning that appropriate legal and policy responses are needed, such as an exemption under the Act. So, we rely on that passage. Stewart Fenwick (SF) Yep. LH That's all we need to say about CEDAW. Not… let's not boil the ocean about CEDAW. SF Yep LH Now, going back to my SOFIC, that Part C5 brought you to definitions of indivisible universality, and I was mentioning before, that's my client's concerns that you are to adopt. But then there's this other test, which I think is important too, which is: you are to act in a way that ensures the greatest possible benefit to all Australians are brought about by your decision-making power. That means, in my submission, that the entire country would benefit from the political activities of my client and their ability to express their views, because they're being suppressed and private, defunded, so on and so forth. Now, I'm not saying, and we don't need to decide, the correctness of those views. That's not the point. If their political discourse is an opportunity for people to reach agreement, to disagree, to be told they're wrong, to be proven wrong, that's the benefit to Australia that this delivers. SF Take the paradigm case of public disputation, the Let Women Speak example. Do you say that that's not an example of political activity by your client, or that you would say that it's not an example of political activity? It's not an example of public political activity by your client. It's an unfortunate phenomenon. And whatever you say it is, is that a relevant consideration? LH We only rely on Let Women Speak for this reason. Some of my lesbians were injured! Some of my lesbians were injured at it by others. We don't know who they were, but we shouldn't have to be subject to violence. **That's the point.** It's all about having an ability to debate things without the threat of violence and extremists and fringe people and fringe politics. We want to be part of the mainstream."

Stewart Fenwick (SF): This ties back to the thing that I'm penciling in, is the efficacy argument or the practicality argument. These are not considerations? And we had the question answered quite honestly. Carol Anne - Look, we're not interested in policing. We just want to get on with it. Is this not a consideration? I don’t know what you mean. Your client should be disadvantaged because other people might exploit the situation. But is the practicality of the reality of the way the world's operating not a consideration? LH When you say, are you saying that Let Women Speak is an adverse consideration to my client or a positive? Because I don't really know what you mean when you say consideration. SF It ties into the efficacy slash practicality argument, which was at least touched on in the decision. How are you actually going to do this in a way that doesn't cause harm, whether it's psychological harm denied by Sheila Jeffery or public disputation and violence? LH I think I follow the question. What you're saying is, well, how are you going to do this without violence? SF At the extreme. Yeah. Yeah. LH With the rule of law. Yeah. So if we have an exemption, people will respect it and everyone is entitled to that presumption. Now, if people want to protest, that's their right too, SF Yeah LH Seeking to stop that. SF Yeah LH But I live in a society where we all infer that, you know, if we have a legal instrument that allows us to do this, people will respect that. So, the prospect of harm or violence or what have you. Yeah. It's hard to argue. I don't think that the number of people who would be diminished, but I definitely would countenance any suggestion. I don't think you're making it... That because my clients will be subject to violence anyway, this is useless. **I would completely reject the patriarchal view of things.** *(I shouldn't but I have to comment to that, he's spending a lot of time with his client obviously :* *lol,*)

Stewart Fenwick (SF): Yeah, yeah. Putting the hypothetical aside, .. I'm going to have to sit and reflect if necessary on the aspects raised by the response submissions or touched on in the decision under review, and consider whether or not reason was a necessity and those things are a factor or not, or just what I've heard from you. Leigh Howard (LH) Yeah, and I did say you weren’t suggesting that. LH I was hesitating to put it in some respects, but I thought, I've got something to say about how to help the situation, which I'll come to on this question. SF And I'm also raising, because I think it was addressed actually in the submission process and in the dialogue around the decision, which was, well, tell us what you're going to do. And with respect, Carol Anne said, plainly and simply, ‘well, we just want to get on with it.’ And I'm not sure how much to focus. I'm not sure how much to focus on this issue. . And then implementation. Yeah. LH And Ms. Anne's witness statement, which you'll go back to to answer that question, she has gone into quite extensive detail about their plans. SF Yeah, yeah. LH At C6, we apply expression and association. Pretty plain terms. And as I say, para 30, those beliefs have been explained by Carol Anne and Professor Jeffries. So. That is one reason why this discretion should be exercised in our favour. It's a very powerful one. Especially. It's fundamental. It's fundamental to our system, that these women express themselves freely, in public. Very powerful. LH The second reason why my women need this exemption, because it facilitates their freedom of association, which I've set out in paragraphs 32 and 33. So, L.A.G is impaired. By accruing its desired political influence, and also denied the full exploration of their sexual and cultural needs without association. It is just as fundamental to our civil society that we have this freedom of association, just as compelling. Again - religions have it. Political parties have it. We should have it too. This is a very important and very compelling reason why you should exercise your discretion and favour. LH The third reason is it protects the exercise of their cultural rights. We need to be visible in public so that we can explore our culture, document it, celebrate it. It's important to older lesbians, not subject of any cross-examination. The older lesbians of our community need to associate; theyneed - they are suffering from the issues to be confronted by our elders in the late stages of life. Our younger lesbians, which were subject to some cross-examination, need it too. They need role models; support in case they need it. Every lesbian requires a pride, and we want to associate and explore our cultural rights so that we can deliver this to members of our community. SF Small 'P' Pride, not capital 'P' Pride. LH I'll get instructions on that. (*Carol Anne laughs*) SF No, no, it's done. LH Now, the point is powerfully made by Professor (Sheila) Jeffreys and Dr (Elena) Jeffreys and Carol Anne that lesbians have less space to associate over history, so Professor Jeffreys is really useful for that because she's lived it. Professor Jeffreys grew up as a lesbian in a world with bookshops and places, coffee shops, et cetera. SF I think we've all suffered from loss of bookshops. LH But they're all been removed or off the scene. The Commission's witnesses fall over themselves to tell us that it's about gentrification. I don't think that's a really relevant consideration. I don't see how that moves the dial any further. What moves the dial is that my client would like to establish a space for lesbians who subscribe to their beliefs to meet. That's one. It's only one. We're going to ask for one. Gentrification is an irrelevant consideration to that. I don't know how that was relevant."

Leigh Howard (LH) So this is a bizarre point that I have to make. But the exemption facilitates my client's sexual rights and their health. It's not surprising that there are lesbians that exist that are not sexually attracted to men or members of the transgender community - that might find it sexually repulsive. That's just. I don't know. It's an unsurprising fact. There should be a space where like-minded lesbians can meet each other without others. That I have to verbalise this in front of my own government is appalling. My government should get out of the way. Help it. Facilitate it. The Australian state is deeply interested in my clients exercising their sexual rights, finding partners, marrying, having children, establishing families. That is essential to my government. The family unit, partnering, marriage are the fundamental building blocks of my community, central to its ultimate success. That's the reason why I decided to do the exemption for these women. It's another reason why this exemption needs to be exercised. These women need to meet each other. There are no such spaces. Now, the current spaces that are operating operate, again, using the Commission's witness's evidence. That you can come and join us. But you have to accept the premise that female-attracted lesbians who identify as transgender women as potential dating partners. Ms Anne was taken to some articles about how this phenomenon, (and the premise that) there is pressure to accept transgender partners being pushed on people. Ms. Ann was taken in crossing to articles where this phenomenon has been documented. Professor Jeffries has documented it as well. That's neither here nor there at the moment. Can we just have one space where it doesn't happen so people feel safe, but don't want that pressure to be inflicted? That's what we are intending to achieve. Ms. Anne also explained that in her meeting with young lesbians that she was cross-examined about - that they were telling her about what's happening in the young LGBTIQ movement on this score as well. So, one space where this doesn't happen, which might lead to lesbians finding partners, marriage and families, should be encouraged. And this is another reason why exemptions should be granted."

Leigh Howard (LH) The last reason, going back to Section 10A and the ICCPR, is that it upholds equality before the law. Now, I've provided you a case of Peel hotel This is an exemption to the Peel Hotel, which you'll find in my bundle, at page 25, and this is an exemption to the Peel Hotel. SF Yeah, no, I read that. LH Yeah, but basically, the exemption was upheld so the gay community could meet in comfort, a gay men's community. OK. Without the spectre of heterosexuals, in order for them to remain comfortable, to ensure that they could freely express themselves between themselves, and without the spectre of others, and so on, and so forth. So, that's a great thing. That's a really good example of how these exemptions are supposed to work. Can we please have one as well? SF Mmm LH So that upholds the equality for the law that I'm talking to. And it's not a hierarchical structure, it's equality. SF So, you presumably say that the procedure adopted in that matter, not seeking to reject or reject, but to advise and inform about the nature of the venue is perhaps a model? LH Yeah. And we're happy to. And we've actually prepared a document which I sent to you for ideas. But this is within your discretion and the way you want to frame it. But we did prepare something. - *(I think LH is paraphrasing here that document)* So if you are minded to exercise your discretion to impose a term and condition, then we propose a form of words that you can have regard to. Now, that form of words simply gives notice that, hang on, this is us, and you politely ask not to attend. We just give a little bit of information about what we're about, and then a link to our website if they're interested to learn, a link, it says, 'If you'd like more information about other organisations that might better suit your needs and interests, visit a link to a directory,' so we'll provide a directory. And if you'd like more information about the (?) exemption, I'll link there. So that could be published or circulated every time we do propose a public event, and it could be available at the door. That would serve this purpose, that someone inadvertently decides to attend; It would prevent that embarrassment of being knocked back at the door. That would be the utility of that. Now, we can, of course, and that's what we're intending to do, to explain to people verbally, but, you know, if you want something in writing that you, you know, tribunal you want to control, then we would just suggest that wording. That's informed by the Peel where, in the Peel case, there was instruction to do something like this.'

Stewart Fenwick (SF): Bell's decision in lifestyle communities is a bit off-topic in terms of the subject matter, but I might be wrong, and I accept that it's under a charter framework, but it seems to me the only, well, sorry, other than Peel, for example, but it's a pretty thorough treatment of the nature of exemptions of this kind. But I hadn't really thought any more about it; I didn't even particularly digest it in great detail. I just skimmed it to see if I was also trying to think about some of the application of international law and the like, and there's a bit of a treatment about that decision, but I don't know. I accept it's a bit late, if you haven't already read that. Leigh Howard (LH): The reason why lifestyle communities is not really helpful is because it's under a framework where a charter of human rights applies, and you have Section 10A, and so what we are doing is applying Section 10A. That's not to say that. That's not to say that general principles about exemptions might be applicable there. I'll assist you because I don't have the. (No, that's all right.) If you're interested in general principles of exemptions, I mean, I have really sent it out for you in my submissions. SF Again, I say that because I keep coming back to, I guess, what might be the orthodox view, and clearly I haven't formed a view, but I was earlier on yesterday, actually, in the context of the guidelines. I was just spitting. There's an orthodox interpretation that exemptions are there to fix the pot, to allow people to fix the potholes, not to make a pothole. LH (Correct.) SF And I don't know whether you have a view about that. I guess what you're saying is you'll avoid the potholes by just taking a straight line and doing the best. LH I think it's a useful analogy. Can I explain why? SF Equality, temporarily, which is, again, why I raised the next question. LH Every exemption creates a pothole. Everyone. So, I can't enter a female gym. I'm being discriminated against. Poor me. So that's how exemptions work. So, the analogy of fixing a pothole to create a pothole doesn't take us very far because SF I haven't worked very long on that analogy, by the way. It was a bit spontaneous. LH Yeah, but I'm not being critical of the analogy or anything. The statutory purpose is to permit discrimination. And I've provided you with a section as to a way to work that out, which is Section 10a, and we need to follow that section. It's your duty. And there are – and our case is, by reference to law, common, statute, and international. And a variety of considerations which justify it. It's as simple as that. So let's take ourselves to a female gym. There are a variety of considerations that justify the operation of female-only gyms. Variety: Safety. Rights, et cetera. It's the same analysis. I can only supply it with the text of the Act. And whilst you are troubled by exemptions allowing discrimination, that's what they do.

Leigh Howard (LH) So, can we go to the path of reasoning, which I think would help you? Stewart Fenwick (SF) (Yep.) LH Now, I said in opening that I took issue with the watering down of the President's reasoning. And we went through the – the President identified competing submissions, questions she had to address, and then she made a finding that it wasn't reasonable or necessary, and she gave two reasons. SF Oh, okay. So, whether these are sort of critical – LH Well, yeah, it's not sprinkled. And I – what she did in the upper end of her reasons is identify the submissions. She didn't express support. SF No, no. LH The organisation said this, Organisation said something else. She gave two reasons. That they have – it has to be rejected, and it can't be adopted. SF Yep. LH The proposition – and I need, I think, assistance on how to adopt this legally. The proposition that people are not invited to our event – creating a risk of suicide is to be rejected out of hand. We do not say – that the transgender community has their mental health issues, et cetera. That's not the point. To say that my clients associated publicly creates a risk of suicide is so extreme. SF Rejected out of hand, don't deny the mental health circumstances of.. LH – No, we don't. Everyone has their mental health concerns. And it's prominent in a community like that. And like ours. To say that we having a meeting creates a risk of suicide? That is outrageous. **Outrageous**. They've just not invited. Ms. Anne's told you about – and also all of the Commission's witnesses. She's told you about all the support and dedication that is provided by the state to the transgender community to assist them, recognize them, respect them, so on and so forth. It is in abundance. SF Oh, you say that's in Carol Ann's statement? Oh, and everyone else's. SF Right. LH So Ms. Ann gives the example of Seahorse. So that's one example. SF Oh, okay. But, you know, the gravamen of the Commission's evidence is that the LGBTI community, is all together supporting the transgender community and providing them services. And so, they have supports. We've been excluded. Okay? Fine. To say that we are causing a suicide risk, so what will happen because it's not the case that the LGBT actually represent all views and they're all united; some people might be upset from that community, from others, some people might support it from that community. There's also I should mention division in that community about transgender politics. SF Well, I mean we haven't actually needed to draw on the submissions, but I mean, , the fact that there are large numbers of submissions in support and against...

Leigh Howard (LH) Yeah, because can I just identify a particular political issue, , and to use the language, that Sheila Professor Jeffries uses in the 90's, you know? And how languages there are members of the trans uh, transsexual community will quite object to being equated to the transvestite community; there are there are differences of opinion. So, , the range of reactions to our events are going to span the whole spectrum of human experience, not suicide though. and I'll Just take you to Paris, red 41. And this is what should have been done by the President was not -… so, this is Holloway Mc Fleetus. So, this is the seminal authority on how to draw an inference: , sorry, inferences from actual facts are proved just as much as the evidence of those facts themselves in a civil cause. ‘You need only circumstances that avoid a more probable interference in favor of wise alleged where direct proof is not available (couldn’t make out the word he used here – glitch in the live stream) …. to give rise to a reasonable and definite inference. They must do more than give rise to conflicting inferences of equal degree and probability, so that the choice between them isn't ..(lost the word here). ‘ So if we're going to raise allegations that we are a suicide risk to the society, you've got to do this with reasonable and definite evidence; the share is not. You saw Miss Anne, you heard how she means no ill will, you've read their objects, there's nothing in there, even get close to suggesting it, now turn to red 43, this is our Neat holdings, because the suggestion is a really serious one; we are creating death. So, if you're going to make that allegation and that finding, you better bring the proof. So, the High Court has said, the strength of the evidence necessary to establish a fact was sought to be proven. Thus, authority statements have often made the effect a clear and cogent and strict proof is necessary such as fraud. Stewart Fenwick (SF) Sounds a bit like Brigginshaw. LH It does Yes, but you can't make that finding. You can't draw that inference. Not with accordance with law. SF Yup.

Leigh Howard (LH) And then the second reason that the President decided to refuse our examinations, and nothing to complain about, nothing to see here, you lesbians are fine, you're not subject to any abuse at all. Professor Jeffries has given you the examples of that physically. We were subject to a very sorry cross-examination on the veracity of that. It was embarrassing. To try to undermine a conviction in a London court to say that, well, the lesbian got a slap in before the community assault, I mean, please.. so bad. But you have Dr Blake's affidavit. Can we just go through that for a minute? Stewart Fenwick (SF) Sure LH There is an online community that's citing violence against TERFs, my clients. I ask you to invite, to look at it all, page nine, TERFs can choke on my girl dick. Page 10, TERFs beware. There's a knife. It just goes on and on. But I need you to look at it. I need you to reflect on it when satisfying yourself of the correct and preferable decision and the reasons offered by the President that this doesn't exist, or it's all anecdotal. Page 12, if you're a TERF, you can get fucked with the business industry end of my barbed wire wrapped basket, it's so sort of outrageous, it needs to be regulated and the way it needs to be called out and stopped and the way we do that is to create legal instruments to allow us to hold our views, express them for - people who respect it. And so that's what an exemption will do. Stop this It will moderate the behaviour and it will give effect to our human rights. And Carol Ann in her advice statement makes a plea to the tribunal that ask you to take into account. She refers to the CEDAW committee asking state parties to do things like this, where it's appropriate, and identified there is a need that we are to be protected against discrimination committed by public. The Commission is not protecting us, so we just ask that the tribunal step in. SF Hmm LH In the shoes of the Commission, give effect to the CEDAW committee recommendation, grant the exemption. Those are my closing positions. SF Do you want to have a shorter break and get back to 2.15 or is that it, everybody? (People went to lunch).

Okay so that's the end of this thread, I think I'm 90% accurate - I'll put the final version of this on AWW.s google drive. This thread should be shared with philosophers, Lesbian groups - he put in arguments that haven't been articulated well. Feminist philosophy (usually of the Western world) is all well and good. But I felt imho that his arguments ilustrated the why of -equality of rights- **for all.** And our Australian Human Rights Commission - are pushing for the rights of some over the rights of all. A hierarchy of rights - with a top and Lesbians at the bottom. AHRC is a vehicle to remove our rights as an Australian people. I think Leigh Howard's background is in Human Rights law - **He did this pro-bono**, I heard a lot of passion in his voice as he argued for LAG's rights - for OUR rights - as this is about our culture that we are ALL equal. He was just beautiful \*mwaw\*! I have to finish/summarise Eleana Jeffreys' x 2 Daye Gang's closing remarks and Sheila Jeffreys. I didn't give word by word attention to DG, she was a garble on a closing remarks, imo. Check out

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they did a massively hard job - well, Bronwyn, Nicole and Suzanne.

[**Kat Karena, lostwomensrights.com,**](https://x.com/KatKarena)

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have done Daye Gang's (AHRC) closing remarks: PART 7. Day 2. Afternoon. Daye Gang's (AHRC) closing.