

Submission from the ROAR Feminist collective to the Australian Human Rights Commission on the Consultation on protection from discrimination on the grounds of sexual orientation or gender identity

The Roar Feminist Collective is a women only collective which was set up to engage women and work towards women's equity, empowerment and the elimination of all forms of violence against women. The collective is open to women of all ages but is currently made up of women between the ages of 15 and 40, with women between 20 and 35 being the highest represented. The women in the collective work in diverse areas, some part time, some full time and some are unemployed or students. The collective has a high representation of lesbian women and bisexual women.

The collective has undertaken a number of important projects and holds weekly meetings. ROAR coordinated Perth Reclaim the Night (an annual global women's event against sexual violence against women) in 2008, 2009 and 2010, in partnership with Lotteries West and local women's organisations. The collective has set up a consciousness raising and support group for women, many of whom are survivors of violence. The collective is currently working on a project, funded by the WA Department for Communities, which is consulting young women using young women friendly workshop techniques. The project is led by young women from the collective, including young lesbian and bisexual women and will involve articles, written by young women from a diverse range of groups in Perth, being produced into a magazine, which will be used by the government to influence future policy initiatives.

The collective is concerned that the LGBTI identity does not adequately represent lesbian women. In the 1970's, many lesbian women broke away from the gay liberation movement, instead getting involved with the women's movement, because they felt that they had more in common with heterosexual women than gay men. Lesbians fought for a place within the gay community and for a short time, limited measures were taken by the 'gay' community to rectify the situation by aiming to centre women's needs within the community, for example the L in LGB was deliberately placed at the beginning of the 'alphabet soup', but more recently women's issues, and the needs of lesbians has, yet again, become invisible. The alphabet soup now most commonly reads GLBTIQ, with the 'gay' symbolically being placed before the Lesbian. ROAR are impressed that the Australian Human Rights Commission place the L first but are concerned that gay men's needs dominate the political and social arenas of the GLBTI group and those who have been raised female do not take priority.

More recently, new language has started to be used to replace the alphabet soup (which is starting to get a bit long). This language includes the terms 'sexually and gender diverse' and 'gender queer' and to some extent 'trans'. The replacement of Lesbian, gay etc with these terms is highly problematic for several reasons. Firstly, these terms eliminate and silence any acknowledgement of the subordinate position of lesbian women, in relation to gay men. Secondly, they politically undermine lesbian feminism (and to some extent the political choices made by some gay males), by representing the political context of egalitarian relationships, and the history of political lesbianism, as merely 'sexual diversity', which denotes an equally balanced sexual menu, without a political

history. Secondly, calling someone 'sexually diverse' is confusing, in that the term represents no people and all people at the same time. Everybody is sexually diverse, so therefore the term does not represent any particular group, so thus does not represent the target groups. The target groups need to be clearly defined as being lesbians, gay men, bisexual and transsexual people. Each of these groups has very different needs, politically and legally. It does not make sense to mash these groups together, and doing so only seeks to silence the needs of (for example) lesbian, who have unique needs as women as well as people who live in same sex relationships.

The term 'gender diverse' or 'trans' are also problematic, in that (again) they silence and colonise the experiences of women who have been raised as female, in a male dominated society. In a similar way too the term 'sexual diversity' is inappropriate (see above), the term 'gender diversity' or 'trans' or 'gender queer' are also problematic in that they falsely depict a menu of genders, which people have an equal power to pick and choose from, as they please. It does not acknowledge the power difference between males and females, and the political movement which sought to win rights for the women, i.e. feminism. The term is invalid and out of context in it's depiction of gender as simply being a transient notion of self expression, with no history, no harm and no struggle. In particular, this term silences the history of women who have, through the women's movement, determined the identity of woman, as stemming from the political and social experiences of those who have been raised as females and thus been at a much greater risk than those raised as males, of being sexually abused, raped or beaten and who earn significantly less than men and who are politically under represented.

It has been strongly argued by feminists, Aboriginal rights activists and other groups who experience subordination, that who gets the right to determine (for example) who is a woman and who is Aboriginal, is very important. And ROAR argues that it is very important that those who do get to make that determination are the people who have lived their whole lives, through absolutely no fault of their own, in a body, in a culture (or descended from a culture) and / or in a group who are subordinate. In this case, that means women who have been assigned female at birth. It is the rights of those women that ought to be protected legally as a number one priority. Protecting the rights of people who were assigned male at birth with regards to anything to do with sex or gender, is, ROAR argues, a step which drastically regresses the rights of women to determination over the category of 'woman', who are a subordinate group, who survive or die under the rule of patriarchy, with a long history of struggle for liberation and a shared history involving common experiences. To silence the experiences of women is to perpetuate the oppression of women. To invent new language which hides, over-rides and over-rules the acknowledgement of the struggles of women and to open up the identity of woman to those raised as males, is to colonise and eliminate women's community, women's identity and women's history.

Further, it is important for the feminist project for women to have the right to determination, because if women can determine who is a woman, it is then possible for women to organise and to work together to raise the collective consciousness and to figure out which aspects of woman-hood have been imposed on us by men and patriarchal values and which aspects of being a woman are derived from a more positive source through women's experience and survival. According to feminists, this consciousness is the very thing that will liberate women (Lucia-Hoagland and Penelope 1991: 17).

If people who are born male and have been raised as boys and raised to have a male consciousness and patriarchal privilege are permitted legally and socially to be able to occupy the places and spaces of women and determine who is a woman, at the expense of those who were raised girls, then how can women ever be liberated from the patriarchal, distorted and warped version of what a woman is?

The ROAR collective are concerned that women only spaces could be under threat if Australia takes on similar legislation to that of the UK, with their 'Gender Recognition Act'. The 2004 Gender Recognition Act in the UK makes provision for anyone over 18 to apply for a change of gender certificate. Once an application has been lodged, a Panel of 'experts' are responsible for making an assessment as to whether or not the applicant fits the criteria outlined in the policy. Applicants do not need surgery, they need to demonstrate that they are 'living as a woman', presumably meaning that they must be demonstrating feminine traits. This means that someone who was assigned male at birth and raised as a male and who has a penis and no intention to remove it, can gain legal recognition as a woman (Jeffreys 2008: 328). If granted the certificate, the incumbent is protected from discrimination, which presumably means that a women's group, such as ROAR, women's refuge, women's rape crisis centre could be prosecuted for discrimination for refusing to allow someone who was raised male (and possible who still has a penis) to become a member or volunteer.

People who refuse to participate in the delusion that a person can be born into the wrong body or transgressed through opting for a different gender on the menu and who do not believe that sex can be changed by either dress codes, makeup, surgery or hormones will likely be deemed legally discriminatory. This could potentially cause serious harm to women's organisations, such as ROAR, who organise events such as Reclaim the Night, women's consciousness raising groups and other spaces that require women only safety.

This might sound reactive and irrational but the fact is that there are several well known examples where women's services or groups or events have been sued by people who were raised as males, including a women's rape crisis centre in Canada. In the case of Kimberly Nixon v Vancouver Rape Relief Society, Kimberly Nixon, a transsexual women, applied for a volunteer peer counsellor position at the Vancouver Rape Relief Women's Shelter (Vancouver Rape Relief and Women's Shelter, 2007). The shelter is for work for women survivors of sexual violence. Kimberly Nixon was advised by the shelter that s/he would not be able to become a peer counsellor because s/he had not experienced being raised as a female and did not fit appropriately into a peer counselor role. S/he was offered another position but instead took the crisis centre to court on the ground of discrimination. The shelter won the case, but the staff had to give up time and energy when they could have been working for the benefit of women survivors instead.

More locally, a group of lesbians in South Australia who were taken to court for refusing to allow someone who was raised as a male to attend their event called "Sappho's Party" ... a small gathering of lesbian separatists who were having a camping trip, which had had low key, 'word of mouth' advertising. The person lodged a complaint with the Equal Opportunity Commissioner, claiming that the refusal of admission was discriminatory (Redgold 2007). The case proceeded to the equal opportunities tribunal. It could be argued that only a male would use such tactics against a small marginalised group.

Another problem is that enabling men to legally become women will potentially lead to a distortion in crime statistics and reporting of crime. A recent example in the United Kingdom involved a transsexual male to female, who was legally recognised as a woman under the Gender Recognition Act. This person was involved in an altercation with a male who was wearing a dress, the consequences ending up being that the cross dressing male was pushed under a train. Newspaper headlines in several UK newspapers reported that a woman had been found guilty of murdering a cross dressing man (<http://www.guardian.co.uk/uk/2010/nov/01/tube-station-murder-cross-dresser>). Notice that the article does not say that the 'woman' who murdered the man was actually born male. If male to female transsexuals are more likely to commit violent crimes, due to being raised as boys, then the reporting and statistical information relating to crime will serve as an injustice to women and neglect to accurately represent the fact that people who were raised as males are more likely to commit violent crimes.

One question that an analysis of introducing legislation to allow for change of sex / gender raises is how the government ought to go about administering gender and who has the right to set the administration guidelines? In the case of the Gender Recognition Act, the UK government has chosen to hand over the power of administration of the medical experts. The medical model is based on patriarchal principles and therefore would seem less threatening to male supremacy and the majority of people in political power are males (McLellan 2010: 79). Through the administration of gender by medical experts, gender becomes depoliticised and bureaucratized and trivialized as a mere life style option (Jeffreys 2004: 328). This trivialisation undermines the extensive work done by feminists, who have pointed out the great political significance and complexity of the gender hierarchy. Feminists have often also been excluded as major stakeholders in the development of such legislation.

Recommendations

Recommendation 1

The legal, political and social need of lesbians be prioritised, protected and considered separately to that of gay men and other people who were born male but who fit under the LGBTI umbrella. ROAR believes that consultations ought to be undertaken with lesbian stakeholders, separately.

Recommendation 2

The Human Rights Commission does not buy into or adopt the terms 'gender and sexually diverse' 'trans' 'gender queer' or any other terms that eliminates lesbian and also that the L continues to be placed first and centred in policy making.

Recommendation 3

Women, who have been assigned female at birth and raised as girls, have protected rights to determination over the identity of 'woman' and protected rights to organise, have exclusive space with (including services) associate with other women who have also been raised as female, at the exclusion of those who have been raised male.

In addition, lesbians and lesbian feminists, who have been raised female, ought to have the rights protected to be able to determine the identity lesbian and to have events or spaces for lesbians who were raised as female, to the exclusion of all others.

This includes being able to advertise as such, publically, without fear of prosecution.

Recommendation 4

It is recommended that the government works with community organisations and schools to promote lesbianism and homosexuality as positive alternatives to heterosexuality.

Recommendation 5

It is recommended that the government promote and fund consciousness raising groups for people who don't fit comfortably into their assigned gender.