

# Legal Erosion of Sex

## FACT SHEET

### Changes to Act in 2013

The Federal Sex Discrimination Act 1984 (SDA) was amended by the Sex Discrimination Amendment Bill in 2013 which introduced protections against discrimination on the grounds of sexual orientation, gender identity and intersex status, and replaced references in the SDA to 'opposite sex' with 'different sex' (an attempt to deny the biological reality of two sexes).

It defines 'gender identity' as "the gender-related identity, appearance or mannerisms or other gender-related characteristics of a person" - a nonsensical circular definition.

### Definitions of woman and man deleted

The words 'man' and 'woman' are no longer defined in the SDA. The Amending Act repealed the definitions of 'man' and 'woman' that had previously existed.

Prior to the Amending Act, 'man' and 'woman' were defined in s4(1) of the SDA as follows:

**Man** means a member of the male sex irrespective of age.

**Woman** means a member of the female sex irrespective of age.

### Changing of sex

For present purposes, the provisions of the SDA also suggest that a person's sex can be changed. This interpretation is consistent with the way 'sex' has been used as a legal concept throughout Australia, including in legislation dealing with birth registers allowing people to change their registered sex in defiance of their biological reality.

### Implications for Lesbians' Freedom of Association

With the inclusion of gender identity as a protected characteristic and a now unclear definition of sex, lesbians are being told that any request to hold single-sex public events will be considered discriminatory against trans-women (biological males). This can now be argued based on their gender identity, AND potentially in terms of their (legal) sex.

The Australian Human Rights Commission stated, "These definitions are repealed to ensure that 'man' and 'woman' are not interpreted so narrowly as to exclude, for example, a transgender women and transgender men from accessing protections from discrimination."

In 2023 the Lesbian Action Group sought an exemption to hold a women-only event at the Victorian Pride Centre. The Australian Human Rights Commission in denying the application defended their position by claiming that the "provisions of the SDA also suggest that a person's 'sex' can be changed". (<https://www.legislation.gov.au/C2023G01157/asmade/t ext>)

A similar challenge to women's only spaces by transgender males using anti-discrimination legislation is occurring in the 'Tickle vs. Giggle' legal case. (<https://gigglecrowdfund.com/>)

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### How about sexual orientation?

The SDA defines 'sexual orientation' as:  
a person's sexual orientation towards:  
(a) persons of the same sex; or  
(b) persons of a different sex; or  
(c) persons of the same sex and persons  
of a different sex

The key problem with this is that sex has not been defined accurately enabling people to 'identify' their way into a sexual orientation.  
e.g. Trans identified males (trans women) who think they're lesbians.

### Why is this a problem for the LGB?

Because of this legislation, same-sex attracted people can no longer publicly gather in single-sex spaces, as we have always traditionally done.

It is now illegal for us to exclude opposite sexed people from our events, dating sites and dating pool.

## Want to learn more?

Visit LGB Alliance Australia  
<https://www.lgballiance.org.au/resources>