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Australia's new cultural imperialism?

Exporting "gender identity" to the global south

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SEP 27



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While it's hardly news that gender identity ideology has captured most of Australia's once respected institutions, I'm shocked at my own capacity to *still be shocked* at the extent of the insanity. Take Victoria's health department, which in a [women's health survey](#) released this week clarifies that: "Any

references to a woman or women or girl or girls include: cisgender women” — meaning non-trans women, as in women, here reduced to a sub-category of women — “transgender women, transgender men, non-binary people and gender diverse people who may be perceived as women, female or feminine (regardless of expression or identity), who may experience similar health issues and/or gender-based discrepancies in care.”

In other words a person qualifies as a woman in official data simply if they’re a feminine-looking man.

I hear you asking: will Victoria’s newly-elected second female Premier, Jacinta Allan, rein in this destructive nonsense? Well, I’m always prepared to be pleasantly surprised.

On the other hand I’m not surprised that in a preliminary ruling The Australian Human Rights Commission knocked back an application from the Lesbian Action Group to hold events exclusively for “lesbians born female,” excluding biological males. (For more about this story, and the erosion of lesbian rights in Australia, see my post here.) After all, the lesbians’ application for an exemption under the federal *Sex Discrimination Act* (1984) had about as much chance of success as I’d have applying for a job at ABC Queer.

It is even less surprising when we learn that in a legal opinion filed last month in the Federal Court the federal Sex Discrimination Commissioner expounded on the contemporary meaning of sex — as in, the once uncontroversial idea that humans are a dimorphic species comprised of male and female — concluding, in philosopher Holly Lawford-Smith’s summation, that it means “almost nothing at all.” Sex is “not a biological concept,” according to the Commissioner, not binary or immutable, trans women (biological males) should be entitled to protections related to pregnancy and breastfeeding, and .. you get the picture.

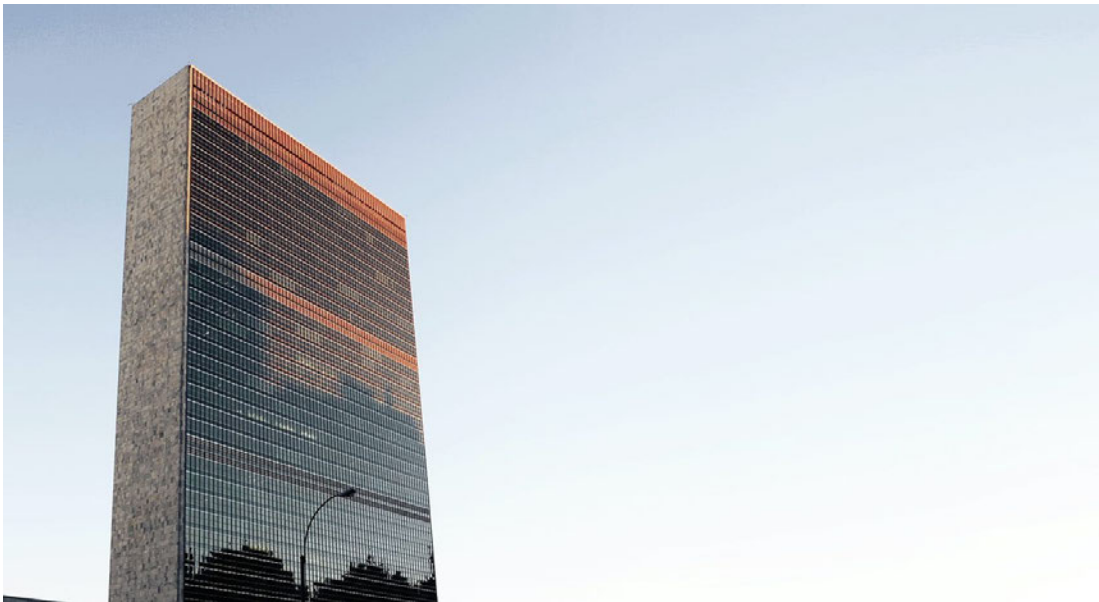
As an aside, a new Commissioner, academic and lawyer, Dr Anna Cody, began her five-year term this month. (Cody presumably had nothing to do with the legal submission.) She told *The Sydney Morning Herald* — in a profile that failed to mention any of this newsy background — that she plans to approach

her brief with an intersectional lens that will focus on First Nations, disability, lower socio-economic, and transgender inclusion.

Cody said problems are rarely single-issue and need to be attacked holistically: “A person is rarely just a woman.”

Surely: for basically anyone can be just that.

Arguably more disturbing is what the Commissioner’s Federal Court submission suggests about the bureaucracy’s enthusiasm for exporting gender identity ideology to Australia’s poorer neighbours where it can seriously harm women, gays and gender non-conforming people.



UN, New York. Photo: [Daryan Shamkhali](#) on [Unsplash](#)

What in the world is “sex”?

The Commissioner’s legal submission was filed in what’s likely to be a landmark case on “gender identity” discrimination, the impossibly named, Tickle v Giggle: Roxanne Tickle, a trans woman was kicked off a female-only social app called Giggle for Girls, and is suing the app and its chief executive, Sall Grover. The case itself is due to be heard in April, and I’ll explore it further

as that date nears. All we need to understand here is that the Court gave the Commissioner leave to appear as an “amicus curiae”, a friend of the court, to assist with the legal issues in the case; the Commissioner is not a party and does not address whether Tickle was in fact discriminated against.

What the Commissioner does, however, is make stark, unqualified claims that the concept of “women” in international law includes biological males. These claims are at best misleading. And they are not inconsequential given the Albanese Government’s foreign policy agenda promotes “LGBTQI” rights in the Asia Pacific region and throughout the global south.

These claims arise because among other things Giggle and Grover allege that the prohibition against “gender identity” discrimination, added to the *Sex Discrimination Act* in 2013, is unconstitutional because it’s inconsistent with Australia’s international treaty obligations. (Again, I won’t be tackling the argument’s merits here.)

The debate centres on the *Convention on the Elimination of all forms of Discrimination Against Women* (CEDAW), a treaty often referred to as the international bill of rights for women and ratified by 189 states. The Commissioner deadpans that CEDAW does not define the term “women,” as if this question would naturally have arisen in 1979 when the United Nations’ General Assembly adopted the treaty. Nonetheless, the Commissioner asserts, the “commentaries” of the CEDAW Committee, a body of 23 international experts that interprets the treaty and monitors its implementation, “confirm” that “women” includes trans women — and that states should therefore take steps to ensure their protection.

To support this assertion that the CEDAW Committee has unambiguously embraced the mantra “trans women are women,” the Commissioner cites the Committee’s Recommendation 28. This non-binding Recommendation acknowledges that while the treaty itself only refers to “sex-based discrimination,” a more expansive interpretation shows it also covers “gender-based discrimination against women,” meaning “socially constructed identities, attributes and roles for women and men and society’s social and

cultural meaning for these biological differences resulting in hierarchical relationships between women and men and...”

Okay, I won't subject you to the full UN'ese, but it's clear that nowhere does the word "transgender" appear, let alone the contention that CEDAW automatically covers a biological male identifying as a woman. In fact this interpretation of Recommendation 28 is contested by at least one prominent office-holder within the UN's human rights bureaucracy, Reem Alsalem, the United Nations Special Rapporteur on violence against women and girls, and an advocate for women's sex-based rights under pressure from self-declared gender identity. Recommendation 28, Alsalem noted in a statement in April, is about "the meaning given by society to differences in biological sex that results in inequality and discrimination." It is *not* disputing the bare fact that "binary gender categories and roles exist."

(In May, Alsalem intervened in favour of former Liberal MP Moira Deeming, expelled from her party in the fallout from Melbourne's "Let Women Speak" rally that was gatecrashed by neo-Nazis. The UN official expressed concerns about women being "silenced" on the issue of sex and gender identity; she herself has been threatened with a boycott campaign from "feminist" NGOs.)



Melbourne's "Let Women Speak" rally, March 2023. Photo: Natalie J. Russell

The Commissioner also lists four Recommendations that refer to "intersectional forms of discrimination faced by women, including on the basis of their gender identity" that states should prohibit. "Gender identity," or even a reference to "transgender," does indeed appear in these instances as part of a laundry list of factors, variously sexual orientation, intersex, age, class, caste and so on. Curiously, though, only one of these Recommendations, Number 33, explicitly mentions as an intersecting factor, "identity .. as a transgender woman" — and that's in the context of women's access to justice relative to men.

Stretching the chewing gum more, the Commissioner points out that in 2018 the CEDAW Committee issued "concluding observations" that congratulated Australia for introducing protections against gender identity discrimination, as well as noting "with concern" that some states still require medical procedures before someone can change legal sex. But a "concluding observation" is simply that; an aside, carrying no legal force.

Indeed, even a rudimentary search of the terms “CEDAW” and “trans women” unearths trenchant critiques from international legal scholars about the treaty’s “identitarian,” “essentialist,” and “asymmetrical” character. CEDAW, according to one commentator, employs a “rigid definition of the woman subject.” The international bill of rights for women is a bad piece of work, these scholars chorus, because it is concerned with the suffering “of one narrowly-defined group,” — being, err, women.

But wait, says the Commissioner, even if — to paraphrase the argument — the Court finds that CEDAW is irredeemably TERF-y (trans-exclusionary radical-feminist-y), then another UN treaty, the International Covenant on Civil and Political Rights (ICCPR) prohibits discrimination on the grounds of gender identity. Not in so many words, of course. In none at all, actually: Article 26 of the ICCPR prohibits discrimination ... “on any ground such as race, colour, sex .. or other status.” These last words “or other status,” the Commissioner asserts, have since been expressly recognised by the UN Human Rights Committee, which adjudicates cases brought by individuals against member states, as extending to discrimination on the grounds of “gender identity.”

Even if this is true — and again plenty of scholars express doubt that the Committee’s rulings meaningfully protect sexual minorities— the ICCPR simply extends to trans people the entirely necessary and unproblematic right to fully participate in society without harassment or discrimination *for being trans*. Nor does the treaty deem all differential treatment discrimination so long as such exclusions are based on reasonable and objective criteria. Critically, the treaty gives no authority to the proposition that trans women have an inalienable right to access female-only spaces and services.

In a similar vein, the Commissioner asserts that another treaty, the International Covenant on Economic, Social and Cultural Rights (ICESCR), has been construed by its committee as extending to gender identity discrimination — but a glance at the submission’s footnotes tell us that the ICESCR only deals with discrimination in explicit areas, such as the right to education and employment.

Lastly, the Commissioner invokes that which is always invoked in this context: the 2007 *Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity*. The most influential of the Yogyakarta Principles is trans people's right to "recognition before the law." The Commissioner says in the footnotes: "While these principles were agreed by a group of academics and UN experts, the experts agreed that they reflect the existing state of international human rights law.."

In *Material Girls: Why Reality Matters for Feminism*, philosopher Kathleen Stock explains that since publication of the Yogyakarta Principles, its "vision of gender identity as a fundamental part of the self, not under any circumstances to be suppressed, has filtered down into legislation and policymaking in numerous countries and states."

So a group of self-identified experts self-declare the state of the law, which states across the globe affirm via laws allowing self-declared gender identity. It takes the likes of Alsalem, the fearless Special Rapporteur, to remind us the edifice is a legal house of cards: the Yogyakarta Principles, she says, "are not binding."

In short: there is no binding authority establishing the rights of sexual minorities at international law, let alone the enforcement of such rights. Moreover, we're light years away from "trans women are women" becoming a new international norm. As Alsalem has noted, while 20 states have introduced some form of gender self ID that's still only 10 percent of all UN member states.

All of which suggests Australia's Sex Discrimination Commissioner has coughed up a skewed, selective and self-serving reading of the status of gender identity at international law. The Commissioner's brief was to provide the court with objective, dispassionate advice about the law as it is — and not as gender ideologues would like it to be. I put it to the Australian Human Rights Commissioner's media unit that the Sex Discrimination Commissioner was obliged to acknowledge these questions of international law are contested. They responded with an earlier media release about the Commissioner's submission: "the prohibition against gender identity

discrimination is constitutionally valid and consistent with Australia's international treaty obligations," under CEDAW and the ICCPR.

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The global harms of gender identity ideology

The repercussions of this legal sleight-of-hand raise the prospect of Australia advocating extreme trans-activist positions in UN and multilateral settings and in its foreign policy generally. In February Foreign Minister Penny Wong launched the first dedicated fund to promote international "LGBTQ rights" in the Asia-Pacific. Now we can snigger at the grandiose rhetoric versus the paltry \$3.5 million involved — but it's the general thrust that concerns me.

"We will listen to the voices, views and priorities of LGBTQIA+ human rights defenders and civil society," Wong said.

The fund will reportedly focus on battling "social stigma and legal discrimination," and if this means working towards the de-criminalisation of homosexuality and combatting the all-too-pervasive violence and harassment against gay and gender non-conforming people in our region then the initiative is laudable and long overdue.

If, on the other hand, listening "to the voices, views and priorities of LGBTQIA+ human rights defenders and civil society," as Wong puts it, means a blank cheque for ideologically captured NGOs to push for gender self-ID, the erosion of female-only spaces and interventions, the routine medicalising of gender non-conformity in minors and the de-sexing of data collection along the lines of the Victorian Government's women's health survey, then this fund will merely export the West's pathologies to poorer countries. Even worse, we'll pretend that the notion sex isn't "binary" is something *they* birthed, and not us.

Western trans activists are attaching themselves to indigenous and other cultures in the developing world to propagate the fairytale that man and woman are mere constructs invented by European colonialists. In New Zealand, Maori group Mana Wāhine Kōrero, one of two women's groups that facilitated Kellie-Jay Keen's visit to Auckland in March, has lacerated trans-

rights organisation Gender Minorities Aotearoa for “picking and choosing parts of our culture, cobbling them together into a sort of raggedy patchwork cultural cloak to wear as justification for faddish beliefs” including “inventing new words in Te Reo (Māori language) to describe wholly colonial conceptions of gender.”

“No Tā moko (face tattoos) for ‘gender diverse’ individuals have ever been recorded,” the group’s Dianne Landy wrote in Quillette. “There are no carved whare (houses) or tukutuku panels (decorative panels depicting historical events relevant to the tribe) that suggest gender as being anything other than binary and immutable.”

In India, the influence of Western transactivism has given rise to what one sociologist has called an “intriguing paradox”: the more people come out as transgender, the more marginalised become the culture’s antique sexual minorities such as the hijras, an officially-recognised “third gender” of effeminate males, many of them cast out from their families and forced into sex work.

“Media representations depict trans women as enjoying newfound opportunity and social progress,” writes sociologist Liz Mount in *The Conversation*. “By contrast, popular depictions of hijras show them associated with stigmatized jobs, poverty and backwardness.” Between 2009 and 2016 Mount interviewed more than 75 trans women, hijras and people from other sexual minorities in Bengaluru. She found the mostly working-class trans women presented themselves as members of the “modern” educated class by emphasising they were “not hijras.”

There are other potentially distorting effects in India from Western-style transactivism. In March, according to Reuters, Delhi’s High Court ordered the city government to build within eight weeks public toilets for trans people after a petition from LGBTQ+ rights groups. No-one could deny such facilities are needed — but India has no shortage of urgent need. In response to the court ruling, Delhi authorities announced that some 500 toilets initially meant for people with disabilities would now be designated for trans people.

Meanwhile, Indian filmmaker and women's rights activist Vaishnavi Sundar lambasts the legislative drift to allowing males to self-identify into women's spaces — including rapists identifying into women's prisons — in a nation where poor, rural women have limited access as it is to single-sex spaces and remain shockingly vulnerable to sexual violence.



Video: Vaishnavi Sundar speaks to journalist Louise Perry

Perhaps I don't need to tell you that one of Sundar's films, *But What Was She Wearing?* — about the widespread sexual harassment Indian women confront in the workplace — was pulled before its screening in New York in February 2020 because the Polis Project deemed it transphobic. She had earlier tweeted: "There are no identities. There is only sex. Male and female."

To all the other travesties the global rich has inflicted on the global poor, it seems we can add this one.

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