

**From:** [REDACTED]  
**Sent:** Saturday, 28 May 2022 5:26 PM  
**To:** Moira Deeming  
**Subject:** NOM Legal

**Me:**

My first thought is that they are trying to narrow the conversation to particular initiatives of the Council. The trick will be to avoid that and say, “No, we want clarification of what the law says, so that we can ensure we are compliant as new situations arise”.

One of the basic properties of good law is that is clear, so that regular citizens can understand clearly when they are crossing a line into unlawful behaviour (see “properties of good law” here, for example: [Characteristics Of A Good Law - Hosbeg.com](#)). If Victorian law is so opaque that it requires Councils to apply to the VGSO for consideration of the legal implications of every new proposal, then it is bad law. In the same way, the onus should not be on Melton Council to provide definitions of who does and doesn’t qualify as a “biological female”. The law needs to protect women’s sex-based rights and so the law need to be able to recognise who “a woman” is.

The inclusion of “sex” in the law does not help women if “gender identity” is also protected. In fact, it might make things worse. This is how it works: if “woman” is defined by gender identity, then the law cannot distinguish between “a[male] woman” and “a [female] woman”. If you then kick a “[male] woman” out of the “women’s” change rooms because of male genitalia, you are discriminating against that individual on the grounds of sex/sex characteristics (i.e. the “[male] woman” is being treated differently to “[female] women” because he has male genitalia). See how useful the intersex – sex characteristics are on a spectrum - argument is! Urgh! (BTW: I already know that Paul agrees with me that this is, in fact, what the law now does – he was incensed about it. It’s completely irrational ... and we haven’t yet seen the issue come to a head (except perhaps in the case of Hannah Mouncey but that never got to court) but, in theory, that is where we stand).

**Then HR Lawyer phoned, so I ran the question past him and this is what he said:**

Australia has international obligations to recognise fundamental human rights (important to note that these human rights pre-exist, they are not conferred by the state but states have obligations to recognise and give effect to them). In the case of Victoria, women’s sex-based rights appear now only to be conferred by way of exceptions to discrimination law. As a legal mechanism, this is inadequate to the task of providing legal recognition of the rights of women elaborated, for example, in CEDAW (to which Australia is a signatory).

The VSCO’s question now seems to imply that the situation is even worse than that. You could push back and ask them clarify whether it is really the case that even these “exceptions” are to be decided by the VSCO on a case-by-

base basis, depending on the particular circumstances of the case in hand. Is that really the case? Is this the only mechanism available under Victorian law to give effect to women's rights?

Then you can rephrase your question: Australia's international obligations under CEDAW require that we recognise and protect the sex-based rights of female humans, is it still consistent with Victorian law that Councils may (as they deem necessary) provide sex-specific services for this group (where failure to do so would result in indirect discrimination)? We don't need to invent new understandings of who qualifies on the basis of biological characteristics. Is it still possible to provide single-sex services, such as changerooms (that exclude males) for the exclusive benefit of that group of humans that Victoria's law used to recognise as "women"?

Reading their question for the first time made me cross but re-reading it again just now, it might represent a wonderful own-goal. Be careful to keep it on file. This is what the Victorian government has to say to women! Incredible! Particularly intrigued by the mention of "fact-based justifications". They imply that the fact of biological sex may not stack up against the fantasy-based claims of gender ideologues"!

You're doing completely the right thing. Stick to the issue, keep asking the simple question. Their efforts to run for cover only serve to demonstrate your point – women are not protected anymore.

Good work!