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gender identity, to the global south
SzegoSep 27;READ IN APP;Photo by Kyle Glenn on
UnsplashWhile 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 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 is inconsistent with Australia's international

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' Okav. I

between women and men and sex, or gender, won't subject you to the full UN's, 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. RussellThe 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; 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 transgender 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, and 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

and Cultural Rights (ICESCR), has been construed by its committee as extending to gender identity discrimination¹²; but a glance at the submission's¹⁷ footnotes tell us that the ICESCR only deals with discrimination in explicit areas, such as the right to education and employment.¹⁶ 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's¹⁷

