



Lesbian Action for Visibility in Aotearoa

LAVA - WORKING FOR LESBIAN VISIBILITY AND SEX-BASED WOMEN'S RIGHTS

IP55 Submission 15

The Law Commission Consultation Paper on Hate Crime – Submission from Lesbian Action for Visibility in Aotearoa (LAVA)

LAVA's Position Statement

LAVA's concerns primarily relate to hate speech rather than hate crime, though the two issues are interconnected. LAVA unequivocally opposes criminal acts or violence against any protected groups and supports the current approach of considering hate motivation as an aggravating factor in sentencing.

Introduction

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Lesbian Action for Visibility in Aotearoa (LAVA) was formed in December 1988 to bring public attention to discrimination against lesbians and ways to counteract it. Examples of discrimination included denial of basic human rights such as employment, access to goods and services, and public spaces, as well as aggressive actions and systemic invisibility. The Homosexual Law Reform Bill (HLRB), which decriminalized homosexual acts between consenting males over sixteen, was passed in July 1986. However, Part Two of the bill, which would have provided protection from discrimination under the Human Rights Act, was defeated.

LAVA's Early Advocacy and Achievements

LAVA emerged when Wellington lesbians became aware of the Labour Government's plan to introduce another bill that would protect homosexuals and people with HIV/AIDS from discrimination. LAVA launched a visibility campaign in support of the proposed legislation. After the National Party's 1990 election victory, the Human Rights Bill was introduced. Katherine O'Regan's Supplementary Order Paper 182 added protection against discrimination based on sexual orientation, later amended to explicitly include the term "lesbian." The bill became law in February 1994, ensuring specific and protected recognition for lesbians. Having accomplished its core goals, LAVA became inactive until its revival in 2020.

LAVA's Revival and Contemporary Challenges

LAVA was reactivated due to new threats against women's and lesbians' visibility and rights, stemming from extremist transgender politics. Many lesbian groups have been labelled as Trans Exclusionary Radical Feminists (TERFs), deplatformed, and silenced within the very Rainbow communities they helped establish. This pattern mirrors developments in other Western nations. LAVA itself has been subjected to such treatment, including being denied a stall at Out in the City, a major Rainbow event. Transgender activists and their allies have falsely labelled LAVA a hate group making this issue highly relevant to discussions about hate crime laws.

LAVA's View on Hate Crime

Proponents of stronger hate crime and hate speech laws argue that such measures would make Aotearoa/New Zealand safer. However, there is no evidence supporting this claim. Silencing individuals and groups by labelling their arguments as hate speech does not contribute to safety but instead stifles essential debate. Defining and enforcing hate crime laws would rely heavily on subjective interpretations by police and courts, influenced by the most vocal activists. Hate speech, however defined, should be countered through reasoned argument rather than legal restrictions.

Hate crime is already recognized under the law as an aggravating factor in sentencing, which LAVA considers sufficient. Creating new, vague offenses could lead to misuse and suppression of legitimate viewpoints. The consultation paper fails to clearly define hate crime, instead using broad terms such as "hostility, prejudice, or intolerance." Such vague definitions risk criminalizing legitimate discussions.

The Problem of Defining Hate Speech and Hate Crime

Freedom of speech is not absolute, but limiting it requires clear and justified criteria. The New Zealand Bill of Rights Act 1990 states that restrictions on expression must be demonstrably justified in a free and democratic society. However, defining reasonable limits is subjective and often contentious. Political correctness has led to mild statements on controversial topics being labelled as hate speech, with some groups demanding extreme measures to ensure their "safety." These trends have resulted in deplatforming, event cancellations, and venue restrictions, often due to fear of backlash rather than genuine safety concerns.

The Relevance of Hate Crime to Lesbians

For lesbians, it is crucial to distinguish between sex and gender. Transgender individuals experience conflict between their bodily sex and psychological identity, but identifying as female does not make someone a woman. Women face discrimination and oppression based on biological sex, and feminist movements have long fought to dismantle restrictive gender roles. While transgender individuals should have safe and private spaces, there must also be spaces where female-bodied individuals are prioritized for safety and privacy.

Trans-activist groups advocate for the erasure of sex-based distinctions in favour of gender identity. Their position, widely accepted by organisations, has led to attacks on feminist and lesbian groups. Media outlets have largely refrained from engaging with these legitimate concerns, instead dismissing them as hate speech. However, defending women's sex-based rights is not hate speech. A High Court ruling recently affirmed that Speak Up for Women, a feminist group critical of transgender policies, is not a hate group. Nevertheless, many institutions remain reluctant to acknowledge such viewpoints.

Concerns About the Impact on Young Lesbians

A concerning trend is the increase in young women, who in the past might have identified as tomboys or lesbians, being encouraged to transition to male. Parents, counsellors, and lesbian groups who advocate for a cautious, watchful approach before medical transition are often accused of hate speech. This stifles meaningful conversations and limits young people's ability to explore their identities freely.

Conclusion

As stated in our opening position statement LAVA's concerns primarily relate to hate speech rather than hate crime, though the two issues are interconnected. LAVA unequivocally opposes criminal acts or violence against any protected groups and supports the current approach of considering hate motivation as an aggravating factor in sentencing. While the Christchurch terrorist attack prompted the Royal Commission's recommendations on hate crime, LAVA doubts that expanding the legislation would achieve the intended goals. Instead, open debate and the exposure of hostility, prejudice, and intolerance are more effective tools.

LAVA has chosen not to answer the consultation paper's nine questions because we fundamentally oppose changes to the law.