

There's something curious about Fiona Patten's Racial and Religious Tolerance Amendment Bill 2019, which has just been sent to parliamentary committee. In her Second Reading speech on the 28th of August, the focus was almost entirely on misogynistic speech, particularly the online abuse of women including rape and death threats. She gives vivid examples of treatment directed at columnist Amy Gray, sports writer Erin Riley, and footballer Tayla Harris, as well as mentioning the notorious Gamergate. There was a brief mention toward the end of her speech of abuse directed toward the LGBTIQ+ community, and an even briefer mention of hate speech directed against people with disabilities. But to all appearances, Patten's main concern is with protecting women from abusive speech online.

Whether that is or isn't in fact her main concern, it's likely to be a cause of confusion that sex isn't one of the attributes listed in the bill. Instead, the bill lists 'gender', 'gender identity', and 'sex characteristics'. Those who followed the passage of the Births, Deaths and Marriages Registration Amendment Bill 2019 into law, and are aware of Patten's vocal support for that reform, may reasonably suspect that her motivation is much more the protection of transgender people than it is the protection of women. Are they right?

No one particularly knows what is meant by 'gender' anymore; at one point it was a euphemism for sex, now it is contested in a fraught battle between those who use it to mean 'harmful social norms imposed on the basis of sex' and those who use it to mean '(subjective) identity'. 'Gender identity' certainly won't stand in for sex; the definition given in the bill says explicitly "with or without regard to the person's designated sex at birth". If 'gender' is 'gender identity', then the vilification bill protects the same thing twice. If some, or even many, women don't have a gender identity (as some feminists, myself included, think they don't) then neither of these attributes protect women from misogynistic speech. If 'gender' is 'harmful norms', or a euphemism for sex, or meant to mean something like 'gender role' in a way that can be filled in by either sex or gender identity, then there's scope for this attribute to protect women from misogynistic speech.

What about 'sex characteristics'? These are defined as "a person's physical, hormonal or genetic features relating to sex, including genitalia and other sexual and reproductive anatomy, chromosomes, genes, hormones, and secondary sex characteristics". There seems to be scope here to include sex, but the definition is clearly given in a way designed to extend protections to trans and intersex people, who can gain some of the characteristics of the opposite sex through surgical and medical interventions. Because someone can be subject to hateful speech targeting a specific physical feature, this wording allows both women and transwomen (men and transmen) to pursue vilification claims if this happens.

Suspicion may be warranted but ultimately misplaced. After all, someone who has just supported a bill effectively replacing sex with gender identity (in making it the case that someone can gain the legal sex 'female' simply by making a statutory declaration) can hardly turn around and list 'sex' as a protected attribute. Listing 'sex' and 'gender identity' together would look superficially more persuasive given the stated aim of protecting women from online abuse, but would effectively amount to listing 'gender identity' twice. Given the contortions of language necessary to accommodate the new gender ideology, 'gender' and 'sex characteristics' might be about the best that women can hope for.

Should we support the bill? One reason I remain unconvinced, huge debate about the exact limits to free speech aside, is that I worry what is being sold as good for women—allowing them recourse against misogyny—will in fact end up being used against women, by transactivists. For a person to be guilty of vilification, they must "engage in conduct that incites hatred against, serious

contempt for, or revulsion or severe ridicule of, that other person or class of persons”. Obviously a lot depends on how these terms are understood. But some examples from the UK should give us pause. Last year during the consultation over the Gender Recognition Act, pink penis-shaped stickers were distributed reading “women don’t have penises”. But a penis is a sex characteristic. Is this sufficient to the vilification of (pre-operative) transwomen?

Others have been subject to police interview or investigation (including feminist Posie Parker, journalist Caroline Farrow, breastfeeding mother (which is relevant because she was detained in a cell for seven hours) Kate Scottow, and an unnamed British teacher. A man, Harry Miller, was even investigated for merely *retweeting* a trans-critical limerick. Their alleged crimes were ‘misgendering’ (Farrow), ‘deadnaming’ (Scottow), ‘hate crime’ (misgendering in the teacher’s case, and using the term ‘castration’ in reference to sex reassignment surgery in Parker’s case), and a ‘hate incident’ (Miller).

A major victory for trans activists last year saw Twitter add ‘misgendering’ and ‘deadnaming’ to its hateful conduct policy, resulting in women who express gender critical views critical being subject to both temporary and permanent bans. The most prominent bans have been of Canadian feminist Meghan Murphy and free speech activist Lindsay Shepherd, although Shepherd’s account has since been restored.

The more latitude there is in the interpretation of what it is to incite hatred, serious contempt, revulsion, or severe ridicule, the more we can expect transgender rights activists to use vilification laws against women.