

A lounge of one's own: Art, gender, discrimination and the law

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Abstract

In this essay, the authors consider the recent discrimination law decision of the Tasmanian Civil and Administrative Tribunal in relation to the ‘Ladies Lounge’, an artwork by Kirsha Kaechele at the Museum of Old and New Art in Hobart. The article first considers the question of whether there was unlawful direct discrimination before turning to the application of defences (referred to as ‘exceptions’ in the relevant legislation, the *Anti-Discrimination Act 1998* (Tas)). The authors highlight the particular tensions that arise at the interface of law and art, particularly when the art seeks to create discomfort.

Keywords

Art, sex discrimination, women, statutory interpretation, feminism

In Hobart, Tasmania – a far-flung corner of the world (depending on your geographical perspective) – sits a private art gallery known as the Museum of Old and New Art (MONA). Founded by professional gambler David Walsh, it contains an eclectic mix of rare antiquities, priceless art works and contemporary pieces by leading artists from around the globe. Known for its broad themes of sex and death, much of MONA’s curation and ambience is irreverent, challenging, sometimes humorous and often shocking. MONA is a major tourist destination for overseas and local visitors including, in April 2023, a Sydney visitor, Jason Lau. After his visit, Lau, unhappy with his means of access to a particular installation in the gallery, made a discrimination complaint under the *Anti-Discrimination Act 1998* (Tas) (‘the Act’) to Equal Opportunity Tasmania. The complaint was referred by the Anti-Discrimination Commissioner to the Tasmanian Civil and Administrative Tribunal (‘TasCAT’).

The installation to which he objected was the ‘Ladies Lounge’, a velvet-curtained box overseen by a museum employee serving as concierge who permitted entry by women and denied entry to men. It was created by Kirsha Kaechele, an artist, and a curator at MONA. The interior of the artwork was sumptuously furnished and contained both ‘precious antiquities and priceless modernist works’.¹ Lau, as a man, was denied entry.

TasCAT, constituted by Deputy President Grueber, found that Lau had experienced direct discrimination under s 14 of the Act as his treatment, characterised as exclusion from a space, was ‘less favourable’ than that experienced by women and that he suffered a ‘detriment’.² The Tribunal Member then considered whether the situation fell within an exception allowing discrimination under s 26 of the Act because it promotes equal opportunity for a group that is disadvantaged or has a special need. The Tribunal member

¹ *Lau v Moorilla Estate Pty Ltd* [2024] TASCAT 58 (9 April 2024) [14] <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/tas/TASCAT/2024/58.html> (‘Lau v MONA’).

² *Ibid* [32].

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found it did not as there was no disadvantage shown to be 'experienced by women in respect to access to spaces'³ and it could not 'reasonably be intended to promote equal opportunity.'⁴ MONA has appealed the decision to the Supreme Court of Tasmania. It closed the 'Ladies Lounge' rather than opening it to men.

A feature of the case was the parallel artistic actions by Kaechele's supporters at the hearing.⁵ A group of about 20 people attended the hearing dressed in similar suits and, seated in the public gallery, crossed and uncrossed their legs 'in sync' while Kaechele gave evidence. They also followed Kaechele out of the venue in a synchronised procession to the sound of Robert Palmer's song, 'Simply Irresistible'. The Tribunal member was not aware of these actions at the time but subsequently expressed criticism of them in his decision. Nonetheless, he found they did not influence the hearing and did not require formal sanction.⁶ The parallel actions and the case itself have generated significant media attention around the world.⁷ The case raises interesting questions about the role of art in addressing inequality and its treatment by courts. It also brings into focus the ongoing disadvantage experienced by women in our society and the need for our law to recognise this and enable further progress on substantive gender equality.

This essay critically engages with TasCAT's reasoning in relation to key issues of interpretation of the Act regarding:

- 1) whether Lau experienced discrimination; and
- 2) whether the 'Ladies Lounge' should be treated as a special measure to promote equal opportunity for a disadvantaged group.

Was there discrimination?

Section 14(2) of the Act defines direct discrimination as less favourable treatment on the basis of a prescribed attribute (including gender). But it is important to recognise that not all negative experiences are unlawful discrimination. Direct discrimination is unlawful if it occurs in connection with a range of life activities, including the provision of services. On the face of it, Lau was denied entry to a space, yet he was not denied the experience of the artwork. It is not entirely clear how the complaint was framed or what specifically was argued because the case was heard by a Tribunal not a Court, and we have access only to the text of the decision and not to the complaint made, nor the various documents filed in the Tribunal setting out the parties'

arguments or any transcript of evidence. In this essay, we highlight the nature of art as an experience, rather than a space to access. This leads us to an alternative basis on which this case might have been decided.

The focus of TasCAT's determination was on the 'Ladies Lounge' as a 'service', on the basis that the parties 'agreed that Mr Lau's consumption of the experience at Mona fell within that provision'.⁸ The Tribunal member noted that the definition of services includes 'services relating to access to, and the use of, any place that members of the public are permitted to enter'.⁹ Within the scope of 'services' as defined in s 3 of the Act is also 'services ... relating to entertainment ... or recreation'.¹⁰ It is clearly arguable – and may have been argued – that art, including the 'Ladies Lounge' as an art installation, is a form of entertainment and that viewing art is a form of recreation.

Conceiving the complaint as one of discrimination in 'services ... relating to entertainment ... or recreation' is consistent with the fact that the 'Ladies Lounge' is an artwork to be experienced and reflected on by all who visit MONA, just as all other artworks are experienced. There is no 'one way' to experience artworks; we generally cannot (and need not) climb into Erwin Wurm's 'Fat Car', that is exhibited next to Kaechele's work, wish we were able to ask John Cage to add notes to '4'33"', his famous silent composition, or scratch and sniff the Louvre's 'Mona Lisa'. We perceive art in multiple ways and respond individually to that perception; 'although every image embodies a way of seeing, our perception or appreciation of an image depends also upon our own way of seeing'.¹¹

Understanding the 'Ladies Lounge' in its true context – as an artwork – changes the analysis of Lau's claim entirely.

Did Lau experience the artwork? Yes. Did his experience of the artwork differ from that of other viewers? Almost certainly, yes. We all have highly personal experiences of artworks. However, the test in discrimination law is not whether one person has a different experience to another. The question, instead, is whether the artist, through the artwork, 'treated' Lau 'less favourably' on the basis that he is a man. Given the highly personalised experience of any artwork, it may be the case that all artworks could be said to treat some viewers less favourably than others based on one or more of their personal characteristics. After all, as Berger wrote,¹² it is inevitable that our personal characteristics, and experiences related to those characteristics, have shaped how we experience the external stimulus that is art. It may be that Lau had a more

³Ibid [75].

⁴Ibid [76].

⁵Fiona Blackwood, 'MONA defends ladies-only lounge against anti-discrimination case brought by male visitor', *ABC News* (online, 20 March 2024) <https://www.abc.net.au/news/2024-03-20/mona-ladies-lounge-legal-fight-men-excluded/103605236>.

⁶Lau v MONA (n 1) [77]–[80].

⁷Tiffany Turnbull, 'Mona: Australian art museum sued over women's-only exhibit', *BBC News* (online, 21 March 2024) <https://www.bbc.com/news/world-australia-68572280>; Editors of ARTnews, 'Man sues over women-only art installation ...', *ARTnews US* (online, 21 March 2024) <https://www.artnews.com/artnews/news/man-sues-over-women-only-art-installation-liverpool-museum-seeks-identity-of-black-model-louvre-gets-bomb-threat-and-more-morning-links-for-march-21-2024-1234700491/>; Natasha Frost, 'A museum's feminist artwork excluded men. So one man took it to court', *The New York Times* (online, 20 March 2024) <https://www.nytimes.com/2024/03/20/world/australia/mona-ladies-lounge-tasmania.html>.

⁸Lau v MONA (n 1) [24].

⁹Ibid [24]; *Anti-Discrimination Act 1998* (Tas) ('ADA Tas') s 3 (definition of 'services' cl (a)).

¹⁰ADA Tas (n 9) s 3 (definition of 'services' cl (c)).

¹¹John Berger, *Ways of Seeing* (Penguin Books, 1972) generally and 10.

¹²Ibid 8.

challenging experience of the ‘Ladies Lounge’ than we, the female-identifying authors of this piece, have had. But is that automatically a ‘less favourable’ experience for the purposes of discrimination law? If it were to be the case that his different experience is said to be less favourable because it was different from ours, then what should discrimination law have to say about how blind people experience visual art (particularly when it is two-dimensional or a hands-off three-dimensional piece), or how a deaf person experiences a musical performance? Does a lesbian experience Gustav Klimt’s ‘The Kiss’ less favourably than a heterosexual?

At times artists create works that aim to unsettle or challenge dominant ideas. In such cases it may be that a white person has an uncomfortable experience of art which critiques white privilege, or the violence experienced by Black people at the hands of white people. Sometimes, a level of discomfort is part of the artist’s purpose; the artist wants to shift or disrupt our perceptions through our emotional engagement with the work.¹³ Given the strength of Lau’s reaction to the ‘Ladies Lounge’, it is perhaps the case that he did in fact have the full and intended experience of this artwork.

The artwork could be understood as encouraging men to think about their privileged position in society. Most doors are usually open to them; through the ‘Ladies Lounge’ they are confronted with what it might feel like to have some closed. Similarly, this artwork could be seen to offer women visitors the pleasurable experience of being given privileged access to a space (akin to a ‘gentlemen’s club’) that might otherwise be closed to them. Male visitors might also celebrate the humour of the work and appreciate their exclusion if they, too, share the vision of the artist for a society where gender norms are upended. If it elicited such emotions and thoughts, then the art was effective in its objective. Many hundreds, if not thousands, of men have been through the Museum and experienced the ‘Ladies Lounge’ as an artwork – like others in the Museum – that is saying something about society.

This suggests there is a real question, contrary to the finding of the Tribunal member, as to whether (or not) Lau experienced discrimination as defined in the Act, or if he simply experienced an artwork that, as was perhaps intended, made him feel uncomfortable. Rather than see his experience of the ‘Ladies Lounge’ as ‘detrimental’ it could be seen as educative, challenging, or valuable in provoking thought and stirring emotions. The fact that there were artworks (precious paintings and objects) inside the artwork does not alter the issue. These were part of the single artwork – the ‘Ladies Lounge’ – and his feelings, flowing

from his inability to access these, were the intended response to the work as a whole.

Was it a special measure?

The Act provides for defences (‘exceptions’) to otherwise unlawful discrimination.¹⁴ These include what are referred to as ‘general exceptions’,¹⁵ as well as exceptions relating to gender discrimination,¹⁶ and exceptions relating to discriminatory ‘speech’ such as public racism.¹⁷

The way Lau framed his complaint as direct discrimination on the ground of gender in relation to the ‘Ladies Lounge’ led to a focus on the general exceptions to discrimination. However, had Lau alleged, as he could have, that MONA had engaged in conduct that ‘offends, humiliates, intimidates, insults or ridicules’ on the ground of gender in breach of s 17(1), another exception would have applied. Respondents to complaints under s 17(1) can seek to defend their otherwise unlawful actions on the basis that, among other things, the conduct was a ‘public act done in good faith for ... artistic ... purposes’. As a claim of direct discrimination, and not a claim under s 17(1), this defence of good faith artistic purposes was not available to MONA.

MONA did argue as a defence that the ‘Ladies Lounge’ promoted equal opportunities and thus was allowed by the Act. The relevant provision in s 26 – one of the general exceptions – states:

A person may discriminate against another person in any program, plan or arrangement designed to promote equal opportunity for a group of people who are disadvantaged or have a special need because of a prescribed attribute.¹⁸

The parties had competing views on the application of s 26. Section 26 is commonly understood as a ‘special measures’ provision. While special measures provisions exist across Australia, there is limited higher court case law or academic commentary on special measures, particularly at the state-level.¹⁹

MONA argued the ‘Ladies Lounge’ constituted an ‘arrangement’ that was designed to promote equal opportunity for women who are a group that continues to face disadvantages.²⁰ Lau argued that s 26 required a concrete and identifiable goal in redressing a disadvantage and that the ‘Ladies Lounge’ failed in this requirement.²¹ He further submitted that the ‘spirit’ of s 26 was to permit ‘positive’ discrimination rather than facilitate ‘negative’ discrimination.²²

¹³Lillian Pearce, ‘The art of discomfort’, *The Michigan Daily* (online, 11 March 2020) <https://www.michigandaily.com/arts/art-discomfort/>.

¹⁴ADA Tas (n 9) pt 5. Section 101 of the ADA Tas specifies that ‘A person who relies on an exception referred to in Part 5 as a defence to a complaint is to prove that exception on the balance of probabilities.’

¹⁵Ibid pt 5, div 1.

¹⁶Ibid pt 5, div 2.

¹⁷Ibid pt 5, s 55.

¹⁸Ibid s 26.

¹⁹There is a discussion of special measures provisions but this is predominantly focused on the federal Acts, specifically with respect to sex discrimination. See, eg, *Jacomb v Australian Municipal Administrative Clerical and Services Union* (2004) 140 FCR 149 and *Walker v Cormack* (2011) 196 FCR 574; Monica Brierley-Hay and Liam Elphick, ‘Riding towards inclusion in the film industry: Quotas and special measures under Australian discrimination law’ (2019) 23(2) *Media and Arts Law Review* 143, 152–4; Julie O’Brien, ‘Affirmative Action, Special Measures and the Sex Discrimination Act’ (2004) 27(3) *UNSW Law Journal* 840.

²⁰Lau v MONA (n 1) [40].

²¹Ibid [39].

²²Ibid.

In his decision, the Tribunal member accepted that the 'Ladies Lounge' was an 'arrangement' for the purpose of s 26.²³ He also accepted that women as a group 'experience some broad societal disadvantage' and that female artists experience some specific disadvantages within the art industry.²⁴

However, the Tribunal member understood s 26 to require that the respondent identify a specific disadvantage that the measure was designed to remedy.²⁵ To that extent, he found MONA failed to identify the specific disadvantage it was targeting and how the measure was specifically designed to remedy that disadvantage. In the context, he compared the 'Ladies Lounge' to other schemes, which he found could more easily be identified as measures designed to promote equal opportunity: gender-based scholarship schemes or quotas for positions or a women-only medical clinic.²⁶ When considering the evidence, the Tribunal member concluded there were two possible instances of 'lack of opportunity' that the 'Ladies Lounge' was designed to redress. The first was presented by another curator, Jarrod Rawlins, as the idea of highlighting the disparity in the display of art by female artists.²⁷ The second, presented (relevantly) by the artist herself, Kaechele, was a broader critique as to the way in which the world continues to be constructed by men making it difficult and exhausting for women to have to navigate it, to simply live in it:

We are so deeply embedded in the dominion of man that we do not even see the myriad ways in which we adhere to and multiply his reign. And for this reason we need the Ladies Lounge: a peaceful space women can retreat to; a haven in which to think clearly, and relish the pure company of women without the overwhelming supremacy of men – to escape the invisible story woven through history into every moment. ... The Ladies Lounge is an essential space for perspective and reset from this strange and disjointed world of male domination.²⁸

Thus, the disadvantage faced by women which the artwork identified was simply having to live in a world that is still not designed for them and continues to exclude them in a variety of ways, including from places and experiences. The artwork redresses that by giving the space as a 'haven' for women as well as starkly providing an experience of this exclusion for men.

The Tribunal member did not consider the evidence provided by either Rawlins or Kaechele as demonstrating a sufficiently precise concept of the disadvantage the artwork

was attempting to ameliorate in its conception or design.²⁹ In particular, the Tribunal member rejected the idea it was designed or could achieve the goal of highlighting the disadvantage experienced by women artists in having their art displayed.³⁰ With respect to Kaechele's artistic intention to identify the continuing exclusion of women in society and space generally, the Tribunal member rejected that such exclusion exists to the extent that it needs to be redressed and could be redressed by the 'Ladies Lounge':

There was no evidence of any relevant existing or contemporary exclusion of women from spaces, either formally or substantively, other than bare reference to men-only clubs, and Ms Kaechele's experience on Flinders Island.³¹ There was no evidence of spaces that are, by reason of [...] general disadvantage, ... systemically more difficult for women to access than men. There was no evidence of spaces that the Ladies Lounge might facilitate entry of women to, other than the Ladies Lounge itself.³²

The Tribunal member concluded the 'Ladies Lounge' was not designed to provide opportunities for a specific disadvantage faced by women and thus was not captured by s 26.

In his decision, the Tribunal member does not consider the way in which Kaechele's artwork shines a spotlight on the experience of women being excluded from situations and places, particularly places of power and privilege. In doing this, the 'Ladies Lounge' is promoting equal opportunity for women by encouraging the viewer to reflect on the experience of exclusion and its ongoing impacts on women. This promotion of equal opportunity can be seen to fall squarely into the exception found in s 26 of the Act.

By drawing the viewer's attention to the experience of exclusion, the 'Ladies Lounge' joins a deep and enduring history of art made by members of marginalised or activist groups. For example: the work of the feminist art collective Guerrilla Girls³³ protesting the absence of women artists in public art spaces; Keith Haring's³⁴ work challenging the deadly silence and marginalisation around HIV/AIDS; and the Art Against Apartheid travelling exhibition.³⁵ Such 'protest' art often makes the viewer feel discomfort, including discomfort at being excluded from the experience that motivated the artwork. That discomfort is part of the 'work' of the art – it promotes greater awareness of a situation the artist (and others) believe needs to change and, thereby, promotes equal opportunity for those disadvantaged by that negative situation.

²³Ibid [45].

²⁴Ibid [50].

²⁵Ibid [59].

²⁶Ibid [51].

²⁷Ibid [61].

²⁸Ibid [64].

²⁹Ibid [67].

³⁰Ibid.

³¹Kaechele had given evidence of her experience several years before 'on a visit to Flinders Island ... when it was suggested to her that she might prefer to sit in the ladies lounge of the local pub': *Lau v MONA* (n 1) [16].

³²*Lau v MONA* (n 1) [73].

³³Guerrilla Girls: Reinventing the "F" Word: Feminism', *Guerrilla Girls* (Web Page) <https://www.guerrillagirls.com/about>.

³⁴The Keith Haring Foundation (Web Page) <https://haring.com/>.

³⁵Centre for Humanities Research, University of the Western Cape, *Art against Apartheid collection* (Web Page) <https://www.chrflagship.uwc.ac.za/media/galleries/art-against-apartheid-collection/>.

The Tribunal member posited that while the ‘Ladies Lounge’ was ‘an artwork by a woman’ this did not itself promote the opportunity for women artists to find their way into galleries and museums. It is without doubt, however, that artists such as Guerrilla Girls and many other feminist artists who have challenged male dominance of art through their work have in fact created opportunities for women artists to claim space in the art world – and in broader society.

At the same time, there are many recent examples of discrimination against women taking the form of exclusion from some places and experiencing significant discomfort in others. This includes the exclusion of a woman from a Melbourne County Court because she was breastfeeding.³⁶ The judge in that case felt this situation of exclusion was so unexceptional as to describe his actions as ‘self-explanatory’. It includes the experience of many, or even most, women in Australia of feeling unsafe to be alone on the streets at night. And it includes the continuing and permitted exclusion of women from the men’s clubs upon which Kaechele modelled the interior of the ‘Ladies Lounge’. These ‘gentlemen’s clubs’ – such as the Melbourne Club and the Australian Club – were described in an editorial in *The Age* newspaper as ‘exclusive centres of power’,³⁷ places from which women are excluded. As such, women are excluded from access to those centres of power. One of the authors of this essay has herself experienced this exclusion from a Tasmanian gentlemen’s club.³⁸ These are all contemporary and, in the latter two cases, continuing forms of exclusion (whether overt in the case of gentlemen-only clubs, or through concerns that one cannot be safe).

Exclusion is an experience of the world around us that cannot be so readily dismissed as ‘historic’, yet the Tribunal member found that MONA had not provided any evidence of current rather than historical spaces that are systematically more difficult for women to access than men. He did accept, based on their evidence, which included the *2024 Status of Women Report Card* published by the Commonwealth Department of Prime Minister and Cabinet Office for Women, that ‘women, as a group, experience some broad societal disadvantage’.³⁹ The Tribunal member seemed to perceive the ‘Ladies Lounge’ as a response to historical rather than continuing disadvantage, implying it was not designed to alter existing inequality of access to spaces. However, the *Status of Women Report 2024*, which points, for example, to widespread sexual harassment and gender-based violence in and outside of the home, can be viewed as clear evidence of ongoing disadvantage against women in a range of spaces. Kaechele’s evidence links historical and ongoing

disadvantage, which she describes as ‘the invisible story woven through history into every moment’.⁴⁰

The fact that gender bias is present in society, whether conscious or unconscious, emerged in two telling references in the Tribunal decision. In one instance, the Tribunal member referred to Crennan J (as she then was) as ‘his Honour’.⁴¹ Elsewhere in the decision, the evidence of fellow MONA curator Rawlins about the role of Kaechele in the development of the ‘Ladies Lounge’ refers to her as being ‘completely out of control (completely beyond David’s control), and any attempt to do so would have resulted in an hysterical outburst’.⁴² The idea of controlling women, whether by fellow professionals or their intimate partners, is troubling in our society where some men see women as requiring control rather than as free agents in their own lives. Similarly, ‘hysterical’, originating from the Latin term for a female neurotic condition emanating from the uterus,⁴³ is often used to refer to unruly, emotional or unreasonable women. These small examples of gendered language point to the larger context of sexism and gender inequality that is at the centre of this case, and ever present in our society, including in the law itself.

Conclusion

The Tribunal member in *Lau v Moorilla Estate* accepted that the ‘Ladies Lounge’ would no longer have its artistic meaning if men were granted entry. MONA indicated in its submissions that, because of this, it would simply close the ‘Ladies Lounge’ rather than grant men entry.⁴⁴ Such an outcome, while disappointing, has indeed now happened.

In many respects, the case demonstrates the difficulty in applying discrimination law formalistically to questions of artistic meaning and purpose. The evidence provided by MONA emphasised the artistic merit and conceit behind the ‘Ladies Lounge’, but its purpose did not easily fit into the narrow strictures of discrimination legislation. A degree of creativity and attention to context, with an understanding of the structurally unequal experiences of women accessing spaces more broadly, may be required in this case to understand the relationship between art, gender discrimination, and the law.

Nevertheless, we consider there are three possible avenues forward. First, as MONA has appealed the original decision, it is possible that the Tasmanian Supreme Court will accept, as we outlined in the first section of this article, that the ‘Ladies Lounge’ does not constitute discrimination. Alternatively, the Supreme Court could find the ‘Ladies Lounge’ is a vehicle to pursue equal opportunity in

³⁶Benita Kolovos, ‘Judge defends ejection of breastfeeding mother and baby from Melbourne court as “self-explanatory”’, *The Guardian* (online, 10 March 2023) <https://www.theguardian.com/australia-news/2023/mar/10/judge-ejects-breastfeeding-mother-and-her-baby-from-melbourne-court-sparking-criticism>.

³⁷Editorial, ‘Time’s up for men-only clubs’, *The Age* (online, 16 March 2019) <https://www.theage.com.au/national/victoria/time-s-up-for-men-only-clubs-20190316-p514se.html>.

³⁸David Killick, ‘Hobart’s men-only Athenaeum Club snubs appeal by women’, *The Mercury* (online, 19 March 2014) <https://www.themercury.com.au/news/tasmania/hobarts-menonly-athenaeum-club-snubs-appeal-by-women/news-story/47de57835a93411c6e5a46b77104c8c0>.

³⁹Australian government Prime Minister and Cabinet Office for Women, ‘2024 Status of Women Report Card’ (Working for Women, 8 March 2024) <https://genderequality.gov.au/status-women-report-cards/2024-report-card>.

⁴⁰*Lau v MONA* (n 1) [64].

⁴¹*Ibid* [57].

⁴²*Ibid* [61]. The reference to David is to Kaechele’s husband and MONA owner, David Walsh.

⁴³*Oxford English Dictionary* (rev 2020 ed, 2023) ‘hysterical’ (adj, def 1b).

⁴⁴*Lau v MONA* (n 1) [83]–[84].

accordance with s 26, as a lawful special measure. Finally, there is the option of MONA working within the law and within the terms of the original judgment while retaining its artistic integrity. Kaechele raised the prospect of adding a toilet to the 'Ladies Lounge' to comply with the Act.⁴⁵ In the latest development, MONA has instead moved one of the paintings that comprised the 'Ladies Lounge' to hang in a newly designated women's toilet, that was previously a gender-neutral toilet.⁴⁶ We would suggest another approach. While we do not support historically exclusionary gentlemen's clubs,⁴⁷ such clubs, as the Tribunal member noted, are entirely within the law.⁴⁸ Perhaps cheekily, we could suggest the 'Ladies Lounge' be turned into a women-only club, with no legal requirement for the club to constitute an equal opportunity measure in order to avoid a finding of unlawful discrimination.⁴⁹

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⁴⁵Kirsha Kaechele, 'Interview with Kirsha Kaechele about the Ladies Lounge' (*Mona Blog*, 7 May 2024) <https://mona.net.au/blog/interview-with-kirsha-kaechele-about-the-ladies-lounge>.

⁴⁶Georgie Burgess, 'Picassos hung in toilet cubicle at Mona in response to adverse discrimination ruling', *ABC News* (online, 24 June 2024) <https://www.abc.net.au/news/2024-06-24/mona-hangs-picassos-in-female-toilet-after-court-ruling/104015216>.

⁴⁷There are clearly examples of men-only spaces that fall within the concept of a special measures provision. These include, for example, Men's Sheds that provide a safe space for men to express emotions and find support for their mental health in a society where this remains difficult.

⁴⁸ADA Tas (n 9) s 27(3) and 3 (definition of 'club').

⁴⁹*Lau v MONA* (n 1) [37].