

SUBMISSION TO THE AUSTRALIAN HUMAN RIGHTS COMMISSION NATIONAL PROJECT



Current and emerging threats to trans and gender diverse human rights

05 May 2024

ACON welcomes the opportunity to provide input to the Human Rights Commission's National Project *Mapping Threats to Trans and Gender Diverse Human Rights in Australia*.

ACON is NSW's leading health organisation specialising in community health, inclusion, and HIV responses for people of diverse sexualities and genders. As such, ACON is well aware of the impact that threats to trans and gender diverse human rights have on our communities' health and wellbeing.

In the last five years, ACON has provided over 16,400 occasions of service to 827 trans and gender diverse (trans) clients. These services include counselling, care-coordination, substance support, suicide prevention and aftercare, and home-based care. Since 2022, we have also introduced a trans mental health and wellbeing service; this service has seen 101 unique clients and provided 1239 occasions of service.

LGBTQ+ people have been facing an alarming surge in targeted attacks on their human rights, and this has been particularly pronounced for trans people.^{1,2,3} With the proliferation of misinformation and disinformation campaigns on social media, LGBTQ+ communities, and trans people in particular, are increasingly being targeted by emboldened hate groups and coordinated campaigns of intimidation and violence.^{4,5,6}

These forces are driving an increase in anti-trans sentiment in Australia, and this is exacerbating already existing challenges for trans people in regards to their health, wellbeing and access to healthcare.

This sentiment is pervasive, and extends into Parliament. We have seen numerous attacks on trans people in Australian Parliament houses, including attempts to have trans people removed from recent legislation to protect LGBTQ+ people from conversion practices in NSW. We thank the NSW Government for opposing these amendments, and protecting the human rights of trans people in NSW.

ACON is deeply familiar with this surge in targeted attacks. Our own staff members have been subject to doxing by anti-trans advocates, on social media, and by tabloid news outlets. These violations of our staff's human rights, including the right to privacy and dignity, have been deeply distressing for our staff and our organisation.

Further, ACON has also been subject to a number of freedom of information requests by the anti-trans lobby, seeking to undermine the work that we do in caring for our communities.

In the following submission we consider the impacts of this alarming increase in attacks on trans rights, and the implications this has for the health, wellbeing, and access to appropriate healthcare for trans and gender diverse people. ACON endorses the submission of our partner organisation, Equality Australia.

Healthcare, discrimination, and violence

Trans and gender diverse people experience disproportionately negative health and wellbeing outcomes when compared to the general population in Australia.^{7,8} The disparities they face are, in many cases, a result of stigma, discrimination, and a fundamental lack of understanding among healthcare professionals about the lives and bodies of trans and gender diverse people.

In healthcare settings, trans people experience transphobia including judgemental and prejudicial attitudes, unreasonable and irrelevant questioning, constant misgendering, incorrect assumptions about their bodies, and even outright obstruction of access to services.^{9,10,11} Lack of education on LGBTQ+ health is frequently cited as a key driver of trans people receiving inadequate healthcare.¹²

In Australia's largest study of LGBTIQ health, *Private Lives 3*, 42% of the 1359 trans and gender diverse people surveyed reported poor or fair overall health.¹³ In a study of young trans people, *From Blues to Rainbows*, participants reported they valued health professionals who were knowledgeable in gender diversity and transgender health care, but also reported that the need to educate their healthcare providers because of their lack of understanding about trans people was common.¹⁴

In addition to transphobia, trans people of colour experience discrimination based on their race, and these intersecting factors amplify negative health outcomes for this group.¹⁵ For example, trans women of colour who are also sex workers face racism, transphobia, transmisogyny, discrimination based on their socio-economic status or sex worker status, and several of these dimensions of marginalisation mean

they are also at higher risk of exposure to sexual violence and exposure to HIV.^{16,17}

Evidence suggests a culture of heteronormativity and cisgenderismⁱ is a common driver of trans people receiving inadequate healthcare.¹⁸ Trans people can face implicit bias at multiple points of engagement with the healthcare system, often beginning at the point they are required to provide their name and their gender for medical records.

Further, exemptions allowing religiously affiliated hospitals and healthcare workers to refuse care to trans people on religious grounds, continue to represent a substantial barrier to health for trans people.¹⁹ Anti-discrimination legislation must remove exemptions for faith-based organisations to allow trans people appropriate access to health care and social services. Exemptions in legislation allowing discrimination against LGBTQ+ people sends a clear message that a healthcare workers' personal religious views are more important than a person's right to safe and accessible healthcare, without fear of discrimination or denial of service based on their gender.²⁰

In sports, trans people face distinct barriers and threats, often spotlighted and heightened by broader societal discrimination. Efforts to exclude them, fueled by misinformation and exclusionary policy proposals, attack their basic dignity and rights as athletes. Addressing sports-specific discrimination is fundamental, as sport plays such a significant role in the lives of Australians and is often seen as the platform for change in societal attitudes. Sports policies and practices must pave the way for inclusivity, ensuring trans people can participate fully and safely.

As well as discrimination and poor health outcomes, trans people also experience high rates violence and harassment because of their gender identity. A recent report found that 94% participants witnessed anti-trans hate online, 48% of trans participants had experienced anti-trans abuse, harassment or vilification in person in the last 12 months, and 16% had experienced anti-trans violence in the last 12 months.²¹ This included spitting, non-consensual touching, grabbing or shoving, assault with objects and weapons, and sexual assault.

Improving the safety of trans people in the community and in accessing services is paramount. In February, ACON attended the City of Sydney's LGBTQIA+ Safety Summit, and endorses the recommendations made in

the [Lord Mayoral Minute](#), that could be scaled to a national level.

Legal gender recognition

Currently in NSW, as per the Births, Deaths and Marriages Registration Act 1995, trans people seeking to change their birth certificate are required to undergo a "sex affirmation" procedure, involving the surgical alteration of their reproductive organs. The procedures required under the act are ones that always result in sterilisation.²²

In addition to requiring surgery, the Act also requires any application "be accompanied by... 2 statutory declarations [by registered medical practitioners] verifying that the person... has undergone a sex affirmation procedure."²³ This often or always involves an unnecessary physical examination.

It is hoped the recent introduction of the Equality Legislation Amendment (LGBTIQIA+) Bill 2023 in NSW will address this issue.

Not all trans people affirm their gender through medical or surgical interventions.^{24,25} This may be because they do not feel such interventions are necessary to affirm their gender, or because these kinds of interventions are very expensive and performed by very few surgeons within the Australian health care system.²⁶ This means a trans or gender diverse person's medical records will often be discordant with their official government issued documents, particularly because many of these documents require the submission of a birth certificate in order to be officially changed.²⁷

Research consistently demonstrates that mental health and well-being for trans people improves, especially outcomes related to anxiety, depression, and suicide ideation, when they are recognised, supported, and affirmed for who they are.^{28,29,30,31,32,33,34,35,36} Legal recognition of gender via a change in birth certificate or recognised details certificate is an example of affirmation and recognition.

Across the world, research has demonstrated that gender-concordant identification has resulted in better health and wellbeing outcomes for trans people,³⁷ in areas as diverse as mental health,³⁸ reduction in tobacco smoking,³⁹ and increased uptake of HIV treatment and prevention.⁴⁰

Further research has identified that gender-concordant identification "serves as an important structural intervention", improving other social determinants of health, including stable housing, income, employment, and legal legitimacy.^{41,42}

ⁱ Heteronormativity is the perspective that sees heterosexuality as the only, preferred or 'normal' sexuality, and cisgenderism is a form of prejudice that denies, denigrates and/or pathologises non-cisgender identities and expressions.



Reforming the process for changing legal sex classification will have a clear benefit for a greater number of trans people born in NSW, as well as ensuring NSW is meeting adequate human rights standards.

Trans people often also experience physical examinations in healthcare settings that are not necessary and that are actively harmful. While physical examinations are sometimes legally required, such as is described above, trans and gender diverse people may not be aware that there is no requirement for genital or chest examinations in order to initiate or continue gender affirming hormonal therapy, and a doctor demanding them may in fact constitute sexual assault.^{43,44} Removing any legal requirements for medical professionals to examine the genitals of a trans or gender diverse person would prevent confusion about this extremely traumatising practice.

Gender affirming care

While not all trans people affirm their gender through medical or surgical interventions, those that do face extreme costs and barriers to this kind of care. Surgery can be a fundamental aspect of how many trans people affirm their gender and maintain wellbeing, with access often significantly improving quality of life.⁴⁵ Surgery is not the goal for all trans people, and many may never desire to undergo surgery related to their gender at all. However, while trans and gender diverse people are far more than their physical appearance, those who wish to pursue gender affirming surgery and can access these interventions have been shown to experience clear and significant psychosocial benefits.^{46,47}

Through our work with trans people, we have identified the urgent need for universally available, publicly funded and affordable medical gender affirmation. ACON has a number of case studies from our client services team that highlight the importance of gender affirmative medical interventions and the impact of barriers to accessing these interventions have on individuals' mental and physical health. These can be provided upon request.

In addition, access to puberty blockers for young trans people has recently become the subject of debate among anti-trans segments of society, and has subsequently been picked up by conservative news outlets in the Australia media,^{48,49} and public figures who actively campaign against, and attack the rights and freedoms of, the trans and gender diverse community.⁵⁰

This debate has been in response to decisions made by the British National Health Service (NHS) to ban their use in Gender Identity Development Services (GIDS) for children in the UK, after the findings of the Cass

Review, a review that ignores the consensus of major medical bodies around the world.⁵¹

In Australia, the use of puberty blockers is an evidence-based model of practice that follows specific criteria set out by the Australian Standards of Care for trans and gender diverse children and adolescents. It can only commence with permission from parents, a doctor, and with consent from the child, and is usually coordinated through a multi-disciplinary medical team.^{52,53,54} Access to gender affirmation is a known protective factor against suicidality, so this kind of healthcare is critically important.^{55,56,57}

Mental Health and Suicide

Trans and gender diverse people experience alarmingly high rates of mental distress and suicidality, particularly if they are young.^{58,59} Of trans participants in the *Private Lives 3* study, 71% reported high or very high levels of psychological distress, 88% reported having ever experienced suicidal ideation with around half having attempted suicide at some point in their lives.⁶⁰

The *From Blues to Rainbows* reported 66% of participants had seen a health professional for their mental health in the last twelve months and, of these, only 60% were satisfied with their experiences.⁶¹ Almost two thirds of young participants had experienced verbal abuse in response to their gender presentation or non-conformity and one fifth had experienced physical abuse. Of those participants who experienced physical abuse, over 90% had thought about suicide in response to their experience. Almost half of young participants had been diagnosed with depression by a health professional, of which 38% had had thoughts about suicide, and only one in four had spoken to a health professional about this. Participants who had experienced verbal or physical abuse were more likely to have an eating disorder, suffer from post-traumatic stress disorder (PTSD), and have depression. They were also more likely to think about suicide.

Many trans young people also do not feel supported by their family. Those with supportive parents fare better on a range of indicators, including their mental health and access to mental health professionals. However, as political discourse vilifying trans people continues to increase, and attacks on trans people continues to rise, we can expect familial support for young trans people will weaken.⁶² As parents and friends are swayed by hate campaigns and conspiracy theories currently circulating at unprecedented levels on social media platforms, we can expect to see a continued rise in hate speech and violence directed at trans people.^{63,64}

These negative experiences are further compounded if the person occupies intersectional dimensions of marginalisation, such as living with a disability, coming from a migrant or refugee background, experiencing unemployment or homelessness, among others



factors.⁶⁵ This is particularly true if they happen to be of Aboriginal and Torres Strait Islander descent, who already face especially disproportionate rates of suicidality and compromised access to health and social services.

As well as systematic transphobia, trans mob and Sistergirls and Brotherboys also recently faced the pain, distress, and trauma of having their lives called into question in a bitter public opinion debate as a result of the Referendum on an Aboriginal and Torres Strait Islander Voice. This is emblematic of the intersectionality of the oppression this group experiences, where they endure multiple dimensions of oppression simultaneously, based on their sexuality and gender, as well as their race. These intersecting factors have compounding negative impacts on health outcomes for Brotherboys, Sistergirls, and trans mob.

Trans communities already experience marginalisation, discrimination, stigma, and harassment at disproportionate and harmful levels. We can only expect mental distress to increase alongside increases in attacks on their human rights, locally and globally.^{66,67}

Data collection

The historic pathologisation of trans people in medical research has had profoundly negative impacts on their social and legal status, creating significant barriers to their ability to access appropriate healthcare.

Data that quantifies trans people in demographic distributions in health research and statistical reporting is limited, making it difficult to support assertions about the disproportionately negative health outcomes they experience, or to argue for the necessary resources to address them. This makes it difficult to address their health needs.

While progress has been made with the Australian Bureau of Statistics, the 2021 Australian Census did not use the *ABS Standard for Sex, Gender, Variations of Sex Characteristics and Sexual Orientation Variables, 2020*, meaning important data about trans people in Australia was not captured.

The health sector has also been slow to change its data collection practices and poor, limited, non-standardised data collection practices persist across services in NSW. This can result in incongruence of gender identity between records, where standards differ between health services within the sector.

Improvements to data collections practices broadly and in health services is critical to improving the evidence base we have in order to provide affirming care for trans people and uphold their human rights in Australia.



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