AHRC INQUIRY: CURRENT AND EMERGING THREATS TO TGD HUMAN RIGHTS

SUBMISSION

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Subject-matter expertise

My subject-matter expertise is demonstrated by having written several peer-reviewed articles on issues concerning transgender identifying and gender diverse young people. These are listed in an appendix to this submission. I am also a practising lawyer who has been involved in litigation on these matters in the Federal Circuit and Family Court of Australia.

The evidence base for facts stated in the terms of reference

The term of reference are predicated on facts which the AHRC intends to investigate further: that there has been an "anti-trans mobilisation" threatening TGD rights, and that this is connected with putting out dis- and mis-information. It also seems to be suggested that people identified with this 'anti-trans mobilisation' are extremists and being radicalised. The terms of reference have indicated to reasonable people from a broad cross-section of the community that the AHRC is calling for people to provide information that will justify these factual premises of the inquiry, and that its eventual report will support a predetermined outcome.

There is a lot of opposition to the claims of transgender activists

The grain of truth within the terms of reference is that there is now a lot of opposition to some aspects of the claims of the transgender movement, as put forward by LGBTQ+ advocacy organisations. These should not be misconstrued as opposition to those people who are transgender or gender diverse as individuals.

In several years of being engaged with these issues, I have never come across someone who wishes ill to those who identify as transgender. Nor have I known anyone who wishes to treat TGD people adversely. Those who express concerns are not 'transphobic' or 'anti-trans' or 'bigots', notwithstanding how prolifically these pejorative terms are bandied about.

A great range of people have concerns about aspects of what LGBTQ+ advocacy groups and others have promoted in terms of medical, legal and social changes. There is quite a diverse range of such issues, and it should not at all be assumed that there is any one movement of opposition that encompasses all or even several of these. It would also be both misleading and defamatory for the AHRC to conclude that people are "anti-trans" just because they express concerns about one or more of these issues. I am confident, of course, that it won't do so.

Medical treatment of minors

Mikael Landén, a Swedish medical expert at the Karolinska Institute, wrote an editorial in *Acta Paediatrica* on March 3rd 2024 pointing out the essence of the conflict about puberty blockers for minors:[1]

> Unfortunately, the discourse surrounding the use of puberty blockers in gender dysphoria is often framed as a political human rights issue rather than as a medical issue. There is a prevailing assertion that puberty blockers are lifesaving, fully reversible, and always safe.
>
> Even though that would place gonadotropin-releasing hormone agonists (GnRHa) in a unique and unlikely category—there are no other known drugs that simultaneously meet these criteria—any effort to shed light on the balance between the benefits and risks of GnRHa treatment is misconstrued as an attack on the LGBTQ+ community. Quite the opposite is true. Insisting that GnRHa treatment should not be evaluated using the same rigorous criteria as other medical treatments will ultimately harm patients with gender dysphoria.

The same issues arise with provision of cross-sex hormones to minors. When concerns that are expressed for scientific reasons are misconstrued as an attack on LGBT human rights, it makes it far more difficult for medical experts to agree on the benefits and risks of this medical treatment for gender incongruent minors.

It has been particularly troubling to see the views of experts in this field who raise concerns about 'gender-affirming care' being labelled as mis-or disinformation by those who support this treatment approach. Labelling people as anti-trans or transphobic, or labelling adverse research findings as 'misinformation', may seem like a good way to win an argument. In fact, it does a great disservice to the truth.

Changes to language

A second reason for concern about the societal changes wrought by the transgender movement has concerned language, and in particular, language relating to women. Famously, JK Rowling got involved in these debates when she reacted to the language of "people who menstruate." In other contexts, women are described by their body parts, for example, "people with a cervix". This language is intended to be inclusive of transmales. However, it relies upon a view that when a female self-identifies as being male, or even non-binary, they cease to be a female and so it must now be accepted that males and more broadly, non-females can menstruate and can have female sexual and reproductive body parts. Abortion laws in various states has now been amended to use the language of 'people' who obtain, or seek to obtain, an abortion.

It does not seem to be accepted by those pushing this awkward use of words that the English language can cope with the notion that a person may have both a biological sex and a gender identity with which the body may or may not be congruent.

[1] https://onlinelibrary.wiley.com/doi/10.1111/apa.17189.

It should be observed that almost invariably, it is women who are described with reference to their body parts or aspects of their reproductive system. Many women find this change of language offensive. Rarely, it seems, is the language of 'people with a penis' used to describe men.

Women's and girl's rights to single sex spaces

It need hardly be explained that a lot of the opposition to societal changes comes from women's groups who see their rights to single sex spaces being eroded. For many decades, a very small number of transfemales has lived as women and used women's facilities without difficulty and controversy. This is because they have sought to 'pass' as women and typically have not sought to 'make waves'. There are actually no laws about the use of public bathrooms, so far as I know. Usage is a matter of social convention. Use of single sex facilities in other contexts may represent the policy of the organisation.

Now there is a lot of controversy about these issues, not so much in relation to bathrooms (which have individual stalls) but certainly in relation to other single sex facilities such as changing rooms, women's gyms, rape crisis centres and prisons. Self-ID may be designed to make it easier for people to live as transgender, but it also has the almost inevitable consequence that people who are motivated for other reasons to identify as female have ready access to female single sex spaces, to the detriment of women's and girls' bodily privacy and, potentially, their safety. This controversy has been damaging to transwomen who have been seeking to live their lives quietly and without asserting a right to be accepted as no different from someone born female.

The AHRC's project is concerned with 'mapping' threats to transgender rights. That cannot be done without identifying what are the limits to transgender rights when they come into conflict with the rights of others. The concern I have heard expressed is that the AHRC sees transgender rights as in all cases 'trumping' women's and girls' rights when there is a conflict. This is not resolved just by insisting that 'transwomen are women'. The conflict could be dealt with by allowing women's groups that are not publicly funded to choose whether to be inclusive of male-bodied persons. However, thus far the pattern of decisions by discrimination commissioners seems to have been to deny women that freedom.

Lesbian rights to same-sex communities

Another aspect of the conflict concerning transwomen's rights and the rights of biological women is that lesbian women have complained about male-bodied transwomen insisting that they be allowed into their groups. The conflict of rights could be resolved by allowing private groups to choose whether or not to be inclusive of male-bodied persons who claim to be 'same-sex' or 'same-gender' attracted to women.

Female sports

Again, it needs little explanation that there is huge controversy about allowing biological males who have gone through puberty to participate in women's sports, especially elite sports. There

has been a retreat now by world sporting organisations from allowing participation on the basis of self-id and suppressed testosterone levels. The scientific evidence does seem to be convincing that male puberty gives males substantial physical advantages, notwithstanding suppression of testosterone.

Breast-feeding and chest-feeding

Another area of controversy concerns the new language being adopted around breastfeeding. This has caused a great deal of concern to some midwives and women's breastfeeding organisations – again because in the name of being 'inclusive' the language suggested that men are capable of breastfeeding. The most recent controversy in this area concerns possible risks to babies being breastfed by their mothers who have had a double mastectomy. Drugs might be taken to assist some form of lactation, but questions arise about the impact of those drugs on a newborn or very young baby.

Misinformation

There has also been controversy about aspects of claims made by the transgender movement. Examples include highly exaggerated claims of suicide risk for teenagers which have not been borne out by careful study of the evidence. The evidence is that this risk is elevated, but most young people now going to gender clinics have significant psychiatric comorbidities. Rates of suicide (fortunately still rare) are not higher than a comparison group of adolescents with such psychiatric comorbidities.[2] They also occur after medicalisation as well as while waiting for it.

Another concern has been the rewriting of history. For example, it is now claimed that transgender people were in the forefront of the Stonewall events which are seen as launching the gay rights movement. Sometimes the claim is made that those transgender people were black. This supports a narrative associated with intersectionality, but has no historical basis.

Another example is the claim that there is a 'trans genocide', evidenced by a high rate of murders. Various examinations of the data do not bear this out.[3] Any murder of a human being is a terrible thing, but the evidence does not support the claim that the rate of murders of trans-identified people in the US or elsewhere is higher than in the general population or that those who have been murdered had been killed because they identify as trans.

Conclusion

The AHRC has asked for only brief submissions. The purpose of this submission has been to show that there is not an 'anti-trans mobilisation' that threatens transgender rights; that claims by transactivists of mis- or dis-information are being used to try to win debates without engaging with the evidence; that there is no evidence that those who have concerns about

[2] For the latest research, see Ruuska et al, "All-cause and suicide mortalities among adolescents and young adults who contacted specialised gender identity services in Finland in 1996–2019: a register study": *BMJ Mental Health* 2024; 27:1–6.

[3] See e.g. https://quillette.com/2019/12/07/are-we-in-the-midst-of-a-transgender-murder-epidemic/; https://quillette.com/2024/01/29/no-theres-no-epidemic-of-anti-trans-violence.

various aspects of the way in which the transgender movement is trying to change society are extremists or being radicalised; and that some of the adverse reaction against transgender activist organisations is because of their own promulgation of patently false ideas.

It was, with respect, most inadvisable for the AHRC to have established terms of reference that assume as facts the talking points of transgender organisations that actually need to be vigorously challenged. There is mounting opposition to the claims of transgender activists in a range of different areas. There are huge controversies about treatment options for minors in the medical and mental health communities. There are splits between LGBTQ+ groups and those lesbian and gay people who do not believe that those groups any more represent their interests. Those who have concerns about one or more of the changes being wrought by the transgender movement are quite diverse and the reasons for their concerns are also diverse.

There are conflicts between trans rights and women's rights in relation to transfemales which are a proper subject of inquiry by the AHRC. Conflicts of rights within the LGBTQ+ community between same-sex attracted individuals and those who identify as transgender are also a proper subject of inquiry by the AHRC. However, regrettably, the AHRC has damaged its reputation by launching this inquiry in the form it has done, and it will have to work hard to regain its credibility as an expert adviser to government and as being sufficiently neutral and impartial as to be able to mediate disputes in this area.

Em. Prof. Patrick Parkinson

March 7th 2024

Appendix: relevant publications

Parkinson, P, 'Gender Identity Discrimination and Religious Freedom' (2023) 38 *Journal of Law and Religion* 10-37.

Parkinson, P, 'Adolescent Gender Identity and the Sex Discrimination Act: The Case for Religious Exemptions' (2022) 1 *Australian Journal of Law and Religion* 76-93.

Parkinson, P, 'Reconsidering Kelvin: Cross-Sex Hormone Treatment as a Response to Adolescent Gender Dysphoria' (2022) 35 *Australian Journal of Family Law* 11-38.

Parkinson, P & Morris P, 'Psychiatry, Psychotherapy and the Criminalisation of 'Conversion Therapy' in Australia'. (2021) 29(4) *Australasian Psychiatry* 409-11.

Parkinson, P, 'Adolescent Gender Dysphoria and the Informed Consent Model of Care' (2021) 28 *Journal of Law and Medicine* 734-744.

Parkinson, P & Morris P, 'Legal Restrictions to Cross-Sex Hormone Treatment for Under 18s'. *InSight+*. Issue 27, July 26th 2021. https://insightplus.mja.com.au/2021/27/legal-restrictions-to-cross-sex-hormone-treatment-for-under-18s.

Parkinson, P, 'Tasmania's Gender-Confused Parliament' in G Holloway (ed), *Australian Perspectives on Transgendering Children and Adolescents* 81-87 (Hobart, 2021).

Parkinson, P, 'Gender Dysphoria and the Controversy over the Safe Schools Program'. (2017) 14 *Sexual Health* 417-422.