03/05/2024

Re: Threats to Trans and Gender Diverse (TGD) Human Rights

Submission to the Australian Human Rights Commission on behalf of the Australian Professional Association for Trans Health

There are many areas of trans and gender diverse (herein trans) human rights which currently deserve attention from the Australian Human Rights Commission. The Australian Professional Association for Trans Health (AusPATH) is Australia's peak body for professionals involved in the health, rights and well-being of all trans people – binary and non-binary. In this submission, we focus on gender-affirming healthcare for trans people in Australia which is in current need of support from the Australian Government.

The United Nations General Assembly International Covenant on Economic, Social and Cultural Rights (ICESCR) Article 12 states that signatories "[..] recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."[1]. Having been ratified and entered into force in the mid-1970s, we expect that the continuing social advances seen in Australia to outpace the legal, regulatory, and legislative frameworks that enforce those common human rights. It is this moment of demand between the needs of the community and the status quo where the human rights of trans Australians are often unintentionally forgotten. We describe below how this ratification is not being upheld for trans Australians to the standards that are to be expected, and are actualised, in everyday life by cisgendered (people whose gender matches that which was assumed for them at birth) Australians.

Over 7% of the high school aged population in Australia are trans or gender diverse.[2] Research shows that trans people are at a higher risk of developing mental health difficulties compared to their cisgender peers, with 3 in 4 trans young people experiencing anxiety or depression, and almost 1 in 2 attempting suicide.[3] Trans adults are also at elevated risk of suffering from poor mental health, experiencing a 10-fold increased prevalence of depression, anxiety,[4] and attempted suicide rates[5] compared to cisgender adults. Some trans people experience gender dysphoria — distress arising from incongruence between one's own gender identity and gender presumed at birth and is associated with poor mental and physical health outcomes. Gender-affirming medical care can help alleviate dysphoria; namely puberty suppression, gender-affirming hormones (testosterone and oestrogen) and gender-affirming surgeries. The impact of these medical treatments goes beyond medical care; they are crucial to the mental health and wellbeing of many trans people. However, these aspects of healthcare are currently under threat in Australia. Below, we outline the issues of access to inclusive and affirming healthcare, then access to puberty suppression, gender-affirming hormones and gender-affirming surgeries.

Issue 1: Timely provision of gender-inclusive and affirming healthcare

There is broad Australian and international consensus among health professionals and public health experts that 1) some people are trans, 2) trans identity is not a mental illness or disorder; 3) the human rights and health care rights of trans people (children, adolescents, adults, and elders) should be supported and protected; 4) trans people have health care needs, including care which supports and affirms their gender, such as, where needed and requested, medical support for legal gender change; puberty suppression; hormone treatment; and surgical treatment; and 5) a person's gender should be respected and affirmed, and "conversion therapy" or attempting to change or suppress a person's gender identity or gender expression is wrong, harmful, and should not be done.

There are evidence-based standards of care that are endorsed and recognised by health practitioners working with trans people, both guidelines specific to the care of trans young people as well as those for trans people of all ages.[7,8,9,10] Furthermore, there are prominent position statements supporting service providers working with and affirming trans people, e.g. from the Australian Medical Association,[11,12] the Royal Australian and New Zealand College of Psychiatrists[13] and many other

Government and professional health bodies.[14,15,16,17,18,19,20,21] Trans people in Australia experience barriers to healthcare; both for gender-affirming medical care and for general health needs. Unfortunately, discrimination within healthcare settings, and systemic barriers to accessing care, have been consistently reported by trans people in Australia.[22,23,24,25,26,27,28,29,30,31] It is apparent that many service providers are not working in line with current best practice.

We ask the Australian Human Rights Commission to:

1. Advocate for the expansion of existing gender-affirming healthcare to trans people in Australia.
2. Advocate for the inclusion of gender diversity teaching materials within all healthcare training programs.
3. Highlight standards of care and guidelines that exist for the care of trans people.

Issue 2: Ensuring equitable access to puberty blockers for trans children

While puberty blockers are available through the Pharmaceutical Benefits Scheme (PBS) for the treatment of precocious puberty, the same cannot be said for trans children who need time to explore their gender identity or are waiting to commence gender-affirming hormones. This is a critical issue affecting the health and well-being of trans children in Australia.

Puberty blockers have been recognised globally as a vital, reversible intervention for trans children experiencing gender dysphoria. Existing research has found improvement, apparent benefit, or non-deterioration, for those receiving puberty blockers in relation to a comparison group.[32,33,34,35,36,37,38,39,40,41,42,43,44,45] No studies have found worsening of mental health or psychosocial function. Studies that compared young people who had access to blockers, compared to those who had oestrogen or testosterone but not blockers, found better psychosocial health in those who had blockers. Puberty blockers provide crucial time for these young individuals to explore their gender identity without the added distress of undergoing unwanted physical changes, especially for those waiting to commence gender-affirming hormones. Despite their significance, the exclusion of puberty blockers for trans children from the PBS in Australia places a substantial financial burden on families, making what is often considered a lifesaving treatment inaccessible to many.

Furthermore, a concerning trend has emerged where anti-trans advocates are calling for the removal of puberty suppressants from treatment options for trans youth, citing a lack of research to justify the associated risks. However, this scrutiny is not equally applied to the use of puberty blockers for precocious puberty, highlighting a discriminatory discrepancy in treatment accessibility *based purely on gender identity*.

This issue takes on even greater significance in light of recent developments in the UK, where the use of puberty blockers for trans children has been severely restricted, except within specific NHS clinical trials. This move has sparked concerns that similar restrictions could be considered in Australia, further limiting the access of trans children to essential healthcare.

We ask the Australian Human Rights Commission to:

1. Advocate for the inclusion of puberty blockers for trans children in the Australian Pharmaceutical Benefits Scheme (PBS), ensuring equitable access to this critical treatment.
2. Support and acknowledge the important and comprehensive research into the long-term outcomes of puberty blocker use among trans youth.
3. Bring attention to existing evidence to ensure that decisions regarding healthcare access are informed by evidence and grounded in the principles of equality and non-discrimination.
4. Monitor and address any attempts to restrict access to gender-affirming care for trans children, ensuring that Australia remains a leader in upholding the rights and well-being of all its citizens, regardless of gender identity.

Issue 3: Access to gender-affirming hormones

It has been documented that access to gender-affirming hormones (i.e., oestrogen, testosterone) for those who desire them is crucial to the mental health and wellbeing of trans individuals.[45] Existing research has found association with improvement, or apparent benefit in those receiving gender-affirming hormones relative to a non-treated group.[32,33,43,45,46,47,48,49,50,51,52,53,54,55,56] Several of these studies found reduced suicidality, or trend to same in smaller studies. The research provides evidence for increased body satisfaction and reduced dysphoria. No existing studies have found deterioration of psychosocial outcomes.

Despite this evidence, trans people in Australia face barriers to accessing gender-affirming hormones. For young people under the age of 18, there are such limited and under-funded paediatric services where young people often "age out" of the service before they are able to be assessed by a clinician due to extensive waiting lists. For trans people over the age of 18, some states have adult gender services that can facilitate access to, and prescribe, gender-affirming hormones. For those that do not have public adult gender services, individuals are left to navigate the health system to locate an affirming provider with the appropriate expertise to prescribe and monitor hormones. All patients should be involved in their medical care, and where possible the informed consent model should be used, for example in primary care.[57,58]

We ask the Australian Human Rights Commission to:

1. Support access to service providers who are capable of prescribing gender-affirming hormones to trans people.
2. Advocate for training of primary care physicians to increase service providers who are capable of providing gender-affirming care.
3. Advocate for increased funding to and development of publicly funded adult services.
4. Push for service providers to use the informed consent model,[57] to enable individuals to have autonomy in their care.
5. Highlight the need for clear transition pathways from paediatric to adult care, in each Australian state and territory.

Issue 4: Access to gender-affirming surgeries

There are multiple barriers impacting for trans people who wish to access gender-affirming surgeries in Australia. These are largely due to prohibitive costs to access surgeries from surgeons offering gender-affirming procedures, as well as there being limited service providers offering gender-affirming surgeries in Australia.[31]

Gender-affirming surgeries have been shown to improve mental health, reduce dysphoria, and improve quality of life in trans people with low complication rates.[59] For example, studies of 'top' (masculinising chest surgery) surgery have all demonstrated high satisfaction and positive outcomes.[60,61,62,63,64,65] A recent Australian study found that one in four non-binary people in Australia have an unmet need for gender-affirming surgery. The diverse needs of patients need to be better understood, so that these needs can be met, e.g. especially for non-binary people.[31,66]

We ask the Australian Human Rights Commission to:

1. Facilitate national discussions on how barriers to accessing gender-affirming surgeries can be alleviated, highlighting the existing evidence for the importance of these surgeries.
2. Support processes to reduce the financial burden of accessing gender-affirming surgeries; i.e., through adding item numbers to Medicare and advocating for private health insurance companies to subsidise the costs of gender-affirming surgeries.

Issue 5: Misinformation and disinformation

In recent years, gender affirming healthcare has been a focus of disinformation and misinformation. In the USA, well-funded conservative groups have sought to systematically restrict trans healthcare

through drafting of legislation to restrict or ban gender affirming care. There are currently 20 states in the USA that have restricted gender affirming healthcare.[67]

These groups also exist in Australia and undertake similar activities. For example, Binary Australia disseminates disinformation and misinformation in their campaigns to restrict gender affirming healthcare,[68] and several bills that would severely impinge on the healthcare and broader rights of trans and gender diverse people have been brought to the Australian Senate, including by Mark Latham, Pauline Hanson, and Alex Antic.

Their activities, intentional disinformation campaigns, and spreading of misinformation, are then further disseminated by conservative media (i.e. 'Murdoch press'), fuelling misunderstanding and division in the community about trans healthcare. This causes immense harm to the trans and gender diverse community and their allies.

We ask the Australian Human Rights Commission to:

1. Advocate for laws and regulations for accurate and ethical media reporting of stories involving trans and gender diverse people.
2. Advocate for consistent national laws that protect trans and gender diverse people from hate speech, vilification, discrimination and enable trans and gender diverse people to affirm their gender (i.e. consistent laws for changing identity documents, and to ban conversion practices).
3. Promote strategies to reduce societal discrimination and improve acceptance of trans and gender diverse people, with focus on reducing unemployment, reducing physical assault and institutional discrimination.

Issue 6: The Cass Review

The recent Independent Review of Gender Identity Services for Children and Young People (known as the Cass Review)[6] has brought concern that the recommendations from the review will be implemented in Australia, with some politicians lobbying to do so. The recommendations in the Review are extremely concerning as they severely limit access to gender-affirming care in the UK, particularly for trans young people. The risk of imposing such limitations cannot be understated, as such denial of care will result in severe effects on mental health and wellbeing for trans people and their families. We wish to stress the unscientific, pseudointellectual nature of the review, and disingenuous manner that it was conceived, are not of the evidence standard that healthcare must be based on in Australia, nor does it apply to the Australian model of care delivery.

We ask the Australian Human Rights Commission to:

1. Advocate that the Cass Review of UK services should not cause policy changes for gender-affirming care in Australia.
2. Support efforts by healthcare practitioners in Australia to prevent recommendations of the Cass Review being implemented in Australia.

Summary

In conclusion, there is ample evidence highlighting the benefits of facilitating access to gender-affirming care, and the risks to the mental health of trans people by not doing so. Low rates of regret with gender-affirming treatments are consistently reported.[35,69,70,71,72,73,74,75,76,77] We urge the Australian Human Rights Council to act on our suggestions above, to ensure that trans people in Australia have access to healthcare meeting their needs.

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