Relationships Australia

1300 364 277
www.relationships.org.au

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By email: TGD.Submissions@humanrights.gov.au

Current and emerging threats to trans and gender diverse rights

About Relationships Australia

Relationships Australia organisations provide tailored services for members of LGBTIQ+ communities,[1] and training for those who work with those communities.[2] Our National Office contributed to legislation in the ACT to protect the rights of people with innate variations in sex characteristics, and is working with IHRA, A Gender Agenda and SHFPACT to develop a training package about that legislation for health care professionals.

Relationships Australia is an Australian federation of secular, community-based, not-for-profit organisations. Our services are for all members of the community, regardless of religious belief, age, gender, sexual orientation, cultural background, lifestyle choices, or economic circumstances. Relationships Australia provides services including counselling, dispute resolution, children's services, services for victims and perpetrators of family violence, community mental health services, and relationship and professional education. We aim to support all people in Australia to live with positive and respectful relationships, and believe that people have the capacity to change how they relate to others. Relationships Australia believes that violence, coercion, control and inequality are unacceptable. We respect the rights of all people, in all their diversity, to live life fully within their families and communities with dignity and safety, and to enjoy healthy relationships.

Framing principles of this submission

Principle 1 - Commitment to human rights

Relationships Australia contextualises its services, research and advocacy within imperatives to strengthen connections between people, scaffolded by a robust commitment to human rights. Relationships Australia recognises the indivisibility and universality of human rights and the inherent and equal freedom and dignity of all.

Principle 2 - Commitment to promoting social connection

Discrimination, stigma and isolation pose significant risks to physical and mental health,[3] while social inclusion is protective against abuse and neglect.[4] Relationships Australia advocates for social inclusion as a human right

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[1] For example, Relationships Australia Queensland offers the Rainbow Service, Rainbow Program Group, and Rainbow Training, as well as tip sheets for being an ally to LGBTIQ+ children and grandchildren, for supporting someone coming out and supporting an older member of an LGBTIQ+ community and its Queerelationships service. Relationships Australia South Australia (RASA) is a member of LGBTIQ+ Health Australia, delivers LGBTIQ+ -specific services tailored for multicultural communities and provides blood borne virus counselling and support for all populations. RASA is currently developing a new Rainbow inclusion plan. To support and inform its service offerings, Relationships Australia New South Wales is a member of Pride in Health and Wellbeing, LGBTIQ+ Health Australia and Diversity Council of Australia.

[2] See, for example, training offered by Relationships Australia Victoria: https://www.relationshipsvictoria.org.au/training-workshops/mediating-with-rainbow-families-1/

[3] See, eg, Lefevor et al, 2019.

[4] See, eg, Heinrich & Gullon, 2006; Dean, 2019; Pillemer et al, 2016. See also Dean, CFCA 51, 20, Box 7, citing the United States of America population study described in Acierno et al, (2017); citing also Hamby et al (2016). Loneliness is a complex social problem and a public health concern (Holt-Lunstad et al, 2015; Mance, 2018; AIHW, 2019). It is often caused by experiences of exclusion due to structural and

reflected in multiple international rights instruments, and has clinical experience supporting clients who experience loneliness.[5] We have conducted pioneering research into who experiences loneliness,[6] and manage a social connection campaign, Neighbours Every Day, [7]supporting people to create connections to combat loneliness. Relationships Australia is a founding member organisation in the Ending Loneliness Together network.[8]

Relationships Australia's perspective

Current and emerging threats to trans and gender diverse (TGD) human rights are manifold and complex. They span domains of social exclusion, access to justice, health care,[9] and employment,[10] while reflecting risks of poverty, employment and housing precarity,[11] assault, violence, harassment and discrimination that are particular to trans and gender diverse people. In light of length restrictions, this submission focuses on threats that are most directly evident from our practice experience, and which we have identified in submissions about family law, family violence, children's rights, poverty, the rights of people with innate variations in sex characteristics, and aged care.

Poor understanding of sex and gender harms TGD individuals and communities and others within LGBTIQ+ communities

Trans and gender diverse people, and intersex people, may have intersecting experiences and needs, but also have unique experiences of othering, discrimination, harassment, and of stigmatising and coercive interactions.

We continue to observe confusion between sex, sexual orientation, gender identity and gender expression in documents and instruments published by Australian governments (eg the 2023 Exposure Draft of the Aged Care Act appeared to conflate intersex with sexual orientation).[12] Conflation of intersex with gender and sexual orientation is a dynamically evolving threat adversely affecting TGD and intersex people, through flawed policy and program design. Further, conflation of these communities, particularly in 'official' contexts, facilitates harmful misinformation and disinformation that permeates society. This is evident in political and legal discourse, popular culture, traditional and social media, as well as among professionals in critical services, including education, health care, finance and employment, and law enforcement. These areas of activity are characterised by, among other things, significant asymmetries of power between professionals and those whom they are meant to serve and support. These asymmetries, when operating on the basis of inaccuracies, contribute to harm.

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systemic social realities that form obstacles to participation in social, economic, cultural and political life. Loneliness has been linked to physical health risks such as being equivalent to smoking 15 cigarettes a day and an increased risk of heart disease (Valtorta, 2016). Loneliness is a precursor to poorer mental health outcomes, including increased suicidality (Calati et al, 2019; McClelland et al, 2020; Mushtaq, 2014. The campaign Ending Loneliness Together has released a guide that explains how community organisations can use validated scales to measure loneliness: https://endingloneliness.com.au/wp-content/uploads/2021/08/AGuideto-Measuring-Loneliness-for-Community-Organisations_Ending-Loneliness-Together.pdf . Research conducted by the Australian National University over several years has demonstrated the value of this campaign to support enduring wellbeing.

[5] In our clinical practice and our advocacy, we apply a social model of loneliness which recognises systemic and structural barriers that inhibit people from making fulfilling social connections and from participating as fully as they would wish in all facets of our community.

[6] See, eg, Mance, 2018.

[7] Neighbours Every Day is a celebration of community, encouraging people to connect with their neighbours. Neighbours matter (whether near, far, or online); see https://neighbourseveryday.org/

[8] For more information, see https://endingloneliness.com.au/

[9] See, eg, Leonard et al, 2012.

[10] See, eg, Law Council of Australia, 2018.

[11] See, eg, Hill et al, 2020; especially pp 25-26.

[12] See note following subclause 22(4): https://www.health.gov.au/resources/publications/exposure-draft-aged-care-bill-2023?language=en

Recommendation 1 That the Commission provide robust training and information to Australian governments and agencies about sex and gender, and the unique needs, characteristics and experiences of each cohort. This must be co-designed with communities and reflected in contracts for service provision.

Family law legislation and services

As noted in our recent submissions to various Governments on family law and family violence, Australia's family law system was developed from a white, heteronormative perspective on family formation and composition that centres nuclear families. TGD relationships are hidden or misunderstood.

Recommendation 2 That Government's response to the current review of the Family Relationship Services Program[13] be designed from an inclusive perspective, acknowledging contemporary plurality of family formation and composition, through a cultural safety framework that:

- guides the development, implementation and evaluation of reforms, and
- is developed in consultation with relevant communities and organisations, including mainstream and LGBTIQ+ organisations.[14]

Recommendation 3 That service providers' recruitment and induction processes, and workplace practices, should articulate and demonstrate a particular interest in attracting workers from diverse populations, including TGD communities.

Recommendation 4 That Family Law Act provisions relating to children should apply consistently, regardless of their family form.[15]

Domestic and family violence (DFV) legislation and services

'DFV' (and cognate terms) is well-recognised, but is conventionally understood as victimisation of women by men in heterosexual relationships. Development of a viable conceptual framework for DFV in TGD relationships is vital. Such frameworks may challenge existing feminist models for family violence but, if done well, will enrich explanations of DFV, including DFV experienced by cisgender and heterosexual people. Aside from the (non-trivial) desirability of an intellectually coherent explanation for DFV that includes TGD people and their relationships, lack of such a framework obstructs recognition of DFV by people experiencing it, service providers and informal support networks, and by help-seeking perpetrators.

Funding guidelines assuming gender-segregated service provision can exclude TGD people, exacerbating threats to their safety. While the last two decades have brought welcome reforms to mitigate these perspectives, much remains to be done to ensure that DFV services are genuinely inclusive and culturally safe for everyone. Recommendations emerging from a specialist pilot program conducted by Relationships Australia New South Wales and ACON[16] focused on:

- mandatory inclusivity training for all staff in the DFV sector, as well as in clinical organisations, the police and legal professionals
- establishing strong referral pathways to LGBTQ-friendly services

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[13] For information about this review, see https://ministers.ag.gov.au/media-centre/review-family-relationship-services-program-05-09-2023

[14] ALRC DP86, Proposals 12-8 to 12.10.

[15] See Family Law Council, 2013, Recommendation 1.

[16] Gray et al, 2020. Relationships Australia New South Wales and ACON piloted the LGBTIQ+ Behaviour Change Program and Partner Support group.

- increasing representation of LGBTQ people in promotional material about DFV
- using social media platforms to increase awareness in LGBTQ communities and using these channels to engage clients for future programs
- ongoing funding to develop, trial and implement tailored programs,[17] and
- ensuring programs respond to diverse needs within mixed LGBTQ groups and manage transphobia and biphobia.

Relationships Australia **supports** these recommendations.

Programs seeking to intervene in DFV dynamics within TGD relationships must go beyond 'tolerance' for or 'inclusion' of LGBTIQ+ people in existing programs and resources. Although there is some overlap, TGD people may have experiences not covered in programs designed for cisgender, heterosexual clients. Service needs emerging from minority stress[18] and homophobic[19] and transphobic abuse must be built explicitly into programs.

Finally, amid the cost of living crisis, people feel forced to remain in unsafe accommodation, for lack of alternatives.[20] Relationships Australia welcomes recent initiatives to increase the accessibility of safe accommodation for people escaping DFV and elder abuse, but there is still substantial unmet need, and certain groups continue to face multiple barriers, including TGD folk.

Recommendation 5 That funding for DFV services, including prevention, early intervention, response and recovery services, as well as perpetrator intervention services, explicitly include trans and gender diverse folk.

Recommendation 6 Services should:

- consider adding questions about forms of DFV specific to TGD relationships into their DFV screening and assessment tools, and
- require staff to undergo audits and sensitivity training to ensure that relevant programs are offered in respectful, culturally appropriate ways.

Rights of the child – *Re Kelvin*[21]

TGD children and their families are facing a backlash against gender-affirming medical treatment for young people who are *Gillick* competent. This is particularly evident in England and Wales following *Bell v The Tavistock and Portman NHS Foundation Trust*,[22] and the Cass Review, and in the United States of America. It is gaining traction in Australia. The underlying tenet of this backlash appears to be that a young person (at least under the

[17] The report notes that short funding cycles do not provide adequate time to populate groups within an underdeveloped community area: at pp 13-14.

[18] 'Minority stress' refers to the experience of heightened, ongoing psychological distress and social pressure experienced by members of stigmatised, minority populations. Such groups face additional life stressors compared to the general population, related to experiences of prejudice, discrimination and harassment, including violence and abuse. LGBTQ communities experience minority stress which can lead to internalised homophobia and fear of being outed, and cause a range of negative mental health outcomes (Meyer, 2003), cited in Gray et al, 2020, p 8. For discussion of extension of minority stress models to trans people, see, eg, Lefevor et al, 2019; McLemore, 2018.

[19] Noting that homophobic and biphobic abuse can be directed at TGD folk, as well as intersex people.

[20] See also the Final Report of the Inquiry into homelessness, 2021.

[21] *Re Kelvin* [2017] FAMFC 258.

[22] *Bell v The Tavistock and Portman NHS Foundation Trust* [2021] EWCA Civ 1363. Since that decision, the National Health Service has determined that 'Puberty blockers (gonadatrophin-releasing hormone analogues) are not available to children and young people for gender incongruence or gender dysphoria because there is not enough evidence of safety and clinical effectiveness.' Children 'from around the age of 16 may receive hormonal treatment. See https://www.nhs.uk/conditions/gender-dysphoria/treatment/

age of 16) can never be considered to be *Gillick* competent for the purposes of consenting to puberty blockers or cross sex hormones.

In *Re Kelvin*, the Full Family Court of Australia held that children and young people who had attained *Gillick* capacity could give valid consent to such treatment. However, where there is disagreement between the young person, clinicians and caregivers, an application may be made seeking an order about whether the young person has capacity and, where necessary, to provide judicial authorisation for proposed treatment.

Crucially, both the *parens patriae* jurisdiction and section 67ZC of the *Family Law Act 1975* (Cth) require decision-makers to accord paramountcy to the best interests of an *individual* child. This is, in our view, consistent with Article 12 of the Convention on the Rights of the Child, and precludes the making of 'blanket' rules about valid consent to treatment.

Finally, Relationships Australia is concerned that reversal of *Re Kelvin* in respect of children and young people may pave the way for resurgent othering, stigma and violence towards trans adults, as well as restrictions on gender affirming care for adults.

Recommendation 7 That Government preserve the paramountcy of the rights of an individual child.

Data collection, research and evaluation

Robust data is vital to evidence-informed service provision; collection of robust data in turn depends on trust and confidence among those from whom data is collected, including research participants. Data collection that is not done purposefully, thoughtfully and inclusively is inimical to building that trust and confidence. Relationships Australia is concerned that data collection requirements from government funders are sometimes in conflict with best practice on asking about gender identity and trans status (and intersex status).[23]

Recommendation 8 That government departments and agencies be required to comply with best practice in data collection about gender identity, trans status and intersex status.

Conclusion

Thank you for considering this submission. [redacted]

Kind regards

[redacted]

Nick Tebbey
National Executive Officer

[23] There are extensive resources available to guide governments, businesses and other entities, including ABS, 2020; see also, eg, Canberra LGBTIQ Community Consortium, 2017.

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