

Submission to the AHRC on current and emerging threats to TGD human rights.

Vixen is Victoria's peer sex worker organisation, proudly run 100% by sex workers for sex workers. Vixen promotes the cultural, legal, human, occupational, and civil rights of all sex workers, and Vixen supports the full decriminalisation of the sex industry as the best practise framework for supporting sex worker health and safety.

Vixen's program background includes advocacy and policy, as well as community-based peer education and support through face to face contact with sex workers. Trans and gender diverse (TGD) sex workers are actively represented at all levels within Vixen, including in leadership and governance roles. Vixen maintains a Trans and Gender Diverse Project staffed exclusively by TGD sex workers to provide best practice peer education and information services.

This submission is informed by the collective knowledge and lived experience of Vixen's staff and the communities we reside in, who provide Vixen with expert knowledge on regulation, policy, and emerging issues.

Vixen supports the full decriminalisation of sex work as an evidence-based regulatory approach with a proven track record. Sex work decriminalisation is the first and most important step in improving health and safety in the sex industry, and is inextricably linked to the reduction of socio-economic harm¹, access to justice otherwise denied in criminalised settings², improved human rights³, and better health among sex workers⁴ including migrant sex workers.⁵

Should the Commission wish to discuss this submission, please contact us [REDACTED]

¹ Armstrong, L. 'I Can Lead the Life That I Want to Lead': Social Harm, Human Needs and the Decriminalisation of Sex Work in Aotearoa/New Zealand. Sex Res Soc Policy 18, 941–951 (2021). <https://doi.org/10.1007/s13178-021-00605-7>

² Gillian Abel et al, 'The Impact of the Prostitution Reform Act on the Health and Safety Practises of Sex Workers' (2007) Retrieved on 04/03/24 from: https://www.otago.ac.nz/_data/assets/pdf_file/0027/248760/pdf-811-kb-018607.pdf

³ Decker MR, Crago AL, Chu SK, Sherman SG, Seshu MS, Buthelezi K, Dhaliwal M, Beyrer C. Human rights violations against sex workers: burden and effect on HIV. Lancet. 2015 Jan 10;385(9963):186-99. doi: 10.1016/S0140-6736(14)60800-X. Epub 2014 Jul 22. PMID: 25059943; PMCID: PMC4454473.

⁴ Christine Harcourt et al, 'The decriminalisation of prostitution is associated with better coverage of health promotion programs for sex workers' (2010) Retrieved on 04/03/24 from: <https://www.sciencedirect.com/science/article/pii/S1326020023019647>

⁵ C. Pell et al, 'Demographic, migration status, and work related changes in Asian female sex workers surveyed in Sydney, 1993 and 2003' (2006) Retrieved on 04/03/24 from: <https://www.sciencedirect.com/science/article/pii/S1326020023047088?via%3Dihub>

Current and emerging threats to TGD human rights

Access to services

Trans and Gender Diverse (TGD) people face a confluence of barriers to accessing services, including stigma and discrimination, overcrowded and underfunded services, poor systemic integration, lack of data collection and availability, and a culture of ‘passing the buck’ between service providers.

Healthcare

Trans healthcare has been systematically disempowered in Australia. Vixen frequently provides referrals to TGD healthcare, within which many services operate on multiple-year waiting lists, forcing some TGD people to either self-medicate or forgo healthcare altogether. Vixen sees a high number of TGD people who have fallen through the gaps, sometimes being shut out of the healthcare system for years at a time.

TGD status is frequently not recorded in healthcare records, and many publicly-funded services do not allow patients to change their names or genders within their records systems. Due to a paucity of data, it is unclear what type of long term costs are incurred by the health system by ‘passing the buck’, however if we compare to similar communities it is likely to be significant. Delays or restrictions on accessing healthcare in any population contributes to lifelong health issues which incur greater costs on health systems down the line.

The culture of ‘passing the buck’ on trans health care exists at every level of the health system. Institutions across uncensored Australia often promote a false ideology that TGD healthcare is uniquely complex, a belief which is allowed to propagate by poor education related to TGD healthcare (Vixen is not aware of any medical course in Australia which includes a mandatory section on trans health). This position is contradicted by the proliferation of “DIY hormones” where many TGD lay-people resort to self-administering hormone replacement therapy (HRT) without medical training, via online and unregulated markets.

TGD people are a comparatively large health population with broadly generalist health needs, who should be easily served within mainstream medical systems but are often marginalised. Systemically, new tenders and funding arrangements across the health system could be leveraged to create system-wide change relating to TGD healthcare, by requiring health organisations receiving public funding to meet minimum competencies around TGD patients within their funding agreements. This approach is consistent with approaches taken with many other patient populations, including young people and first nations people. This approach taken with other populations is a sensible one: intuitively, health services receiving public funding to provide services to the public should not be excluding large patient demographics from their services or data collection. Publicly funded health organisations are already required through their funding arrangements that they are able to demonstrably serve the public, which TGD people make up a statistically significant part of. This approach could create system wide shifts if it was applied to TGD healthcare.

Housing, Youth, AOD, FDV, et al.

Outside of health, Vixen notes that unique access barriers including stigma, lack of funding, and lack of political appetite often prevent TGD people from accessing a wide range of different community services and supports. It is beyond the scope of this submission to discuss each of these in full.

Cost of Living Crisis

TGD people are disproportionately impacted by the cost of living crisis. This can be seen particularly in the increasing costs for houses and rentals. TGD people already experience discrimination in accessing housing, which is further exacerbated by the worsening rental crisis across Australia. TGD people's access to housing represents an existential issue, exposing TGD people to risk of homelessness, and in some cases can force TGD to choose between being housed or being free to express their gender identity.

Policy Gaps

Anti-discrimination and anti-vilification protections

A lack of cohesion between state and territory anti-discrimination and anti-vilification (hate speech) frameworks generates confusion for trans and gender diverse people experiencing discrimination and vilification. The following table summarises available protections:

Jurisdiction	Protected attributes	Anti-discrimination	Anti-vilification
Commonwealth	'Gender identity'	Yes	No
Victoria	'Gender identity' and 'Sex characteristics'	Yes	Criminal offence only if vilification amounts to 'grossly offensive public conduct'.
ACT	'Gender identity' and 'record of a person's sex having been altered'	Yes	Civil protection against public acts that 'incite hatred toward, revulsion of, serious contempt for, or severe ridicule of a person or group of people' Criminal offence of serious vilification
NSW	'being transgender or a transgender person'	Yes	Civil protection against 'transgender vilification' Criminal offence of publicly threatening or inciting violence on basis of 'gender identity'.
Queensland	'Gender identity' (<i>Anti-Discrimination Act 1991 s 7</i>)	Yes	Civil protection against 'inciting hatred towards, serious contempt for, or severe ridicule of, a person or

			group of persons' Criminal offence of serious vilification 'commences 29 April 2024.
Northern Territory	'Gender identity' and 'Sex characteristics'	Yes	Civil protection against 'offensive behaviour because of attribute.'
Western Australia	The 'gender history' of a 'gender reassigned person'	Partial	No
South Australia	'Gender identity'	Yes	No
Tasmania	'Gender identity' and 'Sex characteristics'	Yes	Civil protections against 'conduct which offends, humiliates, intimidates, insults or ridicules another person' and 'inciting hatred' .

These inconsistent approaches generate confusion as to whether TGD people can access these provisions (e.g., in WA, discrimination is only prohibited against 'gender reassigned' people). Many jurisdictions do not have civil anti-vilification protections (SA, WA, Vic) and criminal anti-vilification protections are often limited by high thresholds and specific circumstances (e.g., the Victorian criminal offence does not apply to online vilification). A more uniform approach is required to ensure that TGD people in all jurisdictions can access anti-discrimination and anti-vilification protections, and that the wider community understands that discrimination and vilification against TGD people is unlawful.

Conversion Therapy

Similarly, differences between state and territory approaches to conversion "therapy" mean that TGD young people may be subjected to these practices. Conversion practices are unlawful in Victoria, the ACT, NSW and Queensland, but these damaging and traumatic practices are alive and well in other states and territories.

ID, legal documents, and gender markers

It is outside of the scope of this submission to provide in-depth information on this issue, however Vixen notes that the ability to change gender markers on identity documents is another area with inconsistent approaches in Australia, resulting in increased risk to TGD people.

Inclusion in data

TGD people are frequently invisibilized by data collection approaches. Few institutions allow for people to record genders other than male and female, and TGD people often face inflexible systems which do not allow people to record chosen names, force TGD people to be recorded by their legal sex at birth, and often will not be able to change their gender markers in systems. Gender history is rarely recorded in any setting, and many institutions are outspoken on intentionally refusing to address this.

It's notable that TGD people were intentionally left out of the Australian census. This type of leadership from the government sends a clear message to institutions, that the Australian government tolerates the ongoing marginalisation of TGD people in data. From the Australian Bureau of Statistics:

The Government determined the 2021 Census should collect data on sex but not information on gender, variations of sex characteristics or sexual orientation.

Strong leadership is required on data collection for TGD people before we can effectively combat marginalisation of TGD people in our society.

Political Climate

Features of the current political climate around TGD people

TGD people have become a popular political scapegoat, pushed by widespread media interest and anti-trans media which has proliferated to an extreme degree over the past decade. Impacts of this include:

- Increasing harassment of TGD people.
- Exacerbated marginalisation of TGD people in institutions including in education, healthcare, justice and legal services, and in public services such as centrelink.
- Worsening experiences of TGD related to interpersonal discrimination.
- Increased brazenness by anti-trans antagonists.

In Victoria, we saw a series of anti-trans protests conducted by right wing groups in 2023, including a notable rally on March 18 hosted by British anti-trans agitator Kellie-Kay Keen-Minshull (aka Posie Parker). This rally was widely attended by neo-Nazis, who publicly wore swastikas, gave Nazi salutes on parliament steps, and promoted far right propaganda.

Culture of Permissiveness For Transphobia

Despite the explicitly hostile nature of events like the Posie Parker rally, denouncements of anti-trans activity across Australia has remained weak. Anti-Trans antagonists such as Posie Parker and fringe groups such as Australian National Socialist Network (NSN) have a great deal in common, both having identified TGD people as a strategic scapegoat for elevation of their political platforms, and both having identified that much of Australia fails to denounce anti-trans rhetoric. This situation will continue to worsen as long as Australia perpetuates a culture of being neutral on transphobia. Narratives such as the "grooming" myth are routinely proliferated unchallenged in the media, without sufficient repudiation by Australian institutions, including government, political parties, universities, the public and private sectors.

Poor responses to anti-trans antagonism

Over the last few years, drag events across the country have been repeatedly and increasingly targeted by right wing protesters, which itself represents a risk to TGD people in those communities. However, the impacts of this targeting have been exacerbated by poor responses from the institutions involved in these events. Many local councils have hastily cancelled these types of public events as soon as a protest is announced - resulting in the deplatforming of TGD people, and encouraging anti-trans antagonists that their strategies are effective.

Broadly, deplatforming TGD people in response to complaints from trans-antagonist groups creates dangerous restrictions for TGD people to participate in society, and it emboldens fringe movements

such as the NSN. Mobilising some support for institutions targeted by this, and creating some standards around deplatforming TGD people, could have value in preventing these types of attacks on our community from being exploited by bad actors.

Doxxing by trans antagonists

Doxxing is becoming a worsening strategy of trans-antagonism. In 2023, Vixen is aware that far right protesters attempted to doxx a number of TGD people who they identified at rallies. TGD people doxxed in this way were stalked, harassed, and in some cases had members of the NSN show up in their workplaces.

Police violence

Responses by police to trans-antagonism are inconsistent, and police have frequently responded to protest actions with violence against TGD people. Police have failed to act decisively to prevent the deplatforming attacks on TGD people occurring across Australia, nor the stalking and doxxing of TGD people involved in protest, however police violence against TGD people remains commonplace.

In recent months, protests related to NSW Mardi Gras saw reports of police violence against TGD protesters including choking and pepper spray. Similarly TGD counter-protesters at Midsumma in Victoria reported being punched and shoved to the ground. Police violence against TGD protesters remains the norm - protest actions by and about TGD people which *don't* result in police violence are now a rarity, and police across Australia seem to have adopted a culture of brazenness when it comes to brutality against TGD people.

Online Safety, Censorship and Doxxing

Vixen notes that online safety is an area of increasing concern for TGD people in Australia. Issues such as doxxing and censorship pose serious risks to the safety of TGD people. It is beyond the scope of this submission to discuss these issues in full, however Vixen commends the submission made by our peak body Scarlet Alliance on these issues.

In Summary:

TGD people face a confluence of existential threats in our society, and these cannot be addressed in isolation. Historic approaches to TGD people were broadly considered inhumane - some of the approaches from previous decades included expectations for TGD people to be invisibilized, and health systems were often focused on artificially reducing the number of TGD people in society through arbitrarily onerous standards on accessing TGD healthcare. This history saw TGD people stuck in a negative feedback loop with our institutions, where many TGD people were forced to lie to our doctors to access healthcare, or to live on the fringes of our society to avoid marginalisation - unfairly, TGD people of this generation are often framed as dishonest or untrustworthy, due to the inescapable features of how they were expected to live.

Contemporary issues facing our community pits TGD people against a cost-of-living crisis, political scapegoating, with clear lack of support from our institutions. TGD people who try to escape this cycle of marginalisation are being forced into unregulated markets to access healthcare, and are being met with Police violence. If we are not able to interrupt this cycle, TGD people will once again be caught in a negative feedback loop, where we risk being further stigmatised or marginalised due to the steps TGD people in Australia are being forced to take in order to simply exist in our society.

- Urgent action is required to drastically increase access to trans healthcare.
 - Systemic responsibility for trans healthcare must be agreed - ideally due to the simplicity of the treatment and the size of the population, this should fall on general practice.
 - TGD people must be recorded in data across our health system.
 - Publicly funded health services must be required to have the competence to service TGD patients.
- Policy issues related to TGD people must be addressed consistently, including:
 - Anti-discrimination and anti-vilification protections.
 - Bans on conversion therapy practises
 - Appropriate and accessible systems to change legal documentation and gender markers.
- Public transphobia must be repudiated, and the culture of permissiveness taken by middle Australia towards transphobia and trans-antagonism must cease.
- TGD people must be able to participate fully in all areas of public life, including online, without fear of doxxing, discrimination, or deplatforming.