

30 April 2024

Australian Human Rights Commission  
[TGD.Submissions@humanrights.gov.au](mailto:TGD.Submissions@humanrights.gov.au)

**RE: Australian Human Rights Commission inquiry into current and emerging threats to TGD human rights**

**Acknowledgement of Country**

We wish to pay our deepest respect to Aboriginal and Torres Strait Islander Peoples as the traditional custodians of the lands and waters on which we work and live, and acknowledge that their sovereignty has never been ceded. We welcome and celebrate Aboriginal and Torres Strait Islander peoples who identify as part of the LGBTIQA+ community, in particular Sistersgirls and Brotherboys, and acknowledge their ongoing struggle for visibility, inclusion and justice. We acknowledge the wisdom and strength of Aboriginal and Torres Strait Islander people. We are committed to fostering a culture of sharing knowledge and showing solidarity to support self-determination for Aboriginal and Torres Strait Islander peoples.

**Introduction**

The Inner City Legal Centre (**ICLC**) was established in 1980 by a group of local community members who identified the need for a community legal centre in the local area. We have been supporting LGBTIQA+ people and sex workers for more than 40 years.

Our general legal services catchment area stretches across Sydney's inner city and Eastern Suburbs. We provide statewide services for those identifying as LGBTIQA+ (particularly trans and gender diverse (**TGD**)), sex workers and vulnerable employees through our Employment Rights Legal Service, which is provided in collaboration with Redfern Legal Centre and Kingsford Legal Centre. We are the first Community Legal Centre (**CLC**) in Australia to establish a dedicated Trans and Gender Diverse Legal Service.

All services are provided by the ICLC with little resource. We are the only LGBTIQA+ specific legal service in NSW and we provide this without a dedicated source of funding.

Our existing, catchment-based funding is insufficient for our scale and mandate. The lack of adequately funded specialist services for LGBTIQA+ people and sex workers in NSW is inconsistent with our reputation and significant history in Sydney, NSW as the birthplace of the modern Gay and Lesbian rights movement in Australia.

**Opening Comments**

Trans people are the targets of escalating anti trans and gender-based hate campaigns. Our clients are the forced subjects of a baseless and hysterical identity debate that has swept the UK and America and entered Australia. The campaigns are designed to both undermine the existence of TGD people, and to shame people who push the boundaries of gender norms and binaries.

We wish to reinforce from the outset that Trans people are not victims of their identity. They are the victims of a sensationalist anti trans campaign that causes measurable harms.

It is critical to listen to the lived experience of TGD communities. Our clients' stories of resilience and authenticity guide our advocacy and resistance against the vocal anti trans movement. We acknowledge the experience of family members who also face the injustice and absurdity of the anti-trans movement.

TGD communities have always worked collaboratively to develop contemporary knowledge on gender and have led the movement to protect Trans youth. We thank them for carrying this load.

Thank you to Gilchrist Connell's Pro Bono Practitioners Jilly Field and Shakti Srikanth for their research and writing support. As frontline workers, we have little capacity to contribute to important law reform discussions without assistance from our pro bono partners.

### **Lack of Funding for Legal Needs**

Between 2022-2023, ICLC assisted a total of 1168 clients. Of this, more than 19% self-identified as members of the LGBTIQ+ community. Our annual funding amounts to less than \$1 million dollars and we have only 8 paid staff.

Against this backdrop, we provide the only dedicated service for TGD communities and their families in NSW. We are severely underfunded. We have extremely limited capacity to deliver casework services for our rural, regional and remote (**RRR**) clients and we are unable to fully service the legal needs of our local TGD community. As we rely on a volunteer workforce to perform client intake and our phone lines are always backed up, we know that many clients who need support are unable to get through to us.

Some of the clients that we have been unable to assist have included Trans clients who have reported online hate, abuse and doxing. We know that this vilification has directly impacted upon their physical and psychological safety, often leading to a loss of employment and housing.

We report a notable rise in Trans women with disabilities living in community housing that are the subject of vilification and harassment from their neighbours. The harassment has included physical intimidation and threats to property. We have found that police are reluctant to assist often advising these clients to seek private apprehended violence orders (**AVOs**). Our Domestic Violence Solicitor is currently assisting a number of these clients through this process as the clients usually do not qualify for Legal Aid.

#### **Case Study**

Isabel\*\* lives in private community housing and is a transgender woman with disabilities including balance and co-ordination issues and motor function issues in one arm. Her neighbour has a history of verbal abuse towards her, including transphobic comments. He throws things on her car regularly. She is frightened of him and made a complaint to police. Police told her they were not able to take out an AVO for her protection. She was informed to take one out herself. Police are still required to serve private AVO's however at the first court date one months after the application, they had still not even served the application on the other party. A private application also means there is no form of protection for Isabel until the court makes an interim or final decision. She does not want to leave the area as she has stable employment and is valued and feels belonging in the community – as an older trans woman that can be incredibly difficult to achieve.

\*\* Pseudonym used.

The true scope of funding needed to support legal services for the LGBTIQ+ community is largely guesswork, as the census fails to collect data on sex, sexual orientation and gender diversity. Ignoring LGBTIQ+ population as part of the national data is discriminatory. We cannot adequately support what we cannot accurately quantify, however we know that this has left LGBTIQ+ health, welfare and legal support services chronically underfunded.<sup>1</sup>

Legal Assistance Services are not allocated Commonwealth or State funding to provide legal support to the LGBTIQ+ community despite the fact they have been recognised as a population with unmet legal needs. In our submission to the National Legal Assistance Partnership (NLAP) we called for the LGBTIQ+ community to be recognised as a priority population to remedy their historical exclusion. For far too long, CLCs have been functioning without critical targeted funds to support these populations.

In our NLAP submission we called for an annual grant of **at least** 2 million dollars to enable ICLC to develop a dedicated, safe and sustainable legal service for LGBTIQ+ community and sex workers. This is the minimum amount that would be required. We note that many of our TGD clients self-report as sex workers, having often relied on sex work as the only available form of income at various points in their gender journey or as their preferred career of choice. We have therefore developed specific subject matter expertise working with both sex workers and TGD populations.

### Increasing Unmet Legal Needs

The anti-trans narratives that aim to oppress, distract and derail trans people's experiences<sup>2</sup> is resulting in a demonstratable increase in complex legal needs for TGD communities. These legal needs cannot be adequately addressed on the current inadequate sector funding.

With assistance and input from the ICLC, LGBTI Legal Service in Queensland conducted a survey in late 2023 to assess the legal needs and experiences of LGBTIQ+ people. The survey reported that 61% of respondents experienced at least one legal problem in the past 12 months, and 5 out of 8 states and territories did not have dedicated and safe legal services for LGBTIQ+ communities.<sup>3</sup> This is a glaring funding failure given the alarming levels of discrimination, vilification and personal violence against these communities.

Discrimination against TGD communities is not new, however, legal issues have rapidly compounded with the rising conservative and changing political environments. The insidious and unintelligible moral panic around TGD communities has resulted in a marked increase in discrimination against TGD people, often without any prohibition or recourse under State or Commonwealth Discrimination Acts. The number of individuals the ICLC has advised that identify as LGBTIQ+ has doubled in size over the last 3 years.

Stronger legal protections are needed to halt the rising language-based attacks against TGD communities. The Trans Justice Project and the Victorian Pride Lobby 2023 Report 'Fuelling Hate' (**Fuelling Hate Report**) confirmed that most Trans respondents reported an increase in aggressions, misgendering, violence and identity related harms.<sup>4</sup> The Fuelling Hate Report noted that one in two experienced hate, one in ten experienced violence, and nine out of ten reported a rise in online Trans hate language.<sup>5</sup>

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<sup>1</sup> Aurora and GiveOUT (2022) *Where are the Rainbow Resources? Understanding the funding needs of the LGBTIQ+ community sector in Australia*.

<sup>2</sup> Shon Faye, *The Trans-Gender Issue: An Argument for Justice* (Penguin Publishing, 1<sup>st</sup> ed, 2022), p. 15.

<sup>3</sup> Grace Robbie, 'LGBTIQ+ specialist community legal services are at breaking point', *Lawyers Weekly* (Online, 2 April 2024) <[LGBTIQ+ specialist community legal services are at breaking point' - Lawyers Weekly](#)> and Josh Kerwick, 'Queer Legal Services In Australia Are "Critically Underfunded"', *Star Observer* (Online, 4 April 2024) <[Queer Legal Services In Australia Are "Critically Underfunded" - Star Observer](#)>.

<sup>4</sup> Trans Justice Project and Victoria Pride Lobby (2023), *Fuelling Hate: Abuse, Harassment, Vilification and Violence Against Trans People in Australia* <[Fuelling-Hate-Anti-Trans-Abuse-Harassment-and-Vilification-WEB-SINGLES-1-1.pdf \(transjustice.org.au\)](#)>.

<sup>5</sup> Ibid, p. 5.

The Fuelling Hate Report concluded that: *“these findings paint a grim picture of the prevalence and escalation of anti-trans hate in Australia. It is clear that transphobia wields a broad social licence and that it remains a common experience for many trans people. The results further suggest that anti-trans hate has intensified over the last few years and even more so in 2023.”*<sup>6</sup>

The ICLC is receiving an increase in requests for assistance from Trans people who have been turned away from police after reporting similar vilification. We have advocated for increased action by police. Failing that, we commence private AVOs applications on behalf of our clients.

### Case study

We are appearing for a victim of online harassment and vilification in an AVO application for a transgender woman. Our client has been repeatedly targeted by a group of “sex-based rights” activists for playing soccer as an accepted member of her regional community club. The client lives in a RRR area. We are undertaking travel and overnight stay to appear in this at our own expense as there are no other services that do this type of work.

### Hate Speech in Australia

There is no universal definition of hate speech under Australian law, but the United Nations has defined hate speech as:

*“[a]ny kind of communication in speech, writing or behaviour, that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are, in other words, based on their religion, ethnicity, nationality, race, colour, descent, <sup>7</sup>gender or other identity factor.”*<sup>8</sup>

Anti-trans rhetoric is usually hate speech. It uses language that attacks Trans people for who they are. Anti trans “activists” perpetuate stigma, intolerance, and violence by fuelling baseless panic response across transphobic subcultures. They cause harm direct to individuals that fall outside of the gender binary and by extension to society.

Anti trans speech represents a failure to understand the importance of sex gender identifications. The speech is loud and aimed at social persuasion. It pushes a culture that fails to accept diverse gender identities as natural variations of sex and gender. This speech undermines equality, dehumanises and vilifies and reverses gender justice.

There is a well-documented appropriation of the anti-trans movement by right wing agendas, underground child protection myth makers and “feminists” who exclude Trans people. The ICLC’s position is feminism that does not include trans people is not feminism, because trans rights sit at the very core of gender justice.

Feminists of all persuasions should not exclude trans women if progress is going to be made against patriarchal systems. Judith Butler argues “feminists should embrace the fluidity of gender. Liberation from the patriarchy would be won alongside gay, lesbian, transgender and queer rebels against heterosexism.”<sup>9</sup>

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<sup>6</sup> Ibid, p. 24.

<sup>7</sup> ‘Victorian Greens Condemn Anti-Trans and Nazi Rally’, *Australian Greens* (Media Statement, 25 March 2023) <[Victorian Greens condemn Anti-Trans and Nazi rally | Australian Greens Victoria](#)>.

<sup>8</sup> ‘What is Hate Speech?’ United Nations (Web Page) <[What is hate speech? | United Nations](#)>.

<sup>9</sup> Alona Ferber, ‘Judith Butler on the culture wars, JK Rowling and living in “anti-intellectual times”’, *The New Statesman* (Online, 22 September 2020) <[Judith Butler on the culture wars, JK Rowling and living in “anti-intellectual times” \(newstatesman.com\)](#)>.

As advocates for trans inclusivity, we support inclusivity of all forms of gender expression. We actively push against outdated understandings of gender, including those illustrated in the *Anti-Discrimination Act 1977* (NSW). The ICLC is actively campaigning for urgent reform of that Act.

Trans inclusionary communities rightly challenge existing social norms of gender and identity, including the right to reclaim an identity that differs from the identity assigned at birth. We understand that Trans people have a right to be treated and recognised according to their gender identity. We implore the Australian Human Rights Commission (**AHRC**) to encourage this social literacy by taking proactive steps to formally shut down anti trans languages and aggressions.

In March last year, British campaigner Kellie Jay Keen-Minshull (aka. Posie Parker) held an anti-trans rally in Melbourne. Speeches at this rally implied that Trans people were (inter alia) 'child groomers', 'male sexual predators' and 'paedophiles'. Keen-Minshull referred to gender affirmation healthcare as 'mutilation'.

Speech of this nature is dangerous. It fuels discriminatory stereotypes and works against the development of our moral capacity to understand that gender is diverse and that it sits on a spectrum. Transphobic narratives create social environments that attempt to oppress gender minorities and fuel other social phobic movements. The absence of laws to protect Trans communities reinforces power in the dominant group.

If hate speech that ridicules and questions the identities of trans people is tolerated, we have failed.

As the AHRC is well aware, hate speech and anti-trans messaging is not consistently or adequately regulated against in Australia. Our clients have little protection when they are attacked.

### Case Study

Sam\*\* is an 18-year-old trans man who has recently left home and living in a shelter due to transphobia in his family. A former friend of his has been deadnaming him on social media and harassing him. He has tried to engage appropriately with the other person, but the other person refuses to stop. Police advised they couldn't do anything about it and refused to take out in AVO for his protection despite the clear transphobic harassment and intimidation.

\*\* Not his real name.

The ICLC notes that trans people are exceptionally resilient and collectively powerful. Having stated that, the research confirms that trans people have poorer mental health outcomes as a result of stigma, discrimination, shaming, exclusion and media attacks which has a long term impact on trans communities. Anti-trans language causes material harm as evidenced by the findings of the Fuelling Hate Report.<sup>10</sup>

The ICLC calls for stronger legal protections against hate speech and vilification in the *Sex Discrimination Act 1984* (Cth) or an equivalent law that would cover all Australian jurisdictions. The absence of laws against hate speech and incitement against TGD communities is an obvious failure by successive State and Federal governments.

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<sup>10</sup> Trans Justice Project and Victoria Pride Lobby (2023), *Fuelling Hate: Abuse, Harassment, Vilification and Violence Against Trans People in Australia*, p. 6 <[Fuelling-Hate-Anti-Trans-Abuse-Harassment-and-Vilification-WEB-SINGLES-1-1.pdf \(transjustice.org.au\)](#)>.

The argument for a free marketplace of ideas on the subject of Trans rights completely fails our clients, whose lives and right to exist should not be up for debate. The moral right to freedom of speech does not extend to the protection of dangerous speech. As noted by the International Covenant on Civil and Political Rights (**ICCPR**), the right to freedom of expression is not an absolute right. It is a right that carries with it special duties and responsibilities due to its capacity, when exercised, to impinge upon other human rights. There are therefore situations in which the right to freedom of expression is necessarily and justifiably limited to protect the exercise of other human rights. This is explicitly acknowledged in the ICCPR, limits on the freedom of expression where (among other criteria) it is necessary to protect the rights and reputation of other persons.<sup>11</sup>

## **Conclusion**

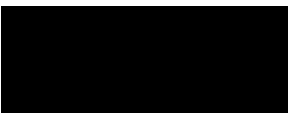
Our sense of justice has failed if we tolerate speech that incites ridicule and questions the identity of another. Anti gender ideology exists to protect the outdated perspective of normative family structures and policing of gender and sexuality. It is redundant and it is harmful.

We must not underestimate the matured gender literacy of society. The majority of whom understand sexual and identity freedoms and who have no interest in the erasure and shaming of sexual or gender minorities. The preconceived notions of gender that we have inherited from English/Norman society have created a structural bias and cisgender dominance that no longer serves civil society. Society has progressed beyond this.

We stand with the TGD community in proud resistance to their continued injustice and work to ensure calls for adequate legal protections and supports are afforded to them.

ICLC call on the AHRC to recommend the development of legal protections against hate speech and anti trans vilification and to call on the Commonwealth government to support adequate funding for LGBTIQA+ specific community legal services.

Kind Regards,



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Managing Principal Solicitor  
**INNER CITY LEGAL CENTRE**

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<sup>11</sup> United Nations International Covenant on Civil and Political Rights signed 16 December 1966 (entered into force 23 March 1976), art 19(3).