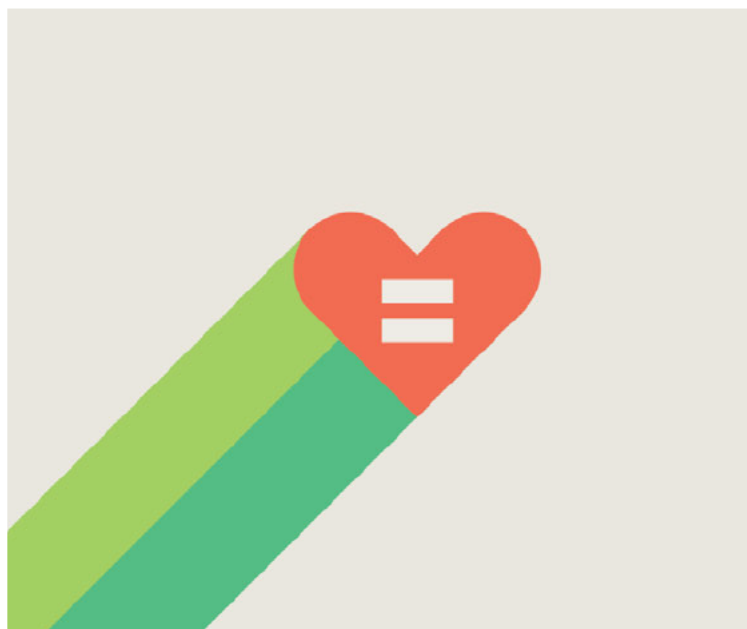




**Submission to the Australian Human Rights
Commission Investigation into the Current and
Emerging Threats to Trans and Gender Diverse
Human Rights**



About Us

Your Community Health (YourCH) has been helping people in Melbourne's north reach their health and wellbeing goals for 50 years. YourCH is a registered community health service and not-for-profit organisation delivering a wide range of services and supports that respond to a full spectrum of needs, including counselling, medical, dental, allied health, AOD, health promotion, and social support services. As a community health service, YourCH focuses on the provision of integrated and holistic support, recognising the significant influence of social determinants on health and wellbeing.

YourCH is Rainbow Tick accredited, and proactively implement strategies to enhance the provision of inclusive, culturally safe and gender-affirming services and work environments for LGBTIQ+ clients, community members and staff. YourCH is deeply engaged with local communities and is committed to amplifying community voice to advocate for more equitable systems and policies.

In partnership, YourCH delivers an innovative, peer-led Trans and Gender Diverse in Community Health (TGDICH) program, working towards equitable health outcomes for trans and gender diverse (here onwards, *trans*) people in Victoria. This impactful program funded by the Victorian Department of Health delivers the informed model of consent in gender-affirming care through mental health support and counselling, specialist GP and endocrinology support, psychiatry, peer navigation, referral to social and peer-support groups, and access to allied health. TGDICH also seeks to build the capacity of mainstream health services to provide gender-affirming care. Similarly, YourCH is leading the *Being Valued* project in collaboration with Transgender Victoria, a WorkSafe program that co-designs evidence-based resources, toolkits and training packages that aim to lower the rates of gendered workplace violence towards LGBTIQ+ people.

Introduction

YourCH welcomes the opportunity to contribute to the investigation into current and emerging threats to the human rights of trans people, conducted by the Australian Human Rights Commission. Human rights are every person's basic entitlement and reflect the values of freedom, equality, respect and dignity. For human rights to be enjoyed, they must be respected and protected by people, services and governments.

As a healthcare service providing gender-affirming care, YourCH holds a growing concern regarding the discrimination and breaches of human rights that trans people face, and the threat and impact of the anti-trans movement gaining traction across the world. A recent report¹ found that anti-trans abuse, harassment and violence in Australia is escalating. The same report found that almost half of trans people experience online anti-trans hate, and that 94.55% of people had seen online anti-trans hate in the last year. Another study found that of the respondents, 63% experienced verbal abuse and 22% experienced physical assault² based on their trans identity. Trans people face discrimination and human rights violations in many life domains, experienced interpersonally, societally, and systemically. Discrimination is fuelled by media, politicians and lobby groups who promote hate, fear and division.

YourCH witnesses the impact of human rights violations and sees discrimination as the main driver of health inequity between trans and cisgender people. Research confirms trans people experience high rates of chronic illness and co-morbidities³, and a recent Australian survey⁴ found concerning mental health statistics among trans adults, including high rates of depression (73%), self-harm (63%), and suicide attempts (43%). These statistics are even more dire for younger trans people.

This health and wellbeing inequity is further perpetuated by an inaccessible healthcare system, where gender-affirmative care is costly, heavily regulated, and severely underfunded. Healthcare that is not gender-affirmative threatens the safety, body autonomy and self-determination of trans people. Conversely, when people have access to affirmative care they see significant improvements in quality of life, confidence, and overall wellbeing. Gender-affirming care saves lives.

Trans communities consistently demonstrate resilience and have long been fighting for justice and equity. Despite the rise in anti-trans hate, Australians overwhelmingly support trans people's rights and access to gender affirming healthcare⁵. With a vocal minority threatening trans rights, the need for support and advocacy is imperative.

¹ Trans Justice Project (2023). Fueling Hate: Abuse, Harassment and Vilification and Violence Against Trans People in Australia. Accessed on 31 March 2024 on <https://transjustice.org.au/wp-content/uploads/2023/08/Fuelling-Hate-Anti-Trans-Abuse-Harassment-and-Vilification-WEB-SINGLES-1-1.pdf>

² Bretherton, I., Thrower, E., Zwickl, S., Wong, A., Chetcuti, D., Grossmann, M., Zajac, J., Cheung, A. (2021). The Health and Wellbeing of Transgender Australians: A National Community Survey. *LGBT Health* (8):1.

³ Rich, A., Scheim, A., Koehoorn, M., Poteat, T (2020). Non-HIV chronic disease burden among transgender populations globally: A systematic review and narrative synthesis. *Prev Med Rep.* 28;20:101259.

⁴ Bretherton, I., Thrower, E., Zwickl, S., Wong, A., Chetcuti, D., Grossmann, M., Zajac, J., Cheung, A. (2021). The Health and Wellbeing of Transgender Australians: A National Community Survey. *LGBT Health* (8):1.

⁵ Equality Australia (2021). New Research Shows Overwhelming Support Among Australians on Trans Equality.

1. Lack of safe and accessible healthcare

The *Right to Health* is one of the most fundamental human rights. Like all Australians, trans people have a right to access safe, affordable and appropriate healthcare. Despite experiencing the lowest average health outcomes and the highest levels of psychological distress and suicidality, trans people encounter persistent underservicing due to interpersonal and systemic discrimination within the healthcare system, the underfunding of gender-affirming services, and the lack of affordable access for people seeking transition-related care. The *Right to Health* is jeopardised for trans people in the following ways:

1.1 Discrimination

People have the right to access healthcare free from discrimination, however this is not the reality for many. One study revealing that 14% of trans participants had been verbally harassed within a healthcare setting, and 1 in 5 had been refused healthcare⁶. Despite clear guidelines available on the provision of gender-affirming care, trans people report experiencing transphobia through deliberate misgendering, denial of gender identity, service refusal and the pathologising of gender diversity. In our experience, this is most prevalent within the clinical mental health sector, where gender diversity can be conflated with mental illness. It is commonly reported that some health and wellbeing workers refuse to use a client's pronouns and chosen name unless formally updated on a birth certificate or Medicare card.

Further to the interpersonal discrimination trans people face when accessing healthcare, inequitable systems and processes contribute to the exclusion of trans people, such as:

- Gendered groups and programs, to the exclusion of trans people.
- New patient forms utilising binary gender markers, often leading to misgendering and substandard care.
- Breaches to the right to privacy by inquiring about LGBTIQ+ identity in busy reception areas, and disclosing LGBTIQ+ identity to other workers, clients and within referrals without expressed consent.

Discrimination within the healthcare sector is a direct deterrent for trans people to seek support and can lead to delayed access to care due to a lack of trust in healthcare professionals. Only one third of trans people felt that their gender identity was very or extremely respected at a mainstream medical clinic or hospital⁷, and 41% of trans people requiring emergency care had avoided going⁸. To combat discrimination and uphold human rights, mainstream health and wellbeing services need mandatory LGBTIQ+ inclusion training and embedded anti-discrimination policies and procedures.

⁶ Kerr, L., Fisher, C. Jones, Tiffany (2019). TRANScending discrimination in health & cancer care: A study of trans & gender diverse Australians. La Trobe. Report.

⁷ Hill, A, Lyons, A., Jones, J., McGowan, I., Carman, M., Parsons, M., Power, J., Bourne, A (2020). Writing themselves in 4: the health and wellbeing of LGBTQA+ young people in Australia. Victoria summary report, Australian Research Centre in Sex, Health and Society, La Trobe University, Melbourne.

⁸ Kerr, L., Fisher, C. Jones, Tiffany (2019). TRANScending discrimination in health & cancer care: A study of trans & gender diverse Australians. La Trobe. Report.

1.2 Lack of specialised or mainstream support

There remains a lack of gender-affirming training and education within the health and wellbeing sector. An Australian study⁹ found that almost half of health professionals lacked knowledge about trans health issues. The lack of specialised knowledge results in pressure on the inadequately funded gender-affirming services, where demand heavily exceeds capacity, resulting in lengthy delays in access.

YourCH's TGDICH program is one of few trans-specific community health services providing gender-affirming care in Australia. Despite a growing need, YourCH has limited resources and funding, and therefore only can support a fraction of people in need. People are typically waiting over 12 months to see the program's Endocrinologist, with wait list currently closed due to limited capacity. Research demonstrates the effectiveness of the program and the urgent need to scale up, however the current state leaves many people without access to this life saving support.

Gender-affirmative care, specifically access to hormones and surgeries, results in significant improvements on quality of life and mental health. Despite this, less than 40% of trans people in Australia rate their access to gender-affirming care as "good/great"¹⁰. Trans people that are not taking hormones have 4 times the risk of a depressive disorder¹¹. The delayed access to gender-affirming medical care has significant repercussions, particularly for younger people, with many experiencing a puberty incongruent with their gender identity leading to irreversible effects. This is particularly challenging for individuals undergoing testosterone-based first puberties, where structures such as tracheal cartilage, vocal folds, and maxillofacial bones undergo growth and thickening, at times necessitating invasive, and costly surgical interventions. The postponement of gender-affirming bodily development also contributes to enduring psychosocial impacts.

Australia desperately needs more funded trans-specific health services to ensure equitable access to appropriate and affordable healthcare.

1.3 Cost and legislation barriers

Due to high costs and cumbersome approval processes, timely access to hormone treatment and surgery remains a challenge for trans people. While the World Health Organisation declassified transgenderism from being recognised as a 'mental health disorder' in 2019 (compared to homosexuality in 1981), Australian legislation is yet to reflect this change. Australians are continuing to need to finance their own reconstructive surgeries and experience a juxtaposition of needing to simultaneously establish their mental and emotional capacity to undertake significant surgeries, as well as their 'chronic and life-threatening mental disorder' with a psychiatrist.

Due to elective surgery regulations, most surgeries occur within the private health system, carrying significant costs. The lack of Medicare rebate and insurance available results in

9 Zwickl, S., Wong, A., Bretherton, I., Rainier, M., Chetcuti, D., Zajac, J., Cheung, A. Health Needs of Trans and Gender Diverse Adults in Australia: A Qualitative Analysis of a National Community Survey. *Int J Environ Res Public Health*. 2019 Dec 13;16(24):5088.

¹⁰ Callander, D., Wiggins, J., Rosenberg, S., Cornelisse, V. J., Duck-Chong, E., Holt, M., Pony, M., Vlahakis, E., MacGibbon, J., & Cook, T. (2019). *The 2018 Australian trans and gender diverse sexual health survey report of findings*.

¹¹ Restar, A (2023). Gender-affirming care is preventative care. *Lancet Reg Health Am*. 24;24:100544.

many trans people resorting to withdrawing their superannuation early to cover gender-affirming surgery expenses – with costs often ranging between \$50,000-\$100,000. With trans people already facing financial barriers due to marginalisation, withdrawing superannuation early results in future financial stressors, risk of poverty and reduces quality of aging for trans people. For young people in Victoria, publicly funded puberty suppression is not available in primary care settings, causing an out-of-pocket expense of \$1000-1500 per month if unable to access services via specialist hospitals such as Royal Children's Hospital. Further, the Pharmaceutical Benefits Scheme (PBS) excludes the primary care prescription of many hormones, contributing to the high costs and limiting access to gender-affirming care.

For trans people to achieve their highest attainable physical and mental health as per *The Right to Health*, there is an urgent need for Medicare and PBS reform to fully implement the informed consent model and ensure affordable access to gender-affirmative care and procedures. Gender-affirming surgeries and hormones should be fully funded by Medicare and PBS, for all ages.

1.4 Research and data exclusion

Trans people remain largely invisible to the local, state and federal governments charged with ensuring their health and wellbeing due to a lack of data-based insights and evidence-based research. Most research and data collection surveys, including the Census, fail to include comprehensive gender identity metrics or put trans people in a position where they must choose between their affirmed gender and trans status. Failings in data result both in trans people being consistently left out of policy and funding decisions.

Without access to quality and accurate data, health responses aren't as targeted or evidence informed, jeopardising effectiveness. Inclusive data collection methods need to be co-designed in partnership with trans people, as discrimination in data collection and research perpetuates the existing health inequity trans people face.

1.5 Emerging threats to the 'Right to Health'

The increase in anti-trans health legislation introduced in the United States and United Kingdom in recent years, supported by biased research publications such as 'Rapid Onset Gender Dysphoria', creates fear and anxiety for trans people in Australia, providing a harsh reminder that hard-fought-for rights can be taken away. In countries that have been previously known for progressive LGBTIQA+ rights, the mobilisation of the far-right, anti-trans movement has resulted in increased discrimination and restricted access to healthcare. Last year, NHS England released a Clinical Policy advising that "Puberty suppressing hormones are not available as a routine commissioning treatment option for treatment of children and young people who have gender incongruence / gender dysphoria," meaning that, for young gender incongruent people in the UK, there is no longer access to public health funded puberty suppression.

More recently, the NHS commissioned a review of gender identity services in England and delivered a set of harmful recommendations that ignored a large body of evidence, research and lived experiences of young trans people and their families. The Cass Review has been widely condemned by the trans and gender diverse community and practitioners in Australia, and if implemented will put the lives and wellbeing of trans young people at further risk.

In Australia, a far-right Australian Member of Parliament proposed a bill to the Senate in November 2023, seeking to ban common forms of gender-affirming care and blocking hormones for people under 18. Whilst this bill was not passed, the very real threat of future legislative changes has resulted in a rise in anxiety and psychological distress within the trans community. Access to hormones and gender-affirming care saves lives. When this is taken away, there are devastating consequences.

2. Other human right violations and forms of discrimination

Whilst transphobia has always existed, there has been a noticeable rise in the anti-trans movement in the past 12 months. Last month, several anti-trans protests occurred around the country, including a group of people performing the Nazi salute in support of a British anti-trans activist. In recent years in Australia, anti-trans views have been expressed by prominent politicians, with discriminatory comments and harmful bills proposed. These bills are often introduced with transphobic campaigns and generate harmful public debate that have major impacts on the mental health and wellbeing of the trans community. Media often use inflammatory language and misinformation that dehumanises trans people, influencing public sentiment and fueling discrimination across a range of life domains. Below are examples of the discrimination, exclusion, and human right violations that trans people experience:

2.1 Employment

In accordance with the *Equal Opportunity Act 2010*, everyone in Australia has the right to a fair and safe workplace with specific provisions protecting an individual's right to identify as a gender that may or may not be the same as the sex designated at birth. Sadly, this is not a reality for many trans people, who experience some of the highest rates of work-related gendered violence, discrimination and harassment in Australia. A recent study found that 33% of trans people reported discrimination in employment¹².

In our experience providing trans healthcare and a trans specific WorkSafe program, we hear about the types of discrimination trans people experience in the workplace, including physical threats and verbal harassment, malicious gossip, deliberate misgendering, transphobic jokes and remarks, and ostracisation. Further to this, trans people report actively avoiding mistreatment at work by hiding their gender identity, refraining from asking their employer to use their correct pronouns, or quitting their jobs.

YourCH witnesses the negative impact that high levels of work-related transphobia have on the mental health of trans people, including increased psychological distress, anxiety and depression. Fundamentally linked, trans people experience unemployment at three times¹³ the rate of the wider community, often leading to financial insecurity and poverty. A rights-

¹² Bretherton, I., Thrower, E., Zwickl, S., Wong, A., Chetcuti, D., Grossmann, M., Zajac, J., Cheung, A. (2021). The Health and Wellbeing of Transgender Australians: A National Community Survey. *LGBT Health* (8):1.

¹³ Ibid.

based approach to employment necessitates the strengthening of anti-discrimination legislation and increasing trans protections in the workplace.

2.2 Sports

The right to participate in sport free from discrimination is often unavailable for trans people, at both community and elite levels of sport. The *Sex Discrimination Act 1984 (Cth)* states it is unlawful to discriminate on the basis of sex or gender in sport unless the different treatment amounts to a special measure or an exemption applies. Despite this, discrimination is a common experience, with Proud 2 Play¹⁴ estimating 70% of LGBTIQA+ people don't feel sport is safe or welcoming, and 50% of trans people avoid playing sports they are interested in.

Anti-trans campaigners call for trans women to be banned from sports, with recently introduced international regulations preventing trans women from competing in a number of elite women's competitions, such as swimming and cycling, and also in sports where performance is not dependant on muscle mass, such as Chess. The discrimination and harmful attitudes within elite competitions cascade and influence local/sub-elite sports. This often places people in the position where they must make a choice between being their authentic selves or being athletes.

Dr Ada Cheung, TGDICH's Endocrinologist, has conducted extensive research into transgender health specific to sports participation. Dr Cheung states, "*in the case of transgender health, which has long been stigmatised, there is not a lot of evidence, but plenty of assumptions*"¹⁵, and is calling for better evidence-based guidance for sports policy. Dr Cheung believes that no data suggests safety in women's sport is compromised by including trans women, arguing the debate stems from fear and prejudice. Further research¹⁶ states that many of the sex differences are reduced or erased over time by gender affirming hormone therapy.

As a healthcare service, we know sport is integral in maintaining positive health and wellbeing, through both exercise and community connection. For trans people who already experience poorer health and wellbeing outcomes, barriers to exercise need to be removed. Equal access to sport, free from discrimination, is a human right not all can enjoy.

2.3 Technology

Technological advances pose an increasing threat to trans people, as algorithms, artificial intelligence bias, use of bots and facial recognition systems with inbuilt gender classifiers can result in further discrimination. We anticipate these systems to be increasingly utilised by movements that aim to suppress trans equity.

¹⁴ Jones, B., Arcelus, J., Bouman, W., Haycraft, E (2017). Sport and Transgender People: A Systematic Review of the Literature Relating to Sport Participation and Competitive Sport Policies. *Sports Med.* 2017 Apr;47(4):701-716.

¹⁵ Cheung, A (2021). Let Evidence, not fear, drive policies on trans athletes. *Sydney Morning Herald*. Accessed 31 March 2024.

¹⁶ Oberlin, D (2023). Sex differences and athletic performance. Where do trans individuals fit into sports and athletics based on current research. *Exercise Physiology* (5).

Conclusion

YourCH remains deeply concerned about the discrimination and breaches to human rights that trans people face and witnesses the negative impact on health and wellbeing. Australia desperately requires an increase in gender-affirming healthcare providers through improved funding for specialist services and the capacity building of the mainstream health sector. We know that creating equitable access to healthcare saves lives, and that combating discrimination in the workplace and other settings contributes to a more equitable society.

The rise in anti-trans campaigners and far right governments poses a major threat to the further deterioration of human rights for trans people, who already experience high rates of discrimination in all facets of life. The need for strengthening anti-discrimination legislation and increasing trans protections has never been so important.

We welcome the opportunity to discuss YourCH's submission on the current and emerging threats to the human rights of trans people. [REDACTED]

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