

Australian Human Rights Commission
Submission: Current/Emerging Threats to TGD Human Rights

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This submission focuses primarily on sexual violence as an ‘emerging threat’ to transgender and gender-diverse (herein TGD) Australians’ human rights. We are established researchers with research focused on LGBTQ+ communities, and we draw on our research in this submission. Importantly, we note that sexual violence cannot be viewed as a standalone phenomenon - we recognise TGD people experience multiple intersecting forms of violence across gender affirmation processes and during their lifecourse. TGD people’s sexual violence experiences are especially shaped by a broader context of transphobia, cisnormativity, and heteronormativity, and this is compounded by other intersectional factors (e.g. race, socio-economic status, disability). We suggest the urgent need to address the openly hostile Australian political climate towards TGD people, with impacts of this climate demonstrated by high rates of poor mental health and suicide amongst TGD people (Johnson et al, 2023). We must address the impact of this climate with cisgender people, and the subsequent transphobia this climate enables.

We define sexual violence using a victim-centered continuum model. This means that sexual violence includes any experience that is defined or encountered as such by the victim-survivor. Our definition includes the full spectrum of sexual violence, ranging from harassment through to experiences that might meet criminal legal thresholds of harm.

Our submission inevitably emphasises negative experiences encountered by TGD people and risks presenting TGD lives through a ‘deficit’ lens. Where possible, we highlight the strengths of TGD people because gender affirmation and connection to queer communities act as protective factors from harm. We urge that any presentation of trans lives being “at risk” is also presented alongside the joy of queer and trans lives. We also acknowledge that binary gender is a Western, colonial construct, and acknowledge the unceded sovereignty of First Nations people in this country.

Three points that need to be emphasised up front:

- 1) Existing research suggests TGD people experience high rates of sexual violence.
- 2) Research focused specifically on TGD experiences is very limited, particularly in the (so-called) Australian context.
- 3) There is an urgent need for further research, done in partnership with TGD communities, to better understand the unique nature of TGD people’s experiences, and to develop appropriate responses and prevention efforts.

The submission below therefore provides a high-level overview of TGD people’s experiences of sexual violence, including outlining what we view as urgent priorities moving forward.

Prevalence – TGD people have higher rates of SV

Internationally, academic and community-based research shows TGD people experience high rates of sexual violence:

- Callendar et al's (2018) research found 53.2% of TGD people experienced sexual violence/ coercion, with just under 70% reporting multiple experiences. Trans and non-binary people assigned female at birth reported highest sexual violence rates.
- Layard et al's (2023) research found transgender and non-binary people reported higher levels of some forms of sexual violence than cisgender participants. Transgender and non-binary participants also reported higher rates of sexual violence occurring throughout their lifecourse (i.e., childhood, adolescence, and adulthood) compared to cisgender participants (21% vs 7%).
- Ussher et al's (2020) research found transgender women of colour experience high rates of lifecourse sexual violence, with racism compounding these experiences.

Overall, evidence on TGD people's experiences of sexual violence is limited, particularly in Australia. International studies have significant limitations, including analysing the experiences of LGBTQ+ people together as a singular group, or TGD people as a singular group (therefore obscuring the diverse experiences of TGD people).

Consent complexities

Negotiating sex and consent is complicated for TGD people, leading to unsafe, unwanted, and coerced sexual experiences. This is because TGD people often face:

- Heightened expectations around gender norms and the pressure to engage in certain sexual acts to 'prove' their gender identity (Hindes, forthcoming).
- Low self-esteem and self-worth due to discrimination, which can impact their ability to be assertive about sexual boundaries (<https://www.transfemme.com.au/>).
- Hypersexualisation and sexual degradation as trans people, particularly trans women (Ussher et al. 2020).

Perpetration

While research exploring perpetration of sexual violence against TGD people is limited, evidence suggests:

- Cisgender men perpetrate this violence against TGD people (Layard et al, 2023).
- Sexual violence is perpetrated against TGD people by gay men (Layard et al, 2023).
- TGD people feel marginalised and powerless within LBG communities, and this compounds sexual violence experiences (Layard et al, 2023).
- TGD people feel objectified and fetishised, with "gay men not considering me to be their equal" (Layard et al, 2023).

Street and public harassment

Street and public harassment is a pervasive form of sexual violence experienced by TGD people. Limited international and Australian (mostly qualitative) research suggests TGD people frequently encounter public harassment. Kearl (2014) found 70% of LGBT

participants experienced street harassment, but there is no specific data on TGD experiences in the study. What we do know in Australia is that:

- Transgender women from culturally and linguistically diverse (CALD) backgrounds are sexually harassed, misgendered, 'outed', and asked inappropriate and intrusive gender-identity questions in public (Ussher et al, 2020). This included being routinely objectified, commented on, or stared/leered at (as a sexual object and 'hostile' staring) in public. CALD transgender women also experienced racist, sexist, whorephobic and transphobic harassment.
- TGD participants encountered extensive harassment in public spaces (Fileborn & Hindes, 2024), and had distinct trajectories of harassment across their lives compared to cisgender participants.
- Public harassment experienced by TGD participants shifted across their process of gender affirmation (Fileborn & Hindes, 2024). For example, a transmasculine participant described experiencing homophobic, sexist, and gender-based harassment when they were younger, but almost no harassment since affirming their masculine gender (though they still feared harassment and violence in certain contexts).
- TGD people read as gender-nonconforming (i.e., not cis-passing) were targeted for harassment, including being misgendered, and/or asked inappropriate and intrusive questions about their bodies and gender identity (Fileborn & Hindes, 2024).
- TGD participants who 'passed' as cisgender reported fearing harassment and violence when the perpetrator 'discovered' they were transgender (Fileborn & Hindes, 2024).
- The political and cultural context increases public harassment of TGD people (Fileborn & Hindes, 2024). For example, the same-sex marriage plebiscite and public 'debate' about sex-segregated spaces (e.g., toilets) increased rates of harassment and/or increased fear and anxiety about potential public harassment.

Locations (other than street/public harassment) where violence/harassment can occur

There are known 'hotspots' for sexual violence and harassment and key locations require further research:

- Workplace
- Religious discrimination
- Service providers, including sexual assault services
- Homeless shelters
- Youth refuges
- Institutions such as criminal justice systems, health/medical systems, education systems
- Dating apps
- Sex on premises venues

Barriers to disclosure and help seeking

While all survivors face significant barriers to disclosure and seeking help in the aftermath of sexual violence, there are some additional barriers unique to TGD survivors. TGD participants in recent Australian research (Layard et al, 2023) indicated:

- They perceived sexual assault crisis services as being for cisgender heterosexual women, and there was a lack of confidence the services would be accessible to or welcoming of TGD people.
- That when they used a service they may experience (or fear experiencing) discrimination.
- Concerns that mainstream services providers lacked necessary skills to support TGD communities, and a lack of TGD specific sexual violence crisis services.
- Difficulty knowing if something constitutes sexual violence, and this may be compounded for TGD people given transphobic and cisnormative perceptions that TGD people should be 'grateful' for any sexual attention they receive.
- They had fears of being 'outed' or of bringing negative attention to TGD communities if they disclosed or reported.

Policing

LGBTQ+ people have a fraught history with police, especially TGD people (Valcore & Dwyer, 2023), and this is a barrier to TGD victim-survivors seeking support and reporting. Research shows improved police relations with sexuality diverse people, but in the instances that TGD people choose to engage police, the police still need to better support TGD people (Dwyer et al, 2021).

- TGD people did not report to police due to historical and ongoing police violence and discrimination against TGD communities and fear of being met with a transphobic response (Layard et al, 2023). There was a lack of trust in police to respond in an appropriate and supportive manner. This reflects the findings of previous Australian research, which indicates a general mistrust of police and unwillingness to report (particularly sexual and family/IPV) to police amongst LGBTQ+ communities broadly (e.g, Leonard & Fileborn, 2018)
- There is currently a lack of alternative or transformative justice responses to sexual violence in Australia (though there has been some positive change in relation to accessing restorative justice for domestic and family violence in some jurisdictions). Given the reluctance of many TGD people to report to police, this means there are no or extremely limited avenues for seeking justice in the aftermath of sexual violence.

Impacts

While many (if not all) victim-survivors are negatively impacted by their experiences, and many impacts are shared by victim-survivors generally, the impacts below are specific to TGD people.

- TGD victim-survivors have alarmingly high rates of suicidal ideation, self-harm, and attempted suicide (Layard et al, 2023). 45% (n=25) of TGD people in this study had attempted suicide as a direct result of experiencing sexual violence, while 43% (n=24) engaged in self-harm. These rates were substantially higher than those reported by cisgender participants, and must be understood within a broader social context in which TGD are marginalised and ostracised.
- Poor mental health outcomes are common for all victim-survivors regardless of gender, but such impacts are particularly pronounced for TGD victim-survivors (Layard et al, 2023).

- When TGD people experience street-based and public harassment, this can delay gender affirmation processes, or changing their gender presentation in public spaces in ways that do not reflect their gender identity in order to feel safer (Fileborn, 2020; Fileborn & Hinds, 2024). However, it should be noted that street harassment was described as one factor amongst a much broader cultural and social backdrop of transphobia and cisnormativity that made gender affirmation challenging.
- TGD participants in Layard et al's (2023) study reported experiencing more pronounced impacts than cisgender participants across almost all measures.

Protective and recovery factors

While there are many negative impacts of sexual violence, Layard et al (2023) also identified factors associated with healing and recovery:

- Being part of TGD affirming LGBTQ+ communities
- Embracing non-normative understandings of sex and gender
- Access to support services that are inclusive of TGD people
- Strong support and friendship networks
- Being in nature
- Engaging in hobbies or activities that bring joy (e.g., reading, art)

Hinds (2024) also found that navigating non-normative gender identities meant TGD people could unpack, resist, and transform gendered expectations that shape their experiences of sexual violence. In other words, trans identities are also a site of resistance, not just a site of marginalisation. This is important to consider as the broader narrative of TGD people as marginalised 'at risk' can also be weaponised and used against them.

Future directions

We have shown the apparent lack of research on TGD experiences of sexual violence. We suggest we urgently need more research on, and provision of resources for, the following:

- TGD-specific experiences because a recent review by several authors (Ison, Hinds & Fileborn) found studies analyse LGBTQ+ participants as a singular group, obscuring the unique experiences of TGD people.
- We need research with gender diverse people (e.g., genderqueer, non-binary) as research on TGD people focuses on transgender men and women.
- We need research with more rigorous study design, as existing research on TGD sexual violence makes it difficult to gather an accurate picture of TGD experiences.
- We need research with older (60+) TGD victim-survivors because most research focuses on younger adults.
- We need more Australian research on the experiences of TGD victim-survivors, undertaken in partnership with TGD people. Very few Australian studies exist, excepting recent studies cited herein.
- We need comprehensive training for service providers and bespoke services (because at LGBTQ+ services, a survivor might know the staff), to provide support for TGD victim-survivors.
- We need more research on the role of bystanders in TGD sexual violence experiences.

- We need more accessible service providers, particularly for rural and remote communities. LGBTIQ Tasmanians included useful suggestions: e.g. a service provider bus that moves around rural/remote areas (Dwyer et al, 2021).
- We need education focused on challenging transphobia with cismen (e.g <https://www.transfemme.com.au/information-for-men-who-date-trans-women/>).

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