



The Gender Centre

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04 May 2024

The Australian Human Rights Commission,
Call for Submission

Dear Commissioner,

GENDER CENTRE submission to the Australian Human Rights Commission; current and emerging threats to TGD Human Rights

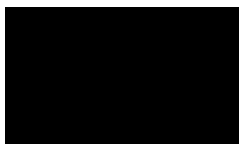
Thank you for the invitation to submit to the AHRC current and emerging threats to TGD Human Rights Scoping project.

The Gender Centre is the oldest ongoing trans-specific service in Australia and possibly the world. The GC is renowned for its comprehensive support and services for the transgender and gender diverse (TGD) community. It operates as a peak state-wide multidisciplinary centre, recognised for its broad range of specialised services aimed at facilitating the exploration of gender identity and assisting in the alleviation of gender dysphoria. The Centre is deeply committed to supporting trans and gender expressive individuals throughout their journey, enabling them to explore and live their authentic sense of self.

Our submission focuses on both the history of anti-trans violence affecting our community but also offers solutions going forward we might address this. The suggestions put forward represent the voices of our trans community, and in particular our BIPOC elders.

I look forward to your response and any steps that you might be considering to improve the lives of TGD people, children and families in Australia.

Yours Sincerely,



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Services for the trans
and gender diverse community

04 May 2024

Re: Threats to Trans and Gender Diverse (TGD) Human Rights

Submission to the Australian Human Rights Commission on behalf of the Gender Centre

The Gender Centre Inc. is the oldest continuing trans-specific service in Australia and possibly the world. Based in NSW, the GC is known for its comprehensive support and services for the transgender and gender diverse (TGD) community. The Centre is deeply committed to supporting trans and gender expressive people throughout their journey, enabling them to explore and live their authentic sense of self.

In 2023 working with SWOP, Professor Noah Riseman and a group of 10 Aboriginal Sistergirls, Māori and Pasifika trans women, the Gender Centre recorded the experiencing and witnessing of hate crimes from the 1970s through the present day in NSW. The other striking thing about the focus group was that it was almost entirely made up of Indigenous, Māori and Pasifika trans women elders. The weight of their words and the sharing of their histories was particularly meaningful because of their status within the trans community as elders.

Their stories and discussions formed the basis of the Speaking Out Against Anti-Trans Violence: A Call for Justice report and accompanying recommendations. This report was SWOP and Gender Centre's attempt to contribute in a meaningful way to the NSW Special Commission of Inquiry into LGBTIQ Hate Crimes.

Background:

Global statistics about hate crimes perpetrated against trans people are damning. In England and Wales in 2021-22, police recorded 4,355 hate crimes against trans people, representing a 56% increase on the previous year.ⁱ In the United States, the non-profit LGBTQ+ advocacy group Human Rights Watch counted at least 38 trans people fatally shot or killed by other violent means in 2022. This was on top of 59 people killed in 2021 and 44 in 2020, and the majority of those murdered were trans people of colour.ⁱⁱ Brazil has the highest number of reported murders of trans people: 125 in 2020-21 and another 96 in 2021-22. According to Transgender Europe's Trans Murder Monitoring report for 2022, 327 trans people were murdered globally between 1 October 2021 and 30 September 2022, with 222 of those cases from Latin America and the Caribbeanⁱⁱⁱ.

Statistics in Australia are not readily available for similar reasons. Occasionally a high-profile killing of a trans person reaches the media, such as Mhelody Bruno – a twenty-five- year-old trans woman from the Philippines killed in Wagga Wagga on 18 September 2019^{iv}, or Kimberley McCrae, killed in January 2020 in her apartment in Coogee. In both instances, the perpetrators were not convicted for murder but rather the lesser crime of manslaughter. Both killings sparked outrage within Australia's trans community and resulted in public rallies and appeals for justice, including calls for a revision of judicial decisions.^v

Two dominant themes emerged from the peer focus group of transwomen elders speaking about their often decades long experience of discrimination and violence in NSW and Australia.

- Police interactions with trans people were the central discussion point around hate crimes. Police came up both as perpetrators of hate crimes and as a distrusted institution which marked trans people less likely to report hate crimes. Moreover, police continue to perpetrate violence against trans people in different ways;
- The past and present cannot be separated. Although the facilitator asked questions about the past, the respondents continued to give answers about the present. It became clear that while there have been some changes over the years, when it comes to hate crimes, most trans Australians do not distinguish between the period 1970-2010 and the period post-2010.

The long history of marginalisation, stigmatisation and abuse of trans people makes TGD community members cynical that government or police care about them. This history of distrust is the very reason that so few trans people have come forward to the Special Commission of Inquiry and previous parliamentary inquiries into hate crimes in NSW. The participants in the focus group, too, were sceptical about the potential outcomes of this inquiry. One expressed: "I think that that inquiry needs to know that this didn't come without a cost, and it retriggered a lot of people, and to what extent, without knowing what actually the hope is from this process."

At the conclusion of the peer focus group, the transwomen and elders made a list of recommendations. One challenge that emerged from the focus group was to come up with pragmatic recommendations for the Special Commission of Inquiry. There is almost a catch-22: trans people generally distrust police and other criminal legal institutions because of the long history of involvement in, perpetration of, and cover-up of hate crimes. In the wake of the global Black Lives Matter movement – not to mention related causes like Trans Lives Matter – there have been calls to abolish the police and to channel police funding into preventative and rehabilitative services instead. Focus group participants recognised that

such revolutionary ideas are not so realistic, so they instead came up with a series of recommendations which are more pragmatic and which we convey to the inquiry. They are as follows:

Issue 1: The Police Association of each state and territory in Australia should reach out to organisations such as the Gender Centre and SWOP (in NSW) and endorse legal reforms that support trans rights around self-identification

The issue of distrust looms large between the trans community and police. Clearly there needs to be a circuit-breaker to start building trust. In the past certain leaders and police commissioners have reached out to the LGBTIQ+ community, but many of the challenges facing trans people in relation to police operate on the ground and are distinct from those facing gay, lesbian and bisexual people. Police Associations, as the unions that represent the interests of police officers themselves, is a more representative body of police culture in Australia and as such is vital as part of any reform process.

Issue 2: Greater transparency and expansion of the NSW GLLO program (or other state equivalent) and Mandatory contact with a trans-focused GLLO or paid peer representative whenever a trans person is involved in a police matter.

The NSW Police established the GLLO program now referred to as LGBTIQ+ Liaison Officers in response to demands from the NSW Gay and Lesbian Rights Lobby over police abuse. According to the NSW Police website, there are currently over 300 GLLOs and 6 regional advocates who are identifiable by a triangle badge they wear on their uniforms.^{vi} This recommendation would, modelled on that program, require local police stations to contact a GLLO immediately when any trans person is in custody or contacts police. The person need only self-identify as trans and, no questions asked, NSW Police would be obligated to make contact with a GLLO.

Issue 3: Require police, courts, corrective services, coroners, medical officers, magistrates, judiciary and other instruments of the criminal legal system to, in proceedings, refer to a trans person by their affirmed name and pronouns and, unless relevant to the proceedings, not comment on genitalia; and review the Computerised Operational Police System (COPS) with trans people's input to ensure that previous names are only listed as aliases and made visible to authorities only when absolutely pertinent to the matter.

Issue 4: Strengthen the power and outreach of a peak body of trans representatives who regularly review and make representations about the NSW criminal legal system, including police, courts and prisons

Several focus group participants advocated for the formation of a peak committee of trans representatives which can regularly advocate for ongoing reforms to the criminal legal system. Such a body would be able to represent the needs of trans people who are the victims of hate crimes and make representations about ongoing reforms to NSW Police to build the trust necessary for trans people to report hate crimes. Such a body needs to be trans-specific, rather than part of an LGBTIQ+ body, or else the distinct needs of trans people risk being subsumed or subservient to the priorities of the gay and lesbian community. The focus group participants noted that any peak body must be reflective of the needs of trans people across NSW, with representatives who are trans women, trans men, non-binary, Sistergirls and Brotherboys, and also must geographically include members from regional NSW and western Sydney.

Issue 5: Expand trans inclusion training at all levels of NSW Police and embed it within Federal, State and territory Police Academies

Since the 1990s, LGBTIQ+ organisations have delivered different training programs to NSW Police in a variety of forums. There was substantial scepticism within the focus group about the effectiveness of existing training because there is such an embedded transphobic culture within the NSW Police.

Another key point is that there needs to be trans specific training as distinct from the LGBTIQ+ umbrella.

Issue 6: Empower the Law Enforcement Conduct Commission (LECC) to compile data about police dealing with hate crimes and fund LECC to embark on a broad outreach campaign publicising its independent power to investigate allegations of police abuse, harassment or perpetration of hate crimes.

Focus group participants unanimously agreed that it is problematic for Police to conduct their own internal investigations of any complaint about police behaviour. As one person put it, “When a case is brought up against police, it’s police investigating them, so therefore, it’s not going to get, it probably won’t even get investigated.” The only solution, as put by another person, was “We need to look outside of that system to a body that has higher power, like an independent body when we do have inquiries into people’s deaths that are queer, that can challenge this, that’s nuanced.”

Issue 7: Implement all outstanding recommendations of the Royal Commission into Aboriginal Deaths in Custody

Issue 8: Expungement of prior convictions for sex work and sex work-adjacent convictions and; full decriminalisation of the sex industry and adding 'sex work' and 'sex worker' as protected attributes under the Anti-Discrimination Act.

Issue 9: Reform prison guidelines around trans people to affirm their gender identities

Representatives of the Gender Centre worked with Corrections NSW in 1998 to develop some of Australia's first coherent guidelines around trans people's treatment in the carceral system. Those guidelines have gone through updates over the years, but still trans people in custody consistently report being housed in prisons that do not match their affirmed gender or being forced into solitary confinement. Being in such situations makes trans people vulnerable to hate crimes including physical and sexual assault in prison. It is well past time that Corrections NSW revisits these guidelines and works with stakeholder organisations such as SWOP and the Gender Centre and implement whatever recommendations those and likeminded groups put forward.

Issue 10: Greater funding and expansion of trans-specific legal services

If distrust of police and the criminal legal system is a major barrier to trans people reporting hate crimes, then there needs to be an advocacy service that can assist trans people to do so.

Issue 11: Make Victim of Crime Compensation more accessible and remove the statute of limitations for trans people victimised by hate crimes, including in prisons.

Given the history of hate crimes, most of which were unreported, goes back decades, any attempt at justice needs to include access to victim of crime compensation. Many trans people are still living with the physical and emotional wounds of hate crimes yet cannot access victim of crime compensation schemes because of time limits.

Issue 12: Strengthen provisions of the Anti-Discrimination Act and update the Births, Deaths and Marriages Registration Act to facilitate self-identification across all states and territories in Australia.

Issue 13: State and Territory Governments to provide visible support and funding for affirming models of health care, as well as lobbying for Medicare to cover gender affirmation surgeries.

Issue 14: Responsible journalistic coverage of trans people and issues.

One focus group participant put it succinctly: "Journalists need to be responsible when they are reporting on trans issues. The words they use, what they do fuels the violence." Transphobic media coverage has a long history in Australia and across the globe. It often perpetuates misunderstandings of what it means to be trans, along with ideas of trans people as deceptive, innately criminal or mentally

ill. Media consistently platforms transphobic individuals and their views, sometimes in an attempt to appear ‘balanced’, and other times with the clear objective to demonise trans people. Yet there is nothing balanced about platforming hatred and positions which deny the living experiences of trans people.

Issue 15: Greater access to counselling services for trans people across NSW, along with services specifically tailored to people over 55 years old.

Issue 16: Expand hate crimes inquiries to the present day and across all state and territory jurisdictions.

Hate crimes are an ongoing problem. Indeed, there are unsolved hate crimes and outstanding issues of police abuse and distrust which linger and affect trans people across the country. It is vital that all states and territories look at cold cases as well as the broader cultures and contexts which led to hate crimes and the underreporting of hate crimes.

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1. ⁱ United Kingdom, Home Office, “Official Statistics: Hate crime, England and Wales, 2021 to 2022,” 6 October 2022, <https://www.gov.uk/government/statistics/hate-crime-england-and-wales-2021-to-2022/hate-crime-england-and-wales-2021-to-2022>, 18 April 2023.
 2. ⁱⁱ Human Rights Campaign Foundation, “Fatal Violence Against the Transgender and Gender Non-Conforming Community in 2022,” Human Rights Campaign, <https://www.hrc.org/resources/fatal-violence-against-the-transgender-and-gender-non-conforming-community-in-2022>, accessed 18 April 2023.
 3. ⁱⁱⁱ “TMM Update: - Trans Day of Remembrance 2022,” Transgender Europe (TGEU), <https://transrespect.org/en/tmm-update-tdor-2022/>, accessed 18 April 2023.
 4. ^{iv} Elise Kinsella and Andy Burns, “Mhelody Bruno's killer was jailed for 22 months. This is the information the court never heard,” ABC News, 2 July 2021, <https://www.abc.net.au/news/2021-07-02/background-briefing-mhelody-bruno-investigation/100256330>, accessed 18 April 2023.
 5. “#JusticeforMhelody Bruno: Trans Community Call for DPP Appeal,” https://docs.google.com/document/d/16fP2v6LX50tEceELfRWwfSmLE6XHSJsYsXSCvd0bDEA/mobilebasic?fbclid=IwAR0hhHbUkNRX4_hNs-V0_tiffqxhO561DWFCOeG86-152ns7YqB51hUVsn0, accessed 18 May 2023; Jordan Hirst, “Trans advocates call for appeal in Mhelody Bruno manslaughter case,” Q News, 31 March 2021, accessed 18 May 2023;
 6. ^v Elise Kinsella and Andy Burns, “Mhelody Bruno's killer was jailed for 22 months. This is the information the court never heard,” ABC News, 2 July 2021, <https://www.abc.net.au/news/2021-07-02/background-briefing-mhelody-bruno-investigation/100256330>, accessed 18 April 2023.

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7. ^{vi} https://www.police.nsw.gov.au/safety_and_prevention/your_community/working_with_lgbtqia/lgbtqia_accordian/gllos_lgbtiq_liaison_officers_and_region_advocates_communities, accessed 24 April 2023.