

Trans Justice Project LTD.

Submission to current and emerging threats to TGD human rights

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Relevant Experience/Expertise

This submission comes from the Trans Justice Project LTD., Australia's first trans-led national advocacy organisation. We are a registered charity focused on fighting for freedom, justice, and equality for all trans and gender diverse people. In addition to our lived experience and community knowledge, the Trans Justice Project offers research and strategic organising in order to protect trans and gender diverse people from the various anti-trans movements and campaigns emerging in Australia. Examples of our work include the *Fuelling Hate Report* (2023), which examined the extent and impact of anti-trans hate (attached to this submission).

Introduction

Currently, trans and gender diverse people are the target of a concerted international effort to erode their legal protections, ban gender affirming care, and restrict their ability to participate in public life. These campaigns, which have shown success in other Anglophone countries, bar trans and gender diverse (TGD) people from full participation in society and subject them to discriminatory laws, effectively representing an attack on their human rights. This submission highlights three areas of concern about which the Australian Human Rights Commission must be aware, social exclusions, medical disinformation, and violence and harassment, and the negative effects that each of these have.

Threats to trans people's social freedoms and inclusion

Globally, there have been campaigns to introduce laws that single TGD people out for exclusion from public spaces, including bathrooms, sporting clubs, and schools. Further, there are many laws already in place that impact TGD people and make their participation in public life more difficult, such as limitations on changing gender markers on birth certificates. These legal frameworks, regardless of whether they are proposed or already in place, necessarily mark TGD people out as distinct from general citizenship, target with discriminatory laws, and further entrench their marginalisation.

Examples of these laws include so-called “bathroom bills”, which demand that all TGD people use the bathroom that corresponds to their assigned gender at birth. As of 2017, 23 US states have considered “bathroom bills” (Rushin & Carroll, 2017), which, by November 2023, have been passed into law in Florida and Kansas among others (Cosker-Rowland, 2023). This is not limited to the US: as of April 2023, similar bathroom laws have been proposed in the UK (Moss and Parry, 2023). TGD people also face legislation that hampers their participation in sport at all levels of competition, with 24 US states legally banning TGD people from participating in sports teams consistent with their gender identification (Movement Advancement Project, 2024). In Canada, the province of Saskatchewan enacted a law that prevents children under 16 from changing their name and pronouns at school without parental consent (Underwood, 2024). TGD people in Australia are not safe from exclusionary legislation either. NSW requires TGD people to have undergone “sex affirmation” surgery for their gender to be recognised on birth certificates (NSW Registry of Births, Deaths, and Marriages, 2024) , and WA requires medical “reassignment procedure” for the same (Legal Aid WA, 2021). Further, there has been a concerted effort by anti-trans groups to bring exclusionary laws in place internationally to Australia, like campaigns against TGD participation in sport (RMIT, 2022).

The inevitable effect of each of these laws is the exclusion of TGD people from public life. Bathroom bans in schools segregate TGD people from their peers and have been shown to cause significant psychological distress to TGD people (Wernick et al., 2017), including contributing to suicidality in TGD young people (Seelman, 2016). Further, bathroom laws institute barriers for TGD people visiting public buildings and institutions, can lead to health problems from holding off bathroom visits as well as decreased food and fluid intake, and generally hampers the ability of TGD people to participate fully in public life (McGuire et al., 2022). Exclusion from sport has been highlighted by the Australian Sports Commission as a discriminatory practice, as, to quote, “all Australians should have the opportunity to be involved in sport and physical activity” (Australian Sport Commission, 2024).

Preventing TGD people from changing the gender marker on their birth certificate has adverse impacts on their ability to participate in public life. Pinning the change of gender markers to gender affirming medical procedures leads to TGD people being pathologized in society (Castro-Peraza et al., 2019). In addition, not having representative documentation leads to difficulties when dealing with official institutions like police, with health records, with access to schooling, university, and other forms of education, with marriage and adoption, and with employment (Mottet, 2013). Employment is particularly notable, with one study showing that the removal of regulations of the change of the gender marker on the birth certificate increases the employment rate of trans men by 11% (Mann, 2021). Taken cumulatively, all these laws limit TGD people’s access to public life, separate them out as a distinct portion of the population, and target them unjustly.

These laws, both independently and cumulatively, target TGD people discriminatorily, marking them out as distinct from other members of civil society. As such, these laws contravene articles in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, that

hold that all are equal before the law (UDHR, Article 7; ICCPR, Article 26). Further, limitations on gender markers represent a failure to confer full recognition of personhood upon TGD people (UDHR, Article 6), as well as a denial of their right to self-determination (ICCPR, Article 1).

Medical Disinformation

Globally there are a number of groups that are attempting to ban or otherwise limit access to gender affirming healthcare. These efforts are driven by disinformation; drawing on spurious evidence and refuted claims to provoke concern about strongly evidenced gender affirming care.

Examples of disinformation include the use of the myth of rapid onset gender dysphoria (ROGD) by anti-trans groups. Initially proposed in an article by Lisa Littman, ROGD positions the motivation behind gender affirmation solely as “fitting in” (Littman, 2018). This article was retracted and corrected due to significant problems with its methodology (Littman, 2019), and journal *PLOS One* issuing an apology for its publication (Heber, 2019). Further, research on the experiences of TGD youth have contradicted Littman’s argument that the decision to transition happens suddenly or is due to social conformity (Kennedy, 2020; Bauer et al., 2021; Turban et al., 2023). Despite this, anti-trans groups use this deficient article widely in their attempts to influence policy (Leveille, 2022).

Anti-trans groups have also proposed an alternative standard for medical care of TGD people. Termed “gender exploratory therapy”, this practice hinges upon the claim that current standards of gender affirming care are ideologically driven (Bartle et al., 2023). This claim ignores wealth of evidence about the positive impacts of gender affirming care for TGD people (Ristori et al., 2024), including reductions in suicidality and psychological distress (Allen et al., 2019). Further, “gender exploratory therapy” contradicts the standards of care endorsed by leading healthcare institutions, including the World Professional Association for

Transgender Health (WPATH) (Coleman et al., 2022), the Australian Medical Association (AMA, 2023), the American Psychological Association (APA, 2024), and the Australian Professional Association for Transgender Health (AUSPATH). This alternate standard of care is evidentially slight, drawing on only three authors (including Littman) to support their claims (Leveille, 2022). It has been noted (including by some of its own proponents) that “gender exploratory therapy” bears marked similarities to conversion practices (Ashley, 2023). Despite the fact that much of this disinformation originates overseas, there has again been a concerted effort to introduce these points into discussions about gender-affirming care in Australia (Turner, 2023).

Campaigns of medical disinformation aim to deny necessary medical intervention to TGD people and promote hesitancy among parents of children seeking gender-affirming care. The NHS in the UK, for instance, has recently banned the use of “puberty blockers” or medication that delays the development of secondary sex characteristics for young people on the basis of a supposed lack of evidence (Campbell, 2024). This is despite research showing that TGD people report vastly improved mental health after accessing gender-affirming care (Allen, 2019; Horton, 2022). Further, this ban necessarily creates a medical double standard between trans and cis youth, as “puberty blockers” (i.e. Gonadotropin-releasing hormone agonists) may still be used to treat precocious puberty in cisgender youth (Ismail et al., 2022). TGD people also have poor experiences seeing medical professionals, due largely to the limited knowledge of the TGD experience held by these medical professionals (Ellis et al., 2015; Skuban-Eiseler et al., 2023). Left unimpeded, disinformation will only compound this experience.

The negative impacts medical disinformation has on TGD health represents a violation of the right to health, well-being, and medical care, present in both the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights (UDHR, Article 25; ICESCR, Article 12).

Further, the creation of specific laws that target the healthcare of TGD people represents a discriminatory practice, specifically marking out TGD people to bar them from medical care (UDHR, Article 7; ICESCR, Article 2).

Violence and Harassment

Trans people are disproportionately the targets of violence and harassment, and as such are one of the most vulnerable groups in society. The Trans Justice Project's own *Fuelling Hate Report* (2023) identified that, out of over 3000 participants, 90% had witnessed anti-trans hate online, half had experienced anti-trans-hate, and one out of ten had suffered anti-trans violence. Further, our report identified that these rates were on the rise; 85% of participants reported that they had seen an increase of anti-trans hate online, 40% experienced more online abuse, and 34% received more in person abuse. These statistics reflect global trends, with reported hate crimes against TGD people in the UK rising 81% between 2016-17 financial year and the 2018-19 financial year (BBC, 2019). Further, violence against TGD people is racialised, with a report on violence against TGD people in the US in 2024 finding 85% of victims of fatal violence were TGD people of colour (Human Rights Campaign Foundation, 2023). In Australia, anti-trans hate has become associated with far-right groups, with an anti-trans rally in Melbourne in March 2023 featuring Nazi salutes and intimidation (Ore, 2023).

Violence and harassment jeopardises the physical and mental safety of TGD people. Street based harassment, for example, has been shown to be damaging to mental health, increasing levels of depression and anxiety as well as negatively impacting sleep quality (DelGreco & Christensen, 2020). These increased rates of harassment and violence lead to unequal access to public spaces, like public transport (Lubitow et al., 2017), and lead to TGD people engaging in health harming behaviours (Miller & Grollman, 2015). Violence and harassment

represent violations of the right to security of person (UDHR, 3; ICCPR, Article 9). Far-right hate groups, emboldened by the general rise in anti-trans sentiment, engage in incitements to violence against TGD people, which represents a further violation of provisions in the ICCPR (Article 20).

Bibliography

Allen L.R., Watson L.B., Egan A.M., Moser C.N., 2019, “Well-Being and Suicidality Among Transgender Youth After Gender-Affirming Hormones”, *Clinical Practice in Paediatric Psychology*, vol.7, no.3, pp.302-311, <https://doi.org/10.1037/cpp0000288>

American Psychological Association, 2024, “APA Policy Statement on Affirming Evidence-Based Inclusive Care for Transgender, Gender Diverse, and Nonbinary Individuals, Addressing Misinformation, and the Role of Psychological Practice and Science”, February, <https://www.apa.org/about/policy/transgender-nonbinary-inclusive-care.pdf>, Accessed: [3rd April 2024]

Ashley, F. 2023, “Interrogating Gender Exploratory Therapy”, *Perspectives on Psychological Science*, vol.18, no.2, pp.472-481, <https://doi.org/10.1177/17456916221102325>

Australian Medical Association, 2024, “LGBTQIASB+ Health Position Statement”, 6th February, <https://www.ama.com.au/articles/lgbtqiasb-health-position-statement#:~:text=The%20AMA%20affirms%20that%20people,%2C%20affirmed%2C%20respected%20and%20understood>. Accessed: [3rd April 2024]

Australian Sport Commission, “Trans and Gender Diverse Inclusion”, https://www.sportaus.gov.au/integrity_in_sport/transgender_and_gender_diverse_people_in_sport, Accessed [28th March 2024]

Bartle C., Buttons C., Burgo J., Connolly S., Forouhar M.N., Goonan K., Gunn A., Lawford Smith H., Levine S., Neumark T., O'Malley S., Reed J., Wright C., 2023, "The Gender Framework", Genspect, <https://genspect.org/resources/sample-policies/genspect-presents-the-gender-framework/>, Accessed [3rd April 2024]

Bauer G.R., Lawson M.L., Metzger D.L., 2022, "Do Clinical Data from Transgender Adolescents Support the Phenomenon of "Rapid Onset Gender Dysphoria"?", *The Journal of Pediatrics*, vol.243, pp.224-227, <https://doi.org/10.1016/j.jpeds.2021.11.020>

BBC, 2019, "Transgender hate crimes recorded by police go up 81%", *British Broadcasting Corporation*, 27th June, <https://www.bbc.com/news/uk-48756370>, Accessed: [3rd April 2024]

Campbell D. 2024, "Children to stop getting puberty blockers at gender identity clinics, says NHS England", *The Guardian*, 13th March, <https://www.theguardian.com/society/2024/mar/12/children-to-stop-getting-puberty-blockers-at-gender-identity-clinics-says-nhs-england>, Accessed [4th April 2024]

Castro-Peraza M.E., García-Acosta J.M., Delgado N., Perdomo-Hernández A.M., Sosa-Alvarez M.I., Llabrés-Solé R., Lorenzo-Rocha N.D. 2019, "Gender Identity: The Human Right of Depathologization", *International Journal of Environmental Research and Public Health*, vol.16, no.6, <https://doi.org/10.3390/ijerph16060978>

Cosker-Rowland R., 2023, "Requiring trans people to use bathrooms for the gender they were assigned at birth violates their rights and does no good", *Australian Broadcasting Corporation*, <https://www.abc.net.au/religion/bathroom-bills-do-demonstrable-harm-to-trans-people/103144674>, Accessed [3rd April 2024]

DelGreco M., Christensen J., 2020, “Effects of Street Harassment on Anxiety, Depression, and Sleep Quality of College Women”, *Sex Roles*, vol.82, pp.473-481, <https://doi.org/10.1007/s11199-019-01064-6>

Ellis S.J., Bailey L., McNeil J., 2015, “Trans People’s Experiences of Mental Health and Gender Identity Services: A UK Study”, *Journal of Gay & Lesbian Mental Health*, vol.19, pp.4-20, <https://doi.org/10.1080/19359705.2014.960990>

Heber J. 2019, “Correcting the scientific record on gender incongruence – and an apology”, *EveryONE Blog*, <https://everyone.plos.org/2019/03/19/correcting-the-scientific-record-and-a-n-apology/> [3rd April 2024]

Horton C., 2022, “Experiences of Puberty and Puberty Blockers: Insights From Trans Children, Trans Adolescents, and Their Parents”, *Journal of Adolescent Research*, vol.39, no.1, pp.77-103, <https://doi.org/10.1177/0743558422110059>

Human Rights Campaign Foundation, 2023, “The Epidemic of Violence Against the Transgender and Gender Non-Conforming Community in the United States”, November, https://reports.hrc.org/an-epidemic-of-violence-2023?_ga=2.141502198.590023297.1711492821-515445399.1711080061, Accessed [3rd April 2024]

Ismail D., Kanumakala S., Annandale D., Lazner M., 2022, “Paediatric Clinical Practice Guideline: Gonadotrophin-releasing hormone (GnRH) analogue (triptorelin) intramuscular injection (Puberty Blockers for Central Precocious Puberty)”, *NHS University Hospitals Sussex*, <https://www.bsuh.nhs.uk/library/wp-content/uploads/sites/8/2022/06/Paediatric-guidelines-Endocrine-DFT-GnRH-LHRH-analogue-treatment-Puberty-Blockers.pdf>, Accessed [5th April 2024]

Kennedy N. 2020, “Deferral: the sociology of young trans people’s epiphanies and coming out”, *Journal of LGBT Youth*, vol.19, no.1, <https://doi.org/10.1080/19361653.2020.1816244>

Legal Aid WA, 2021, “LGBTIQA+ Changing Gender”, <https://www.legalaid.wa.gov.au/find-legal-answers/your-rights/lgbtiqa/changing-gender>, Accessed [28th March 2023]

Leveille L., 2022, “A New Era: Key Actors Behind Anti-Trans Conversion Therapy”, *Health Liberation Now!*, <https://healthliberationnow.com/2022/06/01/a-new-era-key-actors-behind-a-anti-trans-conversion-therapy/>

Littman L. 2018, “Parent reports of adolescents and young adults perceived to show signs of a rapid onset of gender dysphoria”, *PLoS ONE*, vol.13, no.8 <https://doi.org/10.1371/journal.pone.0202330>

Littman L. 2019, “Correction: Parent reports of adolescents and young adults perceived to show signs of a rapid onset of gender dysphoria”, *PLoS ONE*, vol.14, no.3, <https://doi.org/10.1371/journal.pone.0214157>

Lubitow A., Carathers J., Kelly M., Abelson M., 2017, “Transmobilities: mobility, harassment, and violence experienced by transgender and gender nonconforming public transit riders in Portland, Oregon”, *Gender, Place & Culture*, vol.24, no.10, pp.1398-1418, <https://doi.org/10.1080/0966369X.2017.1382451>

Mann S., 2021, “ Transgender employment and gender marker laws”, *Labour Economics*, vol.73, <https://doi.org/10.1016/j.labeco.2021.102072>

McGuire J.K., Anderson S.O., Michaels C., 2022, “‘I don’t think you belong in here.’ The impact of gender segregated bathrooms on the safety, health, and equality of transgender people”, *Journal of Gay & Lesbian Social Services*, vol.34, no.1, pp.40-62, <https://doi.org/10.1080/10538720.2021.1920539>

Miller L.R., Grollman E.A., 2015, "The Social Costs of Gender Nonconformity for Transgender Adults: Implications for Discrimination and Health", *Sociological Forum*, vol.30, no.3, pp.809-831, <https://doi.org/10.1111/socf.12193>

Moss L., Parry J., 2023, "Law change could aid single-sex spaces – watchdog", *British Broadcasting Corporation*, <https://www.bbc.com/news/uk-65181018>, [Accessed 3rd April 2024]

Mottett L., 2013, "Modernizing State Vital Statistics Statutes and Policies to Ensure Accurate Gender Markers on Birth Certificates: A Good Government Approach to Recognizing the Lives of Transgender People", *Michigan Journal of Gender & Law*, vol.19, no.2, pp.373-470, <https://repository.law.umich.edu/mjgl/vol19/iss2/4>

Movement Advancement Project, 2024, "Equality Maps: Bans on Transgender Youth Participation in Sports." www.mapresearch.org/equality-maps/youth/sports_participation_bans Accessed [28th March 2024].

Norris S. 2021, "The Far-Right Co-Option of the Transgender Rights Issue", *Byline Times*, 30th September, <https://bylinetimes.com/2021/09/30/the-far-right-co-option-of-the-transgender-rights-issue/>

NSW Registry of Births, Deaths, and Marriages, 2024, *Change of sex*, <https://www.nsw.gov.au/family-and-relationships/name-changes-and-corrections/change-of-sex>, Accessed [28th March 2024]

Ore A. 2023, "Victoria to ban Nazi salute after 'disgusting' scenes at anti-trans protest", *The Guardian*, 20th March, <https://www.theguardian.com/australia-news/2023/mar/20/victoria-to-ban-nazi-salute-after-anti-trans-protest-melbourne-australia>

Ristori J., Motta G. Meriggiola, M.C., Bettocchi, C., Crespi, C., Falcone, M., Lombardo, F., Maggi, M., Morelli, G., Colao, A.M., Isidori, A.M., Fisher, A.D., 2023, “A comment from SIGIS, SIE and SIAMS: ‘Puberty blockers in transgender adolescents—a matter of growing evidence and not of ideology’”, *Journal of Endocrinological Investigation*, vol.47, pp.479–481, <https://doi.org/10.1007/s40618-023-02173-6>

Royal Melbourne Institute of Technology (RMIT), 2022, “Older people and men the prime targets of Facebook campaigns to save women’s sport”, Mosaic Project, 17th May, <https://www.rmit.edu.au/news/factlab/advance-australia-transgender-women-s-sport>,

Rushin S., Carroll J., 2017, “Bathroom Laws as Status Crimes”, *Fordham Law Review*, vol.86, no.1

Seelman K.L., 2016, “Transgender Adults’ Access to College Bathrooms and Housing and the Relationship to Suicidality”, *Journal of Homosexuality*, vol.63, n.10, pp.1378-1399, <https://doi.org/10.1080/00918369.2016.1157998>

Skuban-Eiseler T., Orzechowski M., Steger F., 2023, “Why do transgender individuals experience discrimination in healthcare and thereby limited access to healthcare? An interview study exploring the perspective of German transgender individuals”, *International Journal for Equity in Health*, vol.22, no.211, <https://doi.org/10.1186/s12939-023-02023-0>

Trans Justice Project, 2023, “Fuelling Hate: Abuse, Harassment, Vilification and Violence Against Trans People In Australia”, <https://transjustice.org.au/wp-content/uploads/2023/08/Fuelling-Hate-Anti-Trans-Abuse-Harassment-and-Vilification-WEB-SINGLES-1-1.pdf>

Turban J.L., Dolotina B., Freitag T.M., King D., Keuroghlian A.S., 2023, “Age of Realization and Disclosure of Gender Identity Among Transgender Adults”,

Journal of Adolescent Health, vol.72, pp.852-859,
<https://doi.org/10.1016/j.jadohealth.2023.01.023>

Turner J., 2023, “Anti-trans disinformation is rife in Australia – and it’s being spread by a small group of organisations”, *Crikey*, 10th March,
<https://www.crikey.com.au/2023/03/10/anti-trans-disinformation-australia-transphobia/> Accessed [11th April 2024]

UN General Assembly, 1948, Universal Declaration of Human Rights (UDHR), Resolution 217 A (III), 10 December,
<https://www.refworld.org/legal/resolution/unga/1948/en/11563> Accessed [28 March 2024]

UN General Assembly, 1966, International Covenant on Civil and Political Rights, United Nations (ICCPR), Treaty Series, vol.999, p.171, 16 December,
<https://www.refworld.org/legal/agreements/unga/1966/en/17703>, Accessed [27 March 2024]

UN General Assembly, 1966, International Covenant on Economic, Social and Cultural Rights (ICESCR), United Nations, Treaty Series, vol.993, p.3, 16 December, <https://www.refworld.org/legal/agreements/unga/1966/en/33423> Accessed [28 March 2024]

Underwood K. 2024, “‘I couldn’t be complicit’: Why one Saskatchewan teacher is protesting the province’s pronoun law”, *Maclean’s*,
<https://macleans.ca/education/saskatchewan-pronoun-law/>

Wernick L.J., Kulick A., Chin M., 2017, “Gender Identity Disparities in Bathroom Safety and Wellbeing among High School Students”, *Journal of Youth and Adolescence*, vol.46, pp.917-930, <https://doi.org/10.1007/s10964-017-0652-1>