



Transgender Victoria;
Transgender Victoria - Drummond Street Services Office

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Transgender Victoria Submission to the Australian Human Rights Commission

Current and emerging threats to TGD human rights

Acknowledgement of Country

Transgender Victoria operates across lands belonging to the Wurundjeri, Boonwurrung, Taungurong, Dja Dja Wurrung, and Wathaurong peoples of the Kulin. Transgender Victoria pays its respects to Elders past, present, and emerging, and acknowledges that sovereignty has never been ceded.

About Transgender Victoria



Transgender Victoria (TGV) is the leading body supporting the trans and gender diverse (TGD) community in Victoria. Transgender Victoria (TGV) works to achieve justice, equity and inclusive service provision for trans and gender diverse (TGD) people, our partners, families and friends. TGV actively advocates for a world where TGD people thrive. Consequently, TGV expects that all TGD people should have our human rights respected and protected as valued members of society.

Introduction

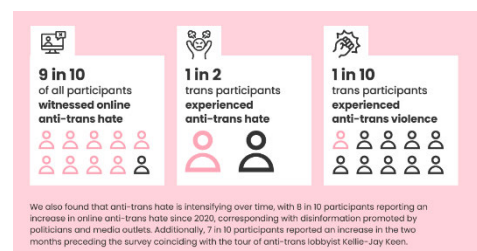
The history of TGD people in Australia demonstrates that TGD people have not had our human rights respected and have been subject to discrimination, prejudice and abuse across Australia¹. Despite all states and the Commonwealth including gender identity as a protected attribute TGD human rights are denied daily (see infographic at right)². This denial of human rights in the face of anti-discrimination laws, indicates that those laws are ineffective and that

¹ Riseman, N., 2023. *Transgender Australia: A History Since 1910*. Melbourne Univ. Publishing.

² Transjustice Project and Victorian Pride Lobby (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>

the AHRC needs to investigate how effective laws can be implemented to protect TGD human rights.

This submission addresses the areas which TGV believes needs focus. We are particularly informed in this by our participation in the recent inquest into a Trans Suicide Cluster where the Victorian Coroner investigated what could have been done to prevent the suicides of 5 young transgender women in 2020/2021. Our submissions to the Victorian Coroner's court are in the Appendices. TGV is concerned that countering the recent anti-trans mobilisation, dis- and misinformation, and extremism and radicalisation as noted by the commission represent a major distraction from TGV's core work of promoting the well being of TGD people so that we may thrive. More active protection of trans and gender diverse peoples' rights are needed by all 3 levels of government in Australia. TGV urges the commission to promote the need to ensure that TGD human rights are protected in this country and that there is *effective* protection from discrimination on the grounds of gender identity.



1. TGD People are a vulnerable community in need of legal protections

TGD people have been the subject of denial of human rights, ridicule, vilification and psychological and physical abuse for most of Australia's recorded history since European settlement.³ Although there are laws preventing discrimination on the grounds of gender identity across Australia, a survey of over 1300 TGD participants⁴ showed that the population suffers from poorer outcomes across the following dimensions than any non-indigenous group in Australia. We also know that, at the intersections of multiply stigmatised identities, including First Nations people who are also gender diverse, outcomes are even worse. These dimensions are access to:

- Support for their poor physical and mental health
- Housing
- Educational opportunities
- Aged care
- Social services
- Employment and/or a stable income
- Community sport
- Protection from intimate partner and family violence

In comparison with the cis-gender participants in the survey the TGD participants experienced far worse outcomes. The survey shows LGBTIQ+ population as a whole has poorer outcomes across most of these parameters than the heterosexual community but the TGD population is worse than any other cisgender community whether heterosexual or sexually diverse. In spite of the ability to affirm our gender on our Australian passport (since 2013) and other documents governed by various state laws in recent years, the majority of TGD people do not

³ Riseman, N., 2021. Victoria's transgender history.

⁴ Hill, A., Bourne, A., McNair, R., Carman, M. and Lyons, A., 2020. Private Lives 3: The health and wellbeing of LGBTIQ people in Australia.

have their gender identity affirmed on their legal documents. Other surveys support these findings.⁵

It is significant that we do not know with any certainty how many TGD people are denied their rights because we are not counted accurately in the census. This is despite 2016 recommendations by the Australian Bureau of Statistics to include us via a simple 2 step question, which were denied by the minister⁶. As a result, the questions devised to assess our numbers were optional and lamentably inadequate to ensure good responses in both the 2016 and 2021 censuses. This represents a denial of our human right to be recognised.

The experiences of TGD participants in a 2022 survey showed that the majority did not feel accepted outside of LGBTIQ+ settings⁷. This lack of confidence drives isolation from mainstream Australian society and forms an effective denial of our human rights due to **ineffective** legal protections from discrimination. The United Nations have affirmed states' obligation to ensure **effective** protection of all persons from discrimination based on sexual orientation or gender identity as per Article 26 of the International Covenant on Civil and Political Rights which sets out the principle of equality and guarantees to all persons equal and **effective** protection against discrimination on any ground such as race, colour, sex, etc⁸. Australia has signed this treaty and the AHRC has accepted that Article 26 applies to discrimination on the basis of gender identity.⁹



Because TGD people have such a poor socio-economic profile and experience extreme marginalisation and struggle to access services to improve our well being and exercise our human rights, TGV submits that TGD people are not being afforded effective protection against discrimination in Australia and that an investigation of how to ensure effective laws preventing discrimination on gender identity or expression be established. In the subsequent sections TGV will explore what is needed in specific areas to ensure **effective** protection is established.

⁵ Bretherton, I., Thrower, E., Zwickl, S., Wong, A., Chetcuti, D., Grossmann, M., Zajac, J.D. and Cheung, A.S., 2021. The health and well-being of transgender Australians: a national community survey. *LGBT health*, 8(1), pp.42-49.
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7826417/>

⁶ <https://www.theguardian.com/australia-news/2019/oct/24/abs-dumped-census-test-forms-with-new-sexuality-questions-after-input-from-ministers-office>

⁷ Hill, A., Bourne, A., McNair, R., Carman, M. and Lyons, A., 2020. Private Lives 3: The health and wellbeing of LGBTIQ people in Australia. p87-91

⁸ Rights, U.N.H., 2002. International covenant on civil and political rights. *Annex VIII*.

⁹ Australian Human Rights Commission (2011) Addressing sexual orientation and sex and/or gender identity discrimination Consultation Report Section 4.1 <https://humanrights.gov.au/our-work/section-4-human-rights-and-discrimination-basis-sexual-orientation-or-gender-identity>

Governments in Australia recognise specific groups as requiring specific strategic and other frameworks for the provision of services and support to other vulnerable groups^{10, 11, 12}. TGV recommends that the best way to address the discrimination against trans and gender diverse Australians is to prepare a specific strategic approach addressing our needs as a vulnerable community which ensures that all levels of government provide effective protection from discrimination thus ensuring our human rights. Any such strategic approach should be co-designed with leadership from TGD led organisations within the TGD community.

2. TGD people need specialist social services and peer support services

building toward a future

Report on the 2019–2022
Trans & Gender Diverse Peer
Support Program delivered
by Transgender Victoria in
partnership with the Victorian
State Government

While the focus on supporting TGD people is most often on medical affirmation of their gender, socially affirming their gender is at least as important and applies to all TGD people including those who have no desire for medical affirmation. Most TGD people take an initial step in social affirmation by informally or informally changing their identity from the gender assigned at birth to another (whether it is from male to female, or female to male, neither or both). This can involve change of preferred name and/or pronouns and experiments with changes in physical appearance and clothing choices.

Because TGD people suffer from the discrimination noted above, socially affirming a gender other than the one assigned at birth is accompanied by a lot of fear and hypervigilance about their safety. Many chose to hide their gender for many years and even decades before socially affirming their gender with friends or family and then with broader society.

The benefits of social support from peers and also from professional social workers was noted in this 2018 study conducted in Victoria¹³.

“Peer support and engagement with the trans and gender diverse community is essential to effective service development and to the quality of services delivered, with volunteer peer support and self-help groups playing a key role that needs to be supported. There is a clear need to expand professionally-facilitated support groups”.

TGV submits that there is a need for a broad mainstream framework for social support which is codesigned with TGD led organisations. This approach will incorporate peer support and the

¹⁰ National Ageing and Aged Care Strategy for People from Culturally and Linguistically Diverse (CALD) Backgrounds Department of Health and Ageing 2020 chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.dss.gov.au/sites/default/files/documents/08_2014/national_ageing_and_aged_care_strategy_cald.pdf

¹¹ Department of the Prime Minister and Cabinet (2017) National Strategic Framework for Aboriginal and Torres Strait Islander Peoples' Mental Health and Social and Emotional Wellbeing 2017-2023 <https://www.niaa.gov.au/resource-centre/indigenous-affairs/national-strategic-framework-mental-health-social-emotional-wellbeing-2017-23>

¹² Attorney General's Department Protecting the Rights of Older Australians <https://www.ag.gov.au/rights-and-protections/protecting-rights-older-australians>

¹³ Victorian Department of Health (2018) Development of trans and gender diverse services in Victoria <https://www.health.vic.gov.au/publications/development-of-trans-and-gender-diverse-services-in-victoria-final-report>

professional support of social workers to enable TGD people to effectively access the support they need to ensure their access to the following areas are met

- Physical and mental health
- Housing
- Educational opportunities
- Aged care
- Social services
- Employment and income
- Protection from intimate partner and family violence
- Community sport

TGV is ideally placed to support the co-design of such a framework as we have been involved in social peer support for TGD people since 2018.



Despite TGV's depth of experience in provision of peer support services and their demonstrated value, there is no core funding for such services in Victoria or anywhere else in Australia. The only funding for these services is provided on a project-by-project basis, most often requiring annual proposals and reporting, or, on occasion, tenuous 4 year cycles. The lack of financial stability underpinning TGD led not-for-profit services contributes to high staff turnover (most often

in fractional roles, with below the poverty line wages), burnout and amplification of lateral hostility resulting from trauma.

3. TGD people need specialist medical support

'Gender incongruence' is a defining feature of being a TGD person and the ICH classifies this as a condition of sexual health. Therefore any steps that support a TGD person to alleviate their gender incongruence whether it is legal, social or medical are considered treatment of a condition of sexual health¹⁴

In addition to the need for legal and social support, TGD people experience discrimination in accessing physical and mental health support. All TGD people have special mental health care needs that support their social and medical gender affirmation. Those that also need to medically affirm their gender need additional gender affirming specialist health care. This falls into two groups of services - hormone provision and surgical services for gender affirmation.

Hormonal gender affirmation can be provided by GPs or specialist endocrinologists and the provision of hormones is most often subsidised by Medicare. However transgender people routinely experience difficulties in accessing hormones either because doctors do

¹⁴ Transcend and Transgender Victoria's submission to the Senate Community Affairs reference committee inquiry on Women's Sexual and Reproductive Health Submission 195
https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/ReproductiveHealthcare/Submissions

not feel competent to prescribe them or are unwilling to do so.¹⁵ The problem is particularly acute in rural and regional areas of Australia but also occurs in metropolitan areas (see Appendix 1). The cost of some hormonal products is covered by Medicare but the coverage is inadequate because these products are not specifically indicated for the treatment of transgender people and so are subject to a number of restrictive practices (eg require approval from PBS)¹⁶. In addition many TGD people require hormone preparations not listed on the PBS as they do not tolerate the listed preparations.

Gender affirming surgeries (including chest reconstructions, phallo-, labia- and vaginoplasties, facial feminisation, tracheal shaves, vocal cord surgeries etc) are not covered under the Medicare universal healthcare system. The justification for this appears to not have been that they are 'cosmetic' surgeries (as is usually assumed) but a review by Layton at the initiation of Medicare found that they are complex and should be only performed in specialist publicly funded units¹⁷

In addition, TGD people find accessing routine medical services (unrelated to their gender identity) severely challenging due to their history of discrimination and abuse within the medical system. Many do not access services even when the condition is a matter of life or death.¹⁸

The limited access TGD people have to healthcare amounts to a denial of a basic human right.

4. TGD people need protection from physical and verbal harassment and vilification including by media

On a weekly, sometimes daily basis, mainstream and global media outlets disseminate editorials and public commentary that question TGD people's rights to live happy and healthy lives. A range of issues rotate across a news cycle that debates our right to bodily autonomy (at any age but especially under 18), right to play sport, right to access safe public bathrooms, and right to engage in a variety of binary-gendered socio-cultural spaces including online chat rooms (see recent court case of Giggle vs Tickle¹⁹). While news coverage invariably claims to be objective and balanced, this often manifests in comparison between a large and vulnerable population of TGD people with a small, amplified and vocal minority that have no vested interest in TGD wellbeing. These antagonists are often motivated by fear of intangible spectres of violence or perceived erasure of their own vulnerable categories (e.g cis women). Meanwhile journalists lack understanding of the implications and impact of their words. Anecdotally, the communities TGV works with and for, alongside our staff and volunteers, experience ongoing mental health challenges, and periodic crises that profoundly impact their capacity to engage in society particularly notable following adverse publicity by media as noted above. The Australian media overwhelmingly reports TGD people in an

¹⁵ Transcend and Transgender Victoria's submission to the Senate Community Affairs reference committee inquiry on Women's Sexual and Reproductive Health Submission 195

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/ReproductiveHealthcare/Submissions

¹⁶ Cheung, A.S., Wynne, K., Erasmus, J., Murray, S. and Zajac, J.D., 2019. Position statement on the hormonal management of adult transgender and gender diverse individuals. *Med J Aust*, 211(3), pp.127-133. <https://www.mja.com.au/journal/2019/211/3/position-statement-hormonal-management-adult-transgender-and-gender-diverse>

¹⁷ Riseman, N., 2022. A history of trans health care in Australia: A report for the Australian Professional Association for Trans Health (AusPATH) page 27

¹⁸ Kerr, L., Fisher, C. and Jones, T., 2019. TRANScending discrimination in health & cancer care: A study of trans & gender diverse Australians.

¹⁹ <https://www.theguardian.com/australia-news/2024/apr/09/roxanne-tickle-giggle-for-girls-app-blocked-trans-woman-alleged-discrimination>

unfavourable or negative way (Refer to TGV submission to the Senate inquiry into the Murdoch media²⁰) which can and does fuel abuse, vilification and violence towards them. This negative reporting is in spite of reasonable Press Council of Australia guidelines which are frequently not followed (see TGV submission in reference 20) .

Rainbow Rights Watch in its submission to the Senate inquiry into the Murdoch Media Inquiry Bill²¹ reported that:

“... several hundred unethical articles from News to recruit and justify intimidation, violence, tracked numerous articles published by News Corp Australia mastheads to the organised online hate groups CWcki and KiwiFarms which targets vulnerable transgender individuals for multi-year harassment, defamation, swatting, and isolation campaigns. This link supporting social media hate is particularly damaging to the mental health and emotional and social wellbeing of TGD people and a breach of their human rights. The KiwiFarms community considers it a goal to drive its targets to suicide, and has celebrated such deaths with (a) a counter on the website, and (b) email messages taunting family members of suicide victims. In addition to relentless harassment campaigns, members of the Kiwifarms community have also been successful in using robodialing services to congest LGBTI suicide hotlines such that they become inaccessible to at-risk individuals.” The Rainbow Rights Watch submission speaks powerfully to the real-world consequences of mainstream media attacks on TGD people and to the spillover effects in social media.

1neo-Nazis Victorian Parliament steps



The Fuelling hate report referred to in the introduction details the current situation with respect to vilification, hate speech and verbal abuse that TGD people experience sometimes on a daily basis in the general community. The shocking levels of abuse of the TGD community needs strong positive action by all 3 levels of Australian governments to ensure that this denial of TGD human rights ends.

5. TGD people need protection in policing, justice and corrections

A recent survey of treatment of transgender prisoners in Victoria shows transgender people experience intense sexual and other violence while incarcerated.²² Prisons, like many hospital wards and homeless services, accommodate people in a binary gender classification system that disallows and discriminates against binary trans people and non-binary gender diverse people alike. Calculations of risk posed to a prisoner and/or by a prisoner are often arbitrary, defaulting to archaic notions that correlate violence with anatomy and physiology rather than behaviour and/or socio-economic factors. These calculations impact placement of people being processed into incarceration and frequently result in long periods of inhumane and illegal confinement in solitary detention. This environment is a grotesque violation of

²⁰ TGV submission to Senate inquiry Murdoch media bill. Submission 4 at https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/MurdochMediaBill2023/Submissions

²¹ Submission 22 Rainbow Rights Watch https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/MurdochMediaBill2023/Submissions

²² Sydney morning herald 2022 Trans people experience intense sexual violence in Victorian prisons, research finds September 4, <https://www.smh.com.au/national/trans-people-experience-intense-sexual-violence-in-victorian-prisons-research-finds-20220825-p5bcld.html>

fundamental human rights and, given the punitive intentions of solitary confinement, has no plausible purpose. It is the systemic default for no well-informed policy for housing trans and gender diverse people, most often trans women. It is particularly notable that there is no accommodation or provision for procedural approaches to dealing with TGD people who identify outside of the gender binary in police or correctional situations. As the acceptance of non-binary identities is a legislated fact in Australia, this is a profound denial of those TGD people who are outside the gender binary.

There is a real deficit in the way Australian police forces deal with TGD people and many do not even recognise their existence or have effective policies and procedures for dealing with them²³

Addenda

TGV submissions to Coroner's Court of Victoria for the inquest into the Transgender Suicide Cluster



TGV response into
Coronial Investigation



TGV Second
Submission final 1 Nc

²³ Miles-Johnson, T., 2015. Policing transgender people: Discretionary police power and the ineffectual aspirations of one Australian police initiative. *Sage Open*, 5(2), p.2158244015581189. <https://journals.sagepub.com/doi/10.1177/2158244015581189>

