Submission to the Australian Human Rights Commission: Current and emerging threats to trans and gender diverse human rights

Introduction to CoPQTI

The UNSW Community of Practice for Inclusive Research with Queer and Trans People, and People with variations of sex characteristics (Intersex People) or 'CoPQTI' comprises UNSW academic, professional staff and research students who hold expertise and interests in making research practices more inclusive. The CoPQTI aims to generate and support enhanced capacity in sector-leading inclusive practice with queer and trans people, and people with variations of sex characteristics, through an interdisciplinary research cluster that investigates the considerable impact inclusive research has on future research findings and public policy development. The CoPQTI co-leads undersigned, experts from six different Faculties and Divisions at UNSW, have decades of experience in research on LGBTIQA+ people's health, well-being, and experiences of violence. We are experts in theories and concepts of gender and their mobilisation across time and place. Our team includes cis and trans researchers.

Strong Communities

Transgender and gender diverse people have created resilient communities that have long supported their members, promoted specialist services in housing, health, law, and community, and created extensive mutual aid networks. The organic growth of these services and support—many grassroots and online—play an important role in creating vibrant local and international trans and gender diverse communities. Throughout the last fifty years of campaigning for trans rights, trans and gender diverse communities have faced many challenges requiring creative problem-solving. One of the earliest examples was the creation of Tiresias House in Gadigal (Sydney), later the Gender Centre, the first dedicated housing service for trans women in Australia in 1983. This legacy continues with the community provision of specialist services to assist with legal and social processes around gender affirmation.

The focus of our submission is on threats to the transgender and gender diverse community. But we cannot talk about threats to safety without mentioning the things that keep us safe—strong, cohesive, and well-supported communities—essential to achieving everyone's safety, equity, and freedom. Current threats to transgender and gender diverse people's human rights target these very things: homelessness, unemployment, health and legal inequities, social isolation, and political scapegoating make communities less safe. We need adequate short-, medium-, and long-term investment, resourcing, coordinated support services, public education campaigns, and community empowerment. These areas are as critical to threat prevention as any direct measures.

Current and Future Threats

Our submission highlights five current threats that significantly impact the ability of trans and gender diverse people to live free from discrimination, violence, and stigma. If not corrected, the ability of a very small community to continue to protect itself while facing systemic discrimination, structural disadvantage, and growing political vilification is something no social group should be asked to do.

1. *Data Inequity*

Understanding population demographics and their needs is the foundation of policy, regulation and service provision across government and non-government sectors. The highest quality global evidence indicates that trans and gender diverse people represent a sizable and growing proportion of the general population. However, we do not currently collect adequate or accurate data on trans and gender diverse people in Australian population-level datasets. Consequently, we cannot comprehensively understand their collective employment, housing, health, family, education, geography, or personal safety experiences. The paucity of data on the experiences of trans and gender diverse people in Australia contrasts with the robust data that we have on a national level for cisgender people. Given we know from community research with transgender and gender diverse people that there are significant structural disadvantage and stigma in areas including employment, housing, health, family alienation, experiences of violence, and migration, it is urgent that we resolve data inequity so we can direct services to where they are most needed. As Teddy Cook, Director of Community Health at ACON has put it: 'We deserve the dignity of being known' (Zhou 2021). If we do not urgently collect accurate data on Australian trans and gender diverse populations, people will remain invisible, their needs unmet, and service provision and governments will remain unaccountable for life-threatening gaps.

2. *Health Inequalities*

The field of trans health has expanded rapidly in recent decades, in line with growing recognition that gender affirmation is a legitimate component of the right to health in all people. Not all trans and gender diverse people want to engage with medical forms of gender affirmation, but all will engage with some form of health care in their lifetimes, and all have a right to health needs being addressed through access to safe, reliable, and well-informed health care services. This is not currently the experience of most – potentially any – trans or gender diverse person in Australia.

International standards of care for the health of transgender and gender diverse people were first established in the late 1970s and have undergone continuous review since that time, responding to the evolving and expanding evidence base on the medical and health needs of

this diverse population (WPATH). The Australian Professional Association of Trans Health is a multidisciplinary network that provides expert advice on issues specific to the Australian context, recognising that health and social outcomes for trans and gender diverse people require appropriate expertise and support across *all* parts of our health and social care systems. Despite their work, professionals working in this field face confronting attacks from a vocal minority of anti-trans campaigners who aim to discredit the purpose and practice of gender affirming care, and seed doubt in the popular imagination about the capacity of trans people to know and to articulate their own health care needs. These attacks often focus on discrediting gender affirming responses to the health care needs of trans and gender diverse young people, but there remains a tendency in the criticisms articulated by non-expert voices to question the rights of trans adults. Whether applied to children or adults, these attacks undermine the very basic human right to self-determination in all people.

Despite the consensus among trans health experts in the need for accessible gender affirming services, this system of care is highly fragmented in Australia, and often very costly. Delayed access to care directly contributes to high rates of mental health problems, social isolation and stigmatisation reported by many trans people. In addition, 'cisgenderism' (the ideology that denies or pathologises transgender experiences) contributes to the maintenance of health care systems and cultures in which trans and gender diverse people commonly report experiences of explicit prejudice, discrimination, and harm. Trans people face persistent structural barriers to healthcare, including long wait times for accessing gender affirming services, being denied access to healthcare services altogether, and fear being misgendered, misunderstood, verbally or physically abused when they do seek healthcare. Such barriers can be even worse for people who are also marginalised because of sexism, racism or ableism. Trans people may feel these barriers outweigh potential benefits when accessing healthcare services. Indeed, when people are supported in accessing the care they desire, the satisfaction ratings of gender affirming care decisions are consistently extremely high. The small numbers of people who regret gender affirming surgery are often related to social discrimination. There is an urgent need for health and social care systems to be reformed to ensure that all people who need access to care can do so, including in highly gendered areas such as reproductive health, cancer care, and family violence services. For example, trans and gender diverse people may have unique experiences with cancer compared to cisgender people and encounter unique barriers due to gender affirming hormone use or exclusionary language in clinical trials, especially for cancers affecting reproductive or genital systems.

3. *Legal Inequalities*

Trans and gender diverse Australians do not have equal legal rights compared to each other, or cisgender people across Australia. The uneven legal recognition of gender affirmation across Australian states and international jurisdictions affects everyday identity documentation used in any process involving proof of identity, which renders trans people liable to anti-trans stigma, discrimination, or rejection. Examples can be as ordinary as accessing a gym membership, signing a rental or employment agreement, or picking up children from school. The impact of inaccurate identity documentation spans areas of significant human rights concerns such as healthcare, employment, housing, education, and freedom of movement, as well as their impacts on regulatory processes of insurance, police checks, children's birth documentation, and many others. Identity documentation is but one area where uneven legal provisions significantly affect the ability of trans people to live safely. These processes are further

complicated for trans and gender diverse people with international birth certificates and passports, where there are no standard processes for accurate recognition of trans and gender diverse people's identity. Another other key area is unequal state anti-discrimination provisions, which means that federal and state levels offer protection for some genders but not others. In NSW and WA, non-binary people are not protected under anti-discrimination laws. In NSW, WA, Queensland, South Australia, and areas of the Commonwealth, trans and gender diverse people do not have freedom from discrimination by religious organisations. Under Commonwealth, NSW, Victoria, WA, and SA laws, there are few anti-vilification provisions for trans and gender-diverse people.

4. *Personal and Community Safety*

Trans people in Australia face a far higher lifetime prevalence of experiencing violence, hate speech, and vilification than cisgender populations. The national LGBTIQ survey *Private Lives 3* (2020) shows that nearly two-thirds of non-binary people, more than half of trans men, and 41 per cent of trans women have experienced sexual violence across their lifetime. Non-binary people and trans men indicate experiencing amongst the highest rates of physical, verbal, and sexual violence from an intimate partner across a lifetime compared to cisgender LGBQ people and cisgender populations overall. The same was found for experiences of physical, verbal, and sexual violence by family members. These findings broadly accord with other community-based surveys of trans and gender diverse people's experiences. Findings from the specialist research conducted on transgender people's experiences of hate crimes identified the prevalence of public violence as a threat to trans women of colour and inappropriate police behaviour towards trans women and sex workers as a major contributing factor.

Trans people are widely subjected to hate speech over social media. Internet safety is exacerbated by emerging technologies like generative AI. Large language models may manifest bias towards transgender and gender diverse people – either where mere usage of transgender and gender diverse terms is considered offensive or in the generation of content that falsely represents their communities. Emerging technologies such as deepfakes have the potential to be used by malicious actors to create morphed pictures and videos to mock, shame or out individuals. Since AI and related technologies are inherently designed to produce the 'most likely output' based on internet-based data, they exhibit biases that are prevalent in their data and society.

Despite these known areas, crucial knowledge of the prevalence of violence experienced by trans people is currently hidden by issues we identified under 'Data Inequity'. It is of paramount importance that all population-based surveys of Australians — such as the Personal Safety Survey and all other federally funded health and well-being measures – are revised to include demographic indicators that make transgender and gender diverse people's experiences visible. Similarly, guidelines for responsible AI must explicitly account for potential harms it may cause to trans and gender diverse communities by evaluation metrics and risk mitigation.

5. The impact of transphobia and anti-trans extremism

Anti-trans views and anti-trans extremism are present in many areas of the social and political landscape. Anti-trans social views result in the isolation of trans people from families and communities of origin, breaking cultural ties and in some cases resulting in family violence. Transphobia in adherence to rigid sex and gender roles is destructive: a key factor in youth

homelessness, familial alienation, and social isolation, including the breakdown of relationships with partners, children, parents, siblings, wider families, kinship groups, and communities. Loss of these factors poses significant health risks, including the risk of suicide. The social isolation many trans and gender diverse people experience is the opposite of the strong social cohesion that is needed for people and communities to thrive. Transphobia is an immediate and direct threat to the human rights of trans and gender diverse people, affecting the human right to safe housing, education, financial security, and many factors of health and well-being.

Interpersonal transphobic views are found across the socio-political spectrum. They range from ignorance and fear of transgender people to religious indoctrination or cultural stigma. At their edge is the growing phenomenon of organised anti-trans political extremism. This political extremism exists in several realms: religious extremism pursued by the upper echelons of the Catholic Church and other organised religions globally; far-right extremism pursued primarily in the United States; and anti-trans extremism held by those purported to be pursuing 'sex-based' rights – that is the position that rights are bestowed on persons based on the appearance of their genitals at the time of birth. All three areas often use rights-based language, such as 'parental rights', 'religious freedom', or 'sex-based' rights, to obfuscate extremist positions.

Key to all three areas of anti-trans political extremism is mis- and disinformation circulated through social media, concentrated media campaigns, and faux research groups propagating disinformation about medical interventions. This is standard operating procedure for many US-led conservative groups, existing alongside their disinformation campaigns on issues against abortion, sex education, and teaching scientific concepts such as evolution, climate change, racial justice, and other issues. Anti-trans extremism relating to "sex-based" rights is a form of political extremism pursued by an uneasy coalition of those who claim to represent women's issues and those indoctrinated in far-right ideologies that deny fundamental aspects of women's rights, such as reproductive autonomy. A distinctive feature is that these views have taken hold in the UK mainstream after a decade of media disinformation and bad faith litigation, and which has even had a politically destabilising effect, such as the 2023 blockage by the UK of the Scottish gender affirmation policies (the first time this administrative power had ever been used). Given the institutional, political, economic, social, and cultural ties to the United Kingdom, their influence on trans and gender diverse human rights in Australia remains a significant threat.

6. Recommendations

Our recommendations focus on addressing current threats to trans and gender diverse people's safety and future-proofing our responses to ensure community needs can be met. We recommend the AHRC seeks to:

1. Invest in transgender and gender diverse community-support initiatives;
2. Support data equity in federal and state government demographic collection;
3. Support publicly funded gender affirmation;
4. Support legal recognition of gender affirmation;
5. Strengthen legal protections for trans and gender diverse people;
6. Co-design anti-trans violence prevention strategies, including the impact of AI;
7. Investigate deradicalisation techniques to counter the growth of anti-trans extremism in Australia;

8. Create public campaigns to combat anti-trans disinformation and promote transgender and gender diverse human rights.

These areas are a non-exhaustive list of some of the initiatives needed to ensure trans and gender diverse people's human rights are upheld, and communities are treated with the dignity and respect that all humans deserve.

Yours sincerely,

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