Australian Human Rights Commission Consultation:

Current and emerging threats to TGD human rights

Submission by

Women's Rights Network Australia Incorporated

Women's Rights Network Australia

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Australian Human Rights Commission: national project mapping current and emerging threats to trans and gender diverse human rights

Women's Rights Network Australia Inc (WRNA) welcomes the opportunity to make this submission to the Australian Human Rights Commission (AHRC) on its proposed project to map current and emerging threats to trans and gender diverse (TGD) human rights.

WRNA is a human rights advocacy group with a focus on the rights of children who identify as transgender and gender diverse. Our advocacy includes submissions to the 2023 parliamentary inquiry into a possible human rights act for Australia.

Our focus in this submission is on the impact of misinformation and disinformation on the rights of TGD people (especially children) as well as the risk posed by social media recommender systems. We also offer suggestions to enhance the project's overall clarity and scope.

1. MAPPING MISINFORMATION: THREATS FROM GOVERNMENT SOURCES

WRNA is concerned that misinformation about healthcare for trans and gender diverse people may have devastating consequences for the health and wellbeing of these vulnerable people. We acknowledge the conceptual challenge in defining harmful misinformation, which we discuss further below. Here we refer to it as information that is false or misleading, including through the omission of important facts, and is reasonably likely to cause harm.

We are especially concerned about misinformation and disinformation emanating from government sources, given, as the Human Rights Commission itself notes, the "enhanced legitimacy and authority that many people attach to information received from official government sources." The OECD similarly highlights the risk of incomplete information leading to misinformation especially when presented as definitive without acknowledging inadequate or contested evidence.

HealthDirect.gov.au

Health Direct, a Government Business Enterprise owned and funded by the Australian Department of Health and Aged Care and the majority of states and territories, provides incomplete and misleading information on gender incongruence and gender affirming care.

Under the heading 'how is gender dysphoria treated? 'Health Direct states that people with gender dysphoria "need to get gender-affirming care," which can include "gender-affirming" hormone therapy and surgery. It then directs clients to lists of health clinicians who practise these treatments.

Health Direct's singular focus on the 'gender-affirming care' model for gender dysphoria/incongruence, including hormones and surgery, is misleading in the context of an

ongoing debate about the efficacy and safety of the model, due to its limited and uncertain evidence base. Indeed many European countries have now rejected it in favour of less medically intrusive models. The World Health Organisation has also recognised the evidence base "is limited and variable regarding the longer-term outcomes of gender affirming care for children and adolescents." More recently, the CASS Review has concluded that "for most young people, a medical pathway will not be the best way to manage their gender related distress."

Health Direct makes no reference to any concerns about the model. Nor does it offer any information on **alternative treatment options** to "affirmative care" for gender dysphoria/incongruence, breaching the right of TGD people and their carers to informed consent, and potentially Australian law. Health Direct's silence on alternatives is also at odds with its own acknowledgement that "to give informed consent you need to be given enough information about your options to make decisions about your health and health care."

Health Direct also provides incomplete and misleading information on several specific issues. It states for example that the effects of **puberty blockers** are reversible, despite clinicians who administer these drugs acknowledging their potential impact, increasing with extended use, on bone density and brain maturation. Health Direct also fails to address the psychological risks of puberty suppression - although these risks are widely recognised in the research literature. Incomplete information in this regard is especially harmful when children and their carers are contemplating decisions that may be irreversible and life-altering.

Health Direct offers limited information on the risks of **cross-sex hormones**, omitting important details regarding their impact on fertility and the need for lifelong medical treatment. Its claim that delaying "gender-affirming care" can lead to worsened mental health is also highly contested, with studies suggesting resolution of gender dysphoria without affirmation or medical intervention for many children and adolescents.

Health Direct also provides no advice or resources for **TGD detransitioners,** exposing a significant gap in care for a doubly marginalised group and undermining Health Direct's claim to be providing health advice "for everyone." This omission is particularly concerning because detransition can be a complex process requiring medical care; many detransitioners report receiving inaccurate or insufficient information prior to their initial transitions, many also experience significant abuse, including online, necessitating support and recognition: and finally; acknowledging the reality of detransition is an important element of informing the consent process of those considering medical interventions for gender dysphoria/incongruence.

Health Direct last updated its advice on gender dysphoria/incongruence in June 2022. We trust inclusion in this mapping project will prompt the Health Direct Board to provide more balanced and up-to-date information for trans and gender diverse young people and their families, in turn respecting their rights to access accurate healthcare resources.

2. MAPPING MISINFORMATION: SOCIAL MEDIA RECOMMENDER SYSTEMS

WRNA urges the Commission to investigate and include social media recommender systems in its mapping of threats to the human rights of trans and gender diverse people. These systems harvest personal data to drive social media engagement, exacerbating the spread of misinformation, creating echo chambers that limit access to alternative viewpoints, including in relation to healthcare options. While other vulnerable groups are also adversely impacted by these systems, the consequences for TGD individuals are increasingly salient.

Our guidance to include “recommender systems" among the current and emerging threats to TGD people reflects the growing concern from clinicians and researchers that “social influences" absorbed through social media, including peer-to-peer health advice shared on social media platforms in the absence of well-informed oversight, can play a critical role exacerbating gender dysphoria/incongruence, in seeking inappropriate medical treatments, or in creating a false view of gender identity that may later prove mistaken. While space precludes a fuller exploration here, we cite here the example of social media influencer Dr Sidbh Gallagher (aka Dr Teetus Deletus) who advocates radical surgery for gender dysphoria in minors.

Historically some organisations representing trans and gender diverse people have rejected any role for social influence in the development of trans identities as a “right-wing theory” or “transphobic”. More recently however, a growing number of advocates and clinicians acknowledge this risk, including in light of their personal experiences supporting young trans and gender diverse people. Dr Laura Edwards-Leeper, a former head of the Child and Adolescent Committee for The World Professional Association for Transgender Health (WPATH) and Erica Anderson a past WPATH Board Member and former President of the United States Professional Association for Transgender Health (USPATH) have both warned that social media may drive dysphoria especially in combination with other factors like autism and trauma. As they note, “The messages that teens get from TikTok and other sources may not be very productive for understanding this constellation of issues.”

The recent Cass Review has also noted a concentration of people reporting gender dysphoria/incongruence in Generation Z and younger Millennials relative to rates in other adults - a correlation that underscores the likelihood that social media use may be influencing the development of gender dysphoria/incongruence. Others have noted the experience of detransitioners who report social influences including media impacted their experience of gender during adolescence.

We appreciate the Commission’s role in promoting freedom of expression in Australia, but believe that regulating algorithmic recommender systems will in fact serve to promote this right, including the right to receive information and ideas of all kinds. By including recommender systems in this mapping project, the AHRC will contribute constructively to community understanding of their impact. It should also serve to encourage greater transparency on the part of commercial platform providers and inform ongoing debates about the best way to regulate them.

3. CORRECTING MISINFORMATION: THE AHRC AND THE FAMILY COURT

As knowledge about the complexities of gender dysphoria/incongruence, including its aetiology and treatments, develops WRNA looks to the AHRC to update its own understanding of these issues and correct any advice subsequently shown to be inaccurate. Specifically, the Commission should correct at the earliest opportunity its 2013 intervention to the Federal Circuit and Family Court of Australia (FCFCA) that asserted puberty blocker treatment is reversible, there are no alternative treatments available,and withholding (or significantly delaying) treatment is likely to have significant adverse psychological and physical effects. It and the Department of Family and Community Services (now DSS) should also correct their 2017 advice that medical science in this area is essentially settled. It is imperative that the AHRC support the Court's prerogative to hear medical evidence where evidence is contested.

4. CORRECTING MISINFORMATION: COUNTERING HARMFUL GENDER STEREOTYPING

WRNA notes the AHRC has a legal obligation to address gender stereotyping, and we recommend a comprehensive public education campaign in Australian schools to this end. We also recommend the AHRC develop and include on its website a clear and accessible guide to making a complaint under the *Sex Discrimination Act* when rights have been impacted as a result of gender stereotyping.

We make this recommendation because we've observed that TGD charities (among others) often perpetuate these harmful stereotypes. For example, the ACT-based TGD charity Meridian equates masculine gender expression with outdated stereotypes such as "wearing pants, having short hair, and liking football" – a characterisation which we believe harms all gender-nonconforming children, regardless of their specific gender identity.

We also urge the commission to critically examine its own use of the term 'gender expression' given the potential for this concept to inadvertently reinforce traditional gender stereotypes.

5. MAPPING PROJECT TERMS OF REFERENCE: CLARITY AND SCOPE

WRNA trusts the Commission will define in its public report and recommendations to Government the terms it has stated it will use in this mapping project and to clarify the safeguards it proposes to mitigate the risk that definitional ambiguity could impact freedoms of expression and association enshrined in Australian law.

We note the AHRC's consideration of the complexity surrounding definitional issues in its own recent submission on the Exposure Draft of the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023. We particularly agree with the Commission's concern that, in the absence of robust safeguards for freedoms of speech and association, poorly defined terms such as "harm" can serve to suppress discussion where reasonable people may legitimately have different perspectives and views.

A lack of adequately defined terms and safeguards for free speech will similarly jeopardise the overall credibility of this project and its findings. We recommend the Commission mitigate this risk by clearly and unambiguously affirming that expressing concerns about the health outcomes of medical and surgical interventions to address gender dysphoria/incongruence, or stating the importance of biological sex to women's and LGB rights, do not constitute "anti-trans mobilisation." Other terms that the Commision has said it will use also need careful definition include 'extremism' and 'radicalisation.'

With regard to mapping 'actions, circumstances, events, forces and and 'groups' that endanger TGD human rights, we urge the Commission to set clear and explicit standards for inclusion. These might include prioritising instances of discrimination, harassment, or abuse upheld by independent tribunals, or criteria to identify false and misleading information impacting decision-making (for example in healthcare). In this regard we also caution against undue reliance on anonymous online surveys (archive link), including those conducted for the specific purpose of this mapping project: while these surveys may offer insight into perceived mistreatment within a community, they are inherently susceptible to bias and politically-motivated outcomes.

Clarity in this regard would also help mitigate concerns, recently noted by the AHRC to the Senate, about the "dangers inherent in allowing any one body … to become the sole arbiter of truth." WRNA also trusts the Commission will clarify how it will manage potential and perceived conflicts of interest that may arise from its statutorily mandated dual roles: promoting understanding and acceptance of human rights, while also investigating potential breaches of those rights. This is particularly important in the circumstances that an individual or organisation were to bring a complaint that the mapping project itself infringed their rights. We note similar issues have led to protracted legal proceedings overseas.

WRNA supports the decision of the AHRC to recognise TGD people as a distinct group in contradistinction to the Commission's previous practice of combining them under the umbrella term LGBTQIA+. This distinction should help support communities formed with reference to sexuality (LGB), sexual differences (I) and gender identity (TQ+) to articulate their self-determined needs. We look forward to the AHRC maintaining this nomenclature going forward, noting that those who have previously advocated for it including LGB Alliance Australia have themselves been smeared as hate groups.

WRNA notes the AHRC's own assurances – recently confirmed by Human Rights Commissioner Finlay - that human rights are "non-hierarchical, so no one human right is officially more important than another." Accordingly, we recommend a broader focus for this project in line with Australia's pluralist democratic values and the reality that numerous vulnerable groups, including Aboriginal and Torres Strait Islander Australians, disabled Australians, migrants, refugees, LGB Australians, and women face threats to their human rights and deserve equal consideration and protection. A broader focus would also assist the Commission and others resolve instances where rights may be in conflict.

Recommendations

1. Review and include in the project government health advice that breaches Australian legal requirements regarding informed consent and/or provides contested information as fact.
2. Investigate and include in the project algorithmic social media recommender systems that exacerbate the spread of misinformation.
3. Review and, should the opportunity arise, correct the Commission's previous interventions to the FCFCA on hormonal treatments for gender dysphoria/incongruence.
4. Prioritise efforts to address harmful gender stereotyping, including through a public education campaign and an accessible mechanism for making a complaint where stereotyping breaches human rights.
5. Broaden the focus of the mapping project to include other groups, including Aboriginal and Torres Strait Islander Australians, disabled Australians, migrants, refugees, LGB Australians, and women that also face threats to their human rights.
6. Define key terms the project will use to mitigate the risk that poorly defined terms may restrict the legitimate exercise of free speech and free association.
7. Specifically affirm that expressing concerns about the health outcomes of medical and surgical interventions to address gender dysphoria/incongruence or stating the importance of biological sex to women's rights does not constitute "anti-trans mobilisation"
8. Establish a transparent mechanism to manage potential and perceived conflicts of interest arising from the Commission's proposed role identifying and mapping individuals and organisations deemed to threaten TGD rights and its established role of investigating and resolving complaints, including those that might arise from the mapping project itself.
9. Prioritise the inclusion of instances of discrimination and abuse upheld by independent tribunals to minimise the risk of the AHRC overreaching and claiming the role of arbiter of truth.