Australian Human Rights Commission

Celebrating 40 years

Equal Identities:

A human rights review of the experiences of trans and gender diverse people in Australia

March 2026

humanrights.gov.au

3. Being Seen and Heard (Dignity)

Being seen and being heard are fundamental to a person's dignity. Trans and gender diverse people in Australia still face challenges being seen and counted accurately. Some of the more pronounced barriers are being recognised in their affirmed gender and accessing healthcare. Additionally, research and data collection often render trans and gender diverse people as invisible. All the barriers to being recognised as who they are affect trans and gender diverse people's identity, health and wellbeing.

Recommendation 7:

All government, government-affiliated and government-funded bodies that collect demographic data should ensure data on gender, sexuality and innate variations of sex characteristics (sometimes known as intersex variations) is collected in line with the ABS *Standard for Sex, Gender, Variations of Sex Characteristics and Sexual Orientation Variables* (2020).

This includes:

a. collecting data on gender identity from everybody to ensure that health and support services have the data necessary to meet the needs of trans and gender diverse children and adolescents

b. implementing new data collection protocols in partnership with LGBTIQA+ and trans and gender diverse specific organisations to establish community trust and ensure privacy and sensitivity concerns are understood.

Recommendation 8:

The Australian Government Department of Health, Disability and Ageing should require LGBTIQA+ and trans and gender diverse representation on key advisory groups, committees and rapid reviews. The Department should also establish a specific ongoing LGBTIQA+ Health Advisory Group to:

a. provide advice on matters relating to trans and gender diverse health, and LGBTIQA+ health more broadly

b. provide advice on relevant government initiatives affecting LGBTIQA+ communities, such as the National Suicide Prevention Strategy 2025-2035 and the National Action Plan for the Health and Wellbeing of LGBTIQA+ People 2025–2035

c. advise on LGBTIQA+ health data collection and contribute to the continuous improvement of the Health Data Portal and key national data sets.

Recommendation 9:

Healthcare providers and education and training institutions (i.e. universities, TAFEs) should ensure that all healthcare and healthcare-adjacent workers and students receive education and ongoing professional development on inclusive care for trans and gender diverse people. This includes awareness of how intersecting forms of discrimination can affect trans and gender diverse people's health and access to healthcare services.

Recommendation 10:

Federal, state and territory governments should introduce or amend legislation to ban conversion or suppression practices. This legislation should follow the following principles:

a. design the legislative framework in consultation with survivors of conversion or suppression practices

b. apply the ban on conversion and suppression practices to both religious and secular settings

c. make it unlawful to take someone out of the jurisdiction for conversion or suppression practices

d. allow reporting by third parties

e. carefully define and provide examples of what is and is not a conversion or suppression practice

f. include an education plan which covers:

   i. who is protected by the law

   ii. how to identify conversion or suppression practices

   iii. awareness of harm caused by conversion or suppression practices.

Recommendation 11

Federal, state and territory governments should reduce barriers that prevent trans and gender diverse people from accessing all forms of healthcare, including gender-affirming healthcare. Reducing barriers includes:

a. increasing staff and service resourcing to meet urgent needs on existing waitlists for publicly funded hospitals and clinics

b. running proactive public awareness campaigns that address misinformation and disinformation which target trans and gender diverse people's healthcare

c. funding service access for trans and gender diverse people in remote, rural and regional communities.

Recommendation 12

Federal, state and territory governments should:

a. end pauses on puberty suppressants and other hormone therapies for children and young people

b. ensure that, in line with other areas of adolescent medicine, *Gillick* competence and clinical standards of care are the framework guiding the provision of healthcare to trans and gender diverse children and young people.

Recommendation 13

The Australian Government should repeal Section 43A of the *Sex Discrimination Act 1984* (Cth).

3.1 Data and research

- **There is a significant gap in research and data on trans and gender diverse populations and experiences in Australia. The lack of sufficient data creates challenges for designing policies, developing practices and allocating funding to support trans and gender diverse populations.**

- **The ABS 2020 *Standard for Sex, Gender, Variations of Sex Characteristics and Sexual Orientation Variables* outlines best practice for data collection questions about trans and gender diverse people.**

- **Researchers also need to consider data privacy and ensure that research design accounts for intersecting marginalisations and identities.**

Relevant human rights laws and principles

- There are no specific provisions in international human rights law that refer to inclusion and accurate representation of gender diversity in research and data. However, the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) outlines that countries should monitor progress in areas such as the right to healthcare, education, housing and employment.
- The Australian Government cannot monitor progress on their obligation to ensure appropriate and accessible services for trans and gender diverse people without adequate data collection.
- In 2018, the UN provided States with guidance that aligns with the 2030 Agenda for Sustainable Development in 'A Human Rights-Based Approach to Data'. This publication notes the importance of more systematic data disaggregation.[372]
- **Yogyakarta Principle 25e – The right to participate in public life:** calls for governments to 'Develop and implement affirmative action programmes to promote public and political participation for persons marginalised on the basis of sexual orientation, gender identity, gender expression or sex characteristics'.[373] Governments must have robust data on trans and gender diverse people to identify areas of need and develop such affirmative action programs.

The importance of data collection

The lack of accurate population data on trans and gender diverse people has wide ranging ramifications. Governments and researchers regularly use population data from the Australian Bureau of Statistics (ABS) Census of Population and Housing (the Census) to influence the allocation of resources and service provision. The Census has historically not collected data on sexuality or gender identity. One researcher explains why this is significant:

> **For groups of people that have been misrepresented, marginalized and oppressed by existing systems of power, data can offer a powerful tool in the fightback against inequality and injustice. When LGBTQ people are presented in a table, graph or data visualization, the general population are reminded of their existence, the inequalities they encounter and what remains unknown about their lives and experiences. The worlds of politics and policymaking run on data, which means that LGBTQ rights organizations are required to engage with existing systems of power and ways of working to bring about change.[374]**

Several submissions emphasised that knowledge gaps impact on policy, practices and funding for these populations. The gaps also create a vacuum where misinformation and disinformation may spread.[375] CoPQTI's submission explained the consequences of the lack of data:

> **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.[376]**

As one practical example: a submission noted the need for more reliable data to inform the delivery of better healthcare. The Royal Australian and New Zealand College of Psychiatrists explained: 'More consistent data is required, as well as more research into LGBTIQ+ mental health more broadly, including protective factors, comorbidity, effective interventions, and specific issues faced by high-risk populations.'[377]

The ABS Census

Organisations have previously raised the challenges arising from the lack of data on the trans and gender diverse population. ACON noted in its 2019 'Blueprint for Improving the Health & Wellbeing of the Trans & Gender Diverse Community in NSW': 'the absence of Census questions that accurately capture gender diversity in population-based surveys makes it difficult to conclusively estimate the size of the trans and gender diverse community'.[378] After the 2021 Census, the Commission successfully conciliated a complaint of discrimination brought against the ABS for failing 'to ask meaningful questions to properly count members of the LGBTIQA+ community'.[379]

The 2026 Census will include questions about sexuality and gender identity for people aged 16 and over. The ABS had recommended that data on gender be collected for all persons, having assessed a strong need for data about younger populations.[380]

The ABS Census will not include a question about innate variations of sex characteristics, which means population data will not be available for this community.

In December 2024, the ABS released experimental estimates of LGBTIQ+ populations in Australia (note these do not include the 'A' for asexual). These estimates are based on a pooled dataset of 44,984 respondents from 4 recent health surveys conducted with Australians aged 16 years and over. The estimates were that 4.5% of Australians 16 years and older are LGBTIQ+. When looking at gender identity specifically, the estimate was that 0.9% of the population aged 16 and older is trans or gender diverse.[381] This data is an important step forward, as these experimental estimates are the first of their kind in Australia.

Innate variations of sex characteristics (IVSC)

Also known as intersex variations, people with IVSC are those born with sex characteristics that do not fit with typical medical notions of male or female bodies.

There are more than 40 known IVSC. These may be related to chromosomes, gonads, hormones or genitals. Some IVSC are visible at birth; others may manifest at puberty, while some people may never know that they have IVSC. It is estimated that between 0.3% to 1.7% of the population has IVSC. It is hard to obtain accurate figures because of the historical and ongoing secrecy around IVSC, stigma and misconceptions.[382] The exclusion of questions about IVSC from the Census exacerbates these problems.

Having IVSC or being intersex is not the same as being trans and gender diverse. Just like endosex people (those whose sex characteristics fall in the typical medical notions of male and female bodies), people with IVSC may be cisgender, trans or gender diverse. This all depends on whether the person identifies with their sex recorded at birth.[383]

InterAction for Health and Human Rights provides information about best practice to collect data around people with IVSC.[384]

Data collection best practice

Evidence shows that insensitive data collection approaches frequently exclude trans and gender diverse people.[385] One common problem is to have no options for non-binary genders. Other times questions do not provide space for respondents to write in culturally specific genders (i.e. fa'afafine, hijra, 2Spirit).

The most up-to-date Australian guidelines for researchers and demographers to collect accurate population data are the ABS 2020 *Standard for Sex, Gender, Variations of Sex Characteristics and Sexual Orientation Variables* (the ABS 2020 Standard). The ABS

2020 Standard suggests that researchers use multiple questions to ask a person's gender, sex recorded at birth, sexual orientation and if they have variations of sex characteristics. The recommended sex and gender questions are:

What was [your/Person's name/their] sex recorded at birth?

Please [tick/mark/select] one box.

- ☐ **Male**
- ☐ **Female**
- ☐ **Another term (please specify)**

Gender refers to current gender, which may be different to sex recorded at birth and may be different to what is indicated on legal documents.

Please [tick/mark/select] one box:

- ☐ **Man or male**
- ☐ **Woman or female**
- ☐ **Non-binary**
- ☐ **[I/They] use a different term (please specify)**
- ☐ **Prefer not to answer.**[386]

Stats NZ Tatauranga Aotearoa uses a similar framework to the ABS 2020 Standard. That framework also instils the principle of 'gender by default'. This requires all government agencies to default to:

> **the collection and output of gender data as opposed to sex. Users should have a clearly established information need for collecting and outputting sex data. This approach is in line with self-determination from a human rights perspective (New Zealand Human Rights Commission, 2020) and promotes the respect and inclusion of all people.**[387]

In November 2025, the National Health and Medical Research Council (NHMRC) announced new data collection requirements for its grants program. Beginning in January 2026, all grant applications must indicate how researchers will take into account gender, sex, sexual orientation and variations of sex characteristics, where appropriate, in the proposed research. Furthermore, projects should apply the ABS 2020 Standard to data collection.[388]

Some submissions expressed concern that approaches to research and data collection do not always follow best practice guidelines. They argued that researchers need to do more to ensure sensitivity, and researchers need greater awareness when conducting research with marginalised groups.[389]

Several submissions also highlighted the need for researchers to implement an intersectional lens. This would ensure that data can inform the design and delivery of services to groups such as trans and gender diverse people from culturally and racially marginalised backgrounds, First Peoples, migrant, refugee and asylum seeker backgrounds, people with disability and currently or formerly imprisoned people.[390] One way to avoid homogenising diverse groups and to capture intersectional experiences is to co-design data collection with relevant communities.[391]

Sensitivities when collecting data

The ABS reported in September 2024 that its testing showed 'there was a similar level of understanding, comfort and support for including a gender question as there was for a question on sex'. Furthermore, the ABS reported that 'there was a broad understanding of the distinction between sex and gender'.[392]

Although the ABS found questions on gender and sexual orientation tested well, LGBTIQA+ organisations and researchers caution about complexities when conducting data collection and analysis. For instance, concerns about data privacy, lack of trust or fear of stigma may limit trans and gender diverse people's personal disclosures in research settings.[393] TransHub – an online resource developed by ACON to educate and support trans and gender diverse people – cautions researchers to avoid making assumptions about trans and gender diverse people. Stereotypes and poor research design may limit their inclusion or participation in research.[394]

Researchers also need to be careful when they analyse data. One challenge is how changing understandings and terms around gender identity may influence studies. Rainbow Health Victoria explains: 'Changing and overlapping terminologies also present difficulties in comparing results across studies and over time, or combining figures, in order to estimate population size'.[395]

The challenges around data collection highlight the importance of researchers continually engaging with trans and gender diverse communities. As other sections of this report show, robust data is vital to support trans and gender diverse people across all domains of life.

3.2 Health and wellbeing

- Trans and gender diverse people face significant barriers to accessing healthcare.

- In Australia there is a lack of targeted trans and gender diverse healthcare service provision. This exacerbates poor physical and mental health outcomes because healthcare professionals often do not recognise or understand trans and gender diverse people's needs.

- Trans and gender diverse people access healthcare in a range of contexts. Best practice is a combination of broad affirming healthcare in all contexts and services specific to trans and gender diverse people.

Relevant human rights laws and principles

- **Article 12 of the *International Covenant on Economic, Social and Cultural Rights*:** states that parties to the Covenant must 'recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health'.[396]
- **Article 24 of the *Convention on the Rights of the Child*:** 'States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.'[397]
- **Article 12 of the *Convention on the Rights of the Child*:** 'States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.'[398]
- **Article 25 of the *Convention on the Rights of Persons with Disabilities*:** 'State Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability.'[399]
- **Article 24(2) of the *United Nations Declaration on the Rights of Indigenous Peoples*:** 'Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.'[400]
- **Yogyakarta Principle 17 – The Right to the Highest Attainable Standard of Health:** states that everyone has 'rights to the highest attainable standard of physical and mental health without discrimination on the basis of sexual orientation or gender identity. Sexual and reproductive health is a fundamental aspect of this right.'[401]
- In addition to these provisions, **United Nations Sustainable Development Goal 3** aims for universal healthcare coverage. The goal is to 'Ensure healthy lives and promote well-being for all at all ages'.[402]

Rates of physical and mental ill health

Submissions from many researchers, psychologists, health professionals and professional bodies addressed health indicators for trans and gender diverse people in Australia.

Consistently, submissions drew on research which points to poor physical and mental health outcomes (regularly described as a 'mental health crisis'). Some submissions provided specific data and observations about trans and gender diverse people with intersecting identities (i.e. young people, trans women and Aboriginal and Torres Strait Islander people).

Many submissions noted trans and gender diverse people's higher risk of chronic health conditions. For example, the Trans Health Research Group stated:

> **[I]nternational research indicates that trans and gender diverse people have an elevated risk of many chronic health conditions compared to their cisgender counterparts including chronic obstructive pulmonary disease, hepatitis, HIV, schizophrenia, dependent patterns of substance use, as well as obesity and liver conditions.[403]**

The Sexuality Education Counselling and Consultancy Agency reported:

> **TGDNB people are more likely to experience chronic health conditions including persistent pain, migraines, and chronic fatigue with minimal research conducted to determine cause and impacts (Rich et al., 2020).[404]**

The Trans Health Research Group also highlighted evidence which shows that trans and gender diverse Australians are more impacted by long COVID and experience higher rates of eating disorders than the general population.[405] Other researchers emphasised that the cause of eating disorders for most trans and gender diverse people is dysphoria, as opposed to dysmorphia. In other words, the eating disorders are the consequences of not feeling comfortable in their body because of their gender identity, as opposed to perceived flaws in their physical appearance.[406]

Misinformation, politicisation of trans and gender diverse people's lives, and threats and violence all negatively impact on the health of trans and gender diverse people.[407] Many submissions cited *Private Lives 3* to draw attention to the disproportionately high rates of suicide and mental ill health among trans and gender diverse people in Australia.[408] The LGBTIQA+ peer counselling service Switchboard noted that trans and gender diverse communities experience some of the highest rates of suicide, suicidality and poor mental health in the country.[409] The Trans Health Research Group reinforced this finding:

> **Our national survey of Australian trans adults in 2018 showed that 73% had been diagnosed with depression and 43% had attempted suicide at some point in their lifetime, which is similar to findings in Australian trans youth … Findings from our community survey in 2022, showed that almost one in ten (8%) of trans and gender diverse Australians had attempted suicide in the first two years of the pandemic, with these rates highest in young people (12.8%). The suicide crisis during the COVID-19 pandemic was highlighted by the Victorian Coronial Inquest into trans suicide deaths in 2023.[410]**

Another prominent Australian study referenced in multiple submissions was the 2017 Trans Pathways report into children and young people. Trans Pathways surveyed 859 trans and gender diverse young people (aged 14–25) and 194 parents or guardians. Researchers promoted the survey through social media, university queer departments, LGBTIQA+ support groups, parent support groups, peer-led safe spaces, Australian trans and gender diverse rights organisations, medical and mental health services and radio. Participants self-selected to do the surveys. This was the largest study into the mental health and care pathways for trans and gender diverse young people in Australia. Trans Pathways found:

- around 3 in 4 respondents had experienced depression or anxiety
- 4 in 5 trans young people had engaged in self-harm
- 48% (or almost half) of trans young people had ever attempted suicide

- trans young people were approximately 20 times more likely than the general youth population to attempt suicide.[411]

Researchers reinforce the point that being trans or gender diverse is not a mental illness. Rather, high rates of mental ill health are often the result of societal stigma and discrimination. For instance, a study in the *Nature Human Behaviour* journal explored the association between anti-transgender laws and the mental health of trans and gender diverse children and young people. The study found that in American states that had enacted anti-transgender laws, there was an increase in suicide attempts ranging from a 7% increase to a 72% increase over the past year among trans and gender diverse young people aged 13–17.[412]

Intersectional health and wellbeing outcomes

Walkern Katatdjin (Rainbow Knowledge) is a national research project exploring the mental health and wellbeing of Aboriginal and Torres Strait Islander LGBTQA+ young people. Walkern Katatdjin's submission cited research about Aboriginal and Torres Strait Islander trans and gender diverse young people which showed that:

> **81.3% of trans participants scored in the 'very high' distress range on the Kessler-5 measure of recent psychological distress. Levels of psychological distress were significantly higher among trans versus cis participants … up to 1 in 5 Aboriginal and Torres Strait Islander TGD young people have had a recent suicide attempt, with over 1 in 2 having a lifetime suicide attempt. Compared to cis participants, trans participants were nearly twice as likely to report a suicide attempt in their lifetime [and] were 1.8 times more likely to report suicide ideation in the last 12 months.[413]**

Other submissions noted the severe impacts of sexual violence on the health of trans and gender diverse victim-survivors. One submission cited a study where '45% (n = 25) of trans and gender diverse people in this study had attempted suicide as a direct result

of experiencing sexual violence, while 43% (n = 24) engaged in self-harm'.[414]

ANROWS referred to research on the poor health outcomes resulting from trans women's high exposure to sexual violence.[415] ANROWS noted that the poor outcomes 'were intensified for trans people from culturally and linguistically diverse backgrounds and trans women of colour'.[416]

A few submissions referenced research into health outcomes for trans and gender diverse people with disability. Sexuality Education Counselling and Consultancy Agency cited research which 'highlights the compounding effects of multiple forms of stigma and discrimination on the health outcomes of TGDNB people with disability'.[417] The National Ethnic Disability Alliance emphasised the compounding poor health outcomes for 'CaLD [culturally and linguistically diverse] people with disability, including those from migrant and refugee backgrounds'.[418]

Finally, submissions reported poorer health outcomes for trans and gender diverse people outside the metropole and in tenuous living situations. These include people in regional or rural areas,[419] as well as homeless trans and gender diverse people. The Family Access Network also noted a connection between drug and alcohol misuse and homelessness among trans and gender diverse populations.[420] ABS data and other research support these findings.[421]

Health professional codes of conduct and non-discrimination

Trans and gender diverse people are entitled to the same quality of healthcare as all other people in Australia. They are also entitled to be treated with respect, free from discrimination. Two clauses in the Medical Board of Australia's code of conduct are particularly relevant to these rights. They state that good medical practice involves:

> **3.2.8 informing your patient when your personal opinion (in the context of practice) does not align with the profession's generally held views**
>
> **3.2.14 ensuring your personal views do not adversely affect the care of your patient or the referrals you make.[422]**

The Australian Medical Association (AMA) also has a code of ethics which affirms the importance of non-discrimination. In clause 4.6.2 it states that doctors must 'Provide care impartially and without discrimination on the basis of age, disease or disability, creed, religion, ethnic origin, gender, nationality, political affiliation, race, sexual orientation, criminal history, social standing or any other similar criteria'.[423] The AMA released a Position Statement in 2023 which affirmed that doctors have an 'ethical and professional duty to provide evidence-based care impartially and without discrimination, including on the basis of gender identity'.[424]

The SDA protections for gender identity include when accessing healthcare. If a trans or gender diverse person receives unfair treatment while accessing a professional service, such as a doctor, they can make a complaint to the Commission.

Discrimination in healthcare

Despite the legal protections and codes of conduct, trans and gender diverse individuals frequently identified being excluded or overlooked from healthcare provision. Submissions identified a lack of training for medical professionals as underpinning a lack of cultural competence.[425] Walkern Katatdjin's research found that the intersection of being trans or gender diverse, Aboriginal and/or Torres Strait Islander and young created even greater barriers to access healthcare:

> **28.1% of [trans and gender diverse] participants had been made to feel like they mattered less because they were Aboriginal and/or Torres Strait Islander and LGBTQA+, in a mainstream health service, while 35.6% had heard rude or hurtful comments about their Aboriginal and/or Torres Strait Islander and LGBTQA+ identity while accessing mainstream health services … Just under half (40.7%) said that they had heard rude or hurtful comments about their Aboriginal and/or Torres Strait Islander identity when accessing LGBTQA+ specific health services.[426]**

Many submissions described experiences of discrimination or hostility from healthcare professionals.[427] Two indicative examples were:

> **'I liked my GP until he saw my kid dressed as a girl. He became very judgy and said "but he is a boy and has a penis, what are you going to do about that?" I sat in my car and cried.'[428]**

> **'Many of the trans and gender diverse people that we [Illawarra Shoalhaven Gender Alliance] see have experienced terrible discrimination and in some cases abuse in health services, including denial of care, attempts to change gender identity, inappropriate genital examinations and untrained and culturally incompetent practitioners.'[429]**

Numerous submissions gave specific examples of non-inclusive or discriminatory practices in healthcare settings. These included:

- misgendering[430]
- deadnaming[431]
- breaches of privacy[432]
- the burden of educating health professionals about trans and gender diverse people[433]
- gendered service provision[434] – especially when services are restricted 'to a particular gender, or enforce a gender binary'[435]
- inappropriate language[436]
- inappropriate questions (i.e. questions about being trans which are unrelated to the health matter)[437]
- funding and costs, especially for psychiatrists and psychologists[438]
- under-resourcing of services specifically targeting trans and gender diverse people[439]
- systemic discrimination,[440] including challenges with medical records[441]
- 'conversion' or suppression practices (discussed further in section 3.3).

Other barriers to accessing healthcare

In some situations, it is prejudice that drives health professionals' discriminatory behaviour. In other instances, it is health professionals' unfamiliarity and lack of awareness about trans and gender diverse people and their experiences.[442] Regardless of the reason, non-inclusive or discriminatory practices can adversely affect trans and gender diverse people's wellbeing in healthcare settings.

Many submissions noted that several healthcare providers continue to pathologise

trans and gender diverse people. For example, Your Community Health mentioned the 'mental health sector, where gender diversity can be conflated with mental illness'.[443]

Intersecting marginalisations magnify the barriers arising from these non-inclusive or discriminatory practices. One trans individual cited in research by Equality Australia said:

> **The links between queerness, gender diversity and neurodiversity, as well as all sorts of related physical and mental health issues, and the fact that they aren't linked or coordinated by GPs [general practitioners] or service providers is very frustrating for this ADHD person.[444]**

The Refugee Advice and Casework Service also noted that trans and gender diverse asylum seekers often do not have access to Medicare. This is a major barrier facing a group who 'disproportionately experience physical and mental ill-health due to their overt experiences of persecution and trauma'.[445]

The Justice and Equity Centre pointed to prisons as another site where there is poor access to affirming healthcare for trans and gender diverse people.[446] As noted in section 2.3, the Department of Home Affairs has agreed with a recommendation of the Commission to develop policy and procedural guidance relating to health, 'accommodation, welfare, security, and management of transgender persons in immigration detention'.[447]

The National Ethnic Disability Alliance suggested that the siloed nature of services, as well as the lack of services targeting trans and gender diverse people, could be addressed through 'cross-sectoral service mapping with an intersectional focus … to support people from diverse backgrounds to safely navigate complex systems comprised of both mainstream and targeted services'.[448]

Consequences of healthcare barriers

Barriers and exclusionary services may lead trans and gender diverse people to avoid accessing healthcare. Indeed, submissions noted that trans and gender diverse people who experience mistreatment are more likely to exercise caution or avoid accessing healthcare services.[449] Submissions also noted that histories of discrimination and abuse within the medical system still influence how some trans and gender diverse people perceive the system today.[450]

A few submissions noted how trans and gender diverse people may be avoiding accessing sexual health services. For instance, Women's Health in the North cited a study by the Kirby Institute which found that '60.1% of [trans and gender diverse] participants had not participated in testing for sexually transmissible infections (STIs) in the previous year'.[451] Scarlet Alliance also noted that some trans and gender diverse sex workers may not be accessing sexual healthcare. They indicated that some providers were demanding names as reflected on identity documents, which often were the sex workers' deadnames.[452]

Several submissions mentioned the rise in misinformation and disinformation and how this was impacting on them as health professionals, their clients or research participants. One mental health provider explained: 'The current climate of negative media and social media commentary and emboldened transphobia in Australia threatens to make it even harder for transgender and gender diverse people to access essential services including health care, mental health support.'[453]

Collectively, the evidence suggests a series of interrelated challenges for trans and gender diverse people's access to general healthcare in Australia. Barriers to inclusive service provision lead many trans and gender diverse people either to avoid seeking healthcare or to negative experiences within the system. Avoidance and negative experiences then fuel poorer physical and mental health outcomes. These outcomes, in turn, reinforce the *need* for greater access. Layered on top of this – and addressed in the next section – is the need for gender-affirming healthcare.

3.3 Gender-affirming healthcare

- The Australian Professional Association for Trans Health (AusPATH) publishes the 'Australian Standards of Care for Informed Consent Gender-Affirming Hormone Therapy'. The Standards of Care draw on international guidelines, clinical experience, research into best practice and lived and living experience of trans and gender diverse people.

- Gender-affirming healthcare is a broad term describing the support and healthcare that helps trans and gender diverse people live as their true selves. The best contemporary evidence concludes that gender-affirming healthcare is safe, effective and benefits trans and gender diverse people, including children and young people.

- Barriers to accessing gender-affirming healthcare include high costs, long wait times, limited availability and a lack of training and cultural knowledge from healthcare professionals.

- Experts note that psychotherapy which starts from the premise that being trans or gender diverse is wrong or undesirable has similarities with conversion practices. Several state and territory laws ban conversion practices because they breach people's human rights and do not reflect best medical practice.

Relevant human rights laws and principles

- The human rights laws and principles outlined at the beginning of section 3.2 on Health and wellbeing also apply to gender-affirming healthcare. **Articles 12 and 24 of the *Convention on the Rights of the Child*** recognise children's right to the highest standard of health and to express their views in all matters affecting them. These rights include the right of the child to participate in decision-making around their own healthcare.[454]
- **Article 17 of the *International Covenant on Civil and Political Rights***: states that 'No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.'[455] This right to privacy applies in healthcare.
- **Yogyakarta Principle 17 – The Right to the Highest Attainable Standard of Health:** notes that States must:
  - **17e.** Ensure that all persons are informed and empowered to make their own decisions regarding medical treatment and care, on the basis of genuinely informed consent, without discrimination on the basis of sexual orientation or gender identity
  - **17f.** Ensure that all sexual and reproductive health, education, prevention, care and treatment programmes and services respect the diversity of sexual orientations and gender identities, and are equally available to all without discrimination
  - **17g.** Facilitate access by those seeking body modifications related to gender reassignment to competent, non-discriminatory treatment, care and support.[456]

What is gender-affirming healthcare?

Gender-affirming healthcare is a broad term for the support and healthcare that helps trans and gender diverse people live as their true selves. It covers medical, psychological, surgical and social support tailored to each person's needs. The World Health Organization succinctly explains: 'Gender-affirmative health care can include any single or combination of a number of social, psychological, behavioural or medical (including hormonal treatment or surgery) interventions designed to support and affirm an individual's gender identity'.[457]

Gender-affirming healthcare is not a one-size-fits-all model. Rather, it is customised to each person to make them feel comfortable living their authentic selves, without feelings of dysphoria.[458]

Gender-affirming health care is not unique to trans and gender diverse people. Similar principles apply widely in medicine, including procedures such as gynaecomastia surgery (breast reduction) in cisgender men, breast reconstruction in cisgender women after mastectomy and testicular prostheses following orchiectomy (removal of one or both testicles). All of these procedures aim to align physical characteristics with an individual's gendered sense of self.

There is a lot of incorrect information in the media and online about gender-affirming healthcare. This false information often comes from individuals or organisations opposed to trans and gender diverse rights. These groups and individuals often target healthcare – especially for children and young people. Other times the incorrect information about gender-affirming healthcare comes from pre-conceived ideas about what it means to be trans or gender diverse, with a heavy focus on the body and surgeries.

Because every trans or gender diverse person's gender affirmation preferences and needs are different, gender-affirming healthcare may take many forms. Some examples of what gender-affirming healthcare may include are:

- mental health support for coping with gender dysphoria or minority stress
- social support to change names, pronouns and legal documents
- gender affirming hormone therapy (GAHT)
- gender affirming surgeries (also known as gender affirmation surgeries)
  - mastectomy ('top surgery')
  - breast augmentation
  - vaginoplasty ('bottom surgery')
  - phalloplasty
  - facial feminisation surgery
- speech pathology or vocal training to help someone feel more comfortable with their voice
- electrolysis or other hair removal
- puberty suppressing medication for trans and gender diverse children, also known as puberty blockers (discussed below).

In Australia, trans and gender diverse adults may consent to gender-affirming healthcare. For some procedures, such as gender affirming surgery, adults may need to provide a mental health assessment, a physical medical assessment and informed consent. Depending on the surgery, the person may need mental health assessments from one or more mental health professionals.

Informed consent

There has been a shift in the medical profession, especially since the 2000s, towards an informed consent, gender-affirming healthcare model.

AusPATH – the peak body representing Australian health professionals who work with trans and gender diverse clients – publishes the 'Australian Standards of Care for Informed Consent Gender-Affirming Hormone Therapy'. These standards of care explain gender-affirming healthcare in the Australian context.[459] They draw on international standards – including the World Professional Association for Transgender Health (WPATH) Standards of Care – along with other Australian standards and position statements.[460] Both the Australian and WPATH standards of care outline the informed consent model, also known as 'ethical affirmation' or 'affirmation enablement'.

The informed consent model is a framework that supports general practitioners, endocrinologists and other medical specialists when starting or managing GAHT. This model recognises that each individual understands their own needs and experiences. They can make informed choices when professionals provide adequate information in comprehensible language about treatment options.

Informed consent means discussing an individual's goals for gender affirmation, understanding their medical history and sharing all relevant information about the benefits and risks of GAHT. Health professionals and the trans or gender diverse person can make decisions based on how GAHT may interact with any other healthcare needs.

'The Australian Informed Consent Standards of Care for Gender Affirming Hormone Therapy' also recommends doctors seek information about protective factors. These may be support networks, housing and connections to culture and community.[461] The informed consent model can also involve referrals to other services, such as speech pathology and vocal coaching or affirming mental health support.

Prior to the introduction of the informed consent model, trans and gender diverse people were expected to have assessments by mental health professionals to access GAHT. Usually psychiatrists performed these assessments and then referred trans and gender diverse people to endocrinologists, who prescribed the gender affirming hormones. The previous approach did not acknowledge non-binary genders and focused heavily on binary pathways and surgery. Trans and gender diverse people, as well as researchers, have noted ways this approach was dehumanising.[462] They also challenged the idea that all trans and gender diverse people needed or wanted surgeries.

There is no legal or regulatory requirement that medical professionals must provide gender-affirming healthcare. Individual health professionals across a range of disciplines may opt in or out of providing gender-affirming healthcare. Those who opt out do so for a range of reasons, including due to personal or religious objections, being uncomfortable working in this space, and preferring to refer trans and gender diverse clients to specialists (as was done under the previous model). Other health professionals are not adequately aware of, or educated about, gender-affirming healthcare.[463]

Some of Australia's leading medical bodies have accepted the principles underpinning gender-affirming healthcare, including:

- the Royal Australian College of General Practitioners[464]
- the Royal Australasian College of Physicians[465]
- the Australian Medical Association[466]
- the Australian Women's Health Alliance[467]
- Endocrine Society of Australia[468]
- the Australian Professional Association for Trans Health (AusPATH).[469]

Benefits of gender-affirming healthcare

Submissions from several health and wellbeing providers emphasised the benefits of gender-affirming healthcare. For example, ACON drew on 'case studies from our client services team that highlight the importance of gender affirmative medical interventions and the impact that barriers to accessing these interventions, have on individuals' mental and physical health'.[470]

Members of Illawarra Shoalhaven Gender Alliance Clinical Network advised that they had seen 'firsthand the health benefits and positive life trajectories associated with having access to local and timely gender affirming healthcare, and experiencing broader health care in an environment of non-discrimination, respect and safety'.[471]

Several submissions raised concern that the evidence base for gender-affirming hormone therapies – especially for children – was not sufficient and therefore risks causing harm.[472]

Evidence reviews, guidelines and standards of care produced in Australia and internationally have found that gender-affirming healthcare has favourable outcomes for trans and gender diverse people, including children and young people. Clinicians and those who developed standards of care balance known risks of treatment with evidenced benefits of treatment and the risks of withholding treatment. These evidence reviews note limitations in research, particularly regarding study design, the lack of long-term follow-up and cohort tracking as part of longitudinal studies.[473]

How Evidence Quality is Assessed

The term 'low quality' has a specific, technical meaning when used in the assessment of quality of evidence in scientific research. The NHMRC considers the GRADE system (Grading of Recommendations Assessment, Development and Evaluation) to be best practice when assessing evidence.[474] The GRADE system assesses study design and categorises evidence on a scale from 'very low quality' to 'high quality'. Observational studies are typically coded as 'low quality', yet medical interventions commonly come from findings from observational studies. Systematic reviews suggest that only a minority of healthcare interventions are supported by 'high quality' evidence.[475] The GRADE handbook provides examples of how strong recommendations can be based on low quality evidence.[476]

A submission from The Melbourne Children's Campus – a coalition comprised of the Royal Children's Hospital, the Murdoch Children's Research Institute and the University of Melbourne's Department of Paediatrics – also noted that 'Standards of research that are not applied in other areas of healthcare are applied to gender affirming care, such as calls for unfeasible study designs and restricting care access to research participants only.'[477]

Ongoing research and evaluation are vital to improving the quality of treatments and outcomes in all areas of medical care.

Developing standards of care for children and young people

There is substantial incorrect information circulating in the media, online, among politicians and in public discourse about what gender-affirming healthcare is for children and young people. Much of the false information draws on false stereotypes used to attack gay and lesbian people since the 1970s. This false information does not recognise that trans and gender diverse children and young people have agency and capacity to participate in decision-making about themselves. Critics of gender-affirming healthcare apply different standards to this area of medicine than what is accepted practice around treatment and informed consent in any other area of child and adolescent health.

In 2017, the Royal Children's Hospital Gender Service published the 'Australian standards of care and treatment guidelines for transgender and gender diverse children and adolescents'. Doctors developed these standards after a lengthy process which drew on existing standards, treatment guidelines, clinical and observational studies and lived and living experience of trans and gender diverse children, young people and their parents. A multidisciplinary team from adolescent psychiatry, paediatric endocrinology, paediatrics and allied health worked together to develop the standards.[478]

The 'Australian standards of care for trans and gender diverse children and adolescents' are considered world leading. An editorial in the international medical journal *The Lancet* commented:

> **Children and adolescents with gender dysphoria often experience stigma, bullying, and abuse, resulting in high rates of mental illness, including depression, anxiety, and self-harm. But with supportive, gender-affirming management – as laid out by the Australian guidelines – these consequences can be minimised.[479]**

AusPATH and specialists who work with trans and gender diverse children and young people consider these Australian standards of care to be best practice. On 31 January 2025, the Health Minister announced that the NHMRC would lead a review into the Australian standards of care and to develop national guidelines. Interim advice is expected in mid-2026.[480]

Gender-affirming healthcare for children and young people

The need for standards of care for trans and gender diverse children and young people reflects their complex social and healthcare ecosystems. This is a summary of the main principles of gender-affirming healthcare, as outlined in more detail in the Australian standards of care.

Some aspects of social affirmation are the same as for adults, for example changing names and use of pronouns. However, children and young people navigate social affirmations in different contexts. For instance, children must consider school environments, and laws around changing names or gender on documents are different for children under the age of 18.

Medical affirmation is also different for trans and gender diverse children. Changes to the body during puberty can cause significant distress for trans and gender diverse people. Puberty suppressing medication – commonly referred to as puberty blockers – can temporarily halt puberty for children. This can have significant mental health benefits, as well as prevent the need for further medical or surgical procedures in adulthood. For example, puberty suppressants stop people recorded male at birth from growing facial and body hair and their voices dropping. People recorded female at birth can avoid developing breast tissue.

Like with adults, not all trans and gender diverse children choose to medically affirm their gender. For those who do, health professionals classify medical affirmation for trans children and adolescents the following way:

- puberty suppressants; administered when blood tests show onset of Tanner stage 2 or 3 of puberty[481]
- gender-affirming hormone treatment (GAHT; estrogen or testosterone).

From 2004 until 2013, only the Family Court of Australia could authorise children's access to both puberty suppression and GAHT. In

Re Jamie (2013) the Full Court of the Family Court held that court authorisation was no longer required for doctors to prescribe a puberty suppressant to children with gender dysphoria.[482] In *Re Kelvin* (2017) the Full Court held that children and young people who had attained *Gillick* competence (discussed below) could give valid consent to GAHT without needing approval from the Family Court. This could happen when there was no dispute between the child, their parents and their medical practitioners about the treatment, and health professionals carried out the treatment in accordance with best practice guidelines.[483] Approval from the Federal Circuit and Family Court *would* be required if there was disagreement between the young person, their clinicians and their caregivers about the relevant treatment.[484]

The Full Court in *Re Kelvin* noted that there had been significant advances in medical knowledge and in the development of standards of care for the treatment of gender dysphoria.[485] It also noted that the risks of GAHT and the risks of withholding treatment were better understood, so the role of judicial approval could be reassessed. As summarised in the leading judgment: 'the risks involved and the consequences which arise out of the treatment [for gender dysphoria] being at least in some respects irreversible, can no longer be said to outweigh the therapeutic benefits of the treatment'.[486]

Puberty suppression via GnRHa (gonadotropin-releasing hormone agonist)

This is medication that pauses the development of primary and secondary sex characteristics. Puberty suppression allows children to take time and make decisions about their bodies. They may decide to start GAHT, or they may decide to cease puberty suppression. If they cease puberty suppression, they will go through natural puberty development.

Doctors have prescribed puberty suppressants since the 1980s to treat precocious puberty in children. Since the 1990s doctors overseas have prescribed puberty suppressants to trans and gender diverse children and young people. Since 2004, doctors in Australia have been prescribing puberty suppressants to trans and gender diverse children and young people. There are now decades of evidence which show that puberty suppressants are effective and acceptably safe and that adolescents tolerate side effects, such as impacts on bone mineral density, well.[487] Puberty suppressants have led to clear improvements to psychosocial health.[488]

Gender-Affirming Hormone Therapy (GAHT)

Doctors may prescribe GAHT (i.e. testosterone therapy or estrogen and/or progesterone therapy, sometimes alongside an androgen suppressor). Similar to puberty suppressants, doctors have been prescribing GAHT to young people for decades.[489]

Some effects of GAHT are reversible, some are irreversible and for some the reversibility is unknown. Substantial evidence suggests positive outcomes for trans and gender diverse people who access GAHT. However, evidence reviews note that expert opinion is largely based on clinical experience rather than controlled studies.[490]

The Australian standards of care provide useful tables which outline the effects and reversibility GAHT. Part of the informed consent process involves discussing these effects and reversibility before commencing any treatment. For instance, the Australian standards of care recommend fertility counselling before anyone commences GAHT.[491] Emerging research suggests that long-term the effects of GAHT on fertility may also be reversible.[492]

Another kind of medical affirmation is gender affirming surgery. Gender affirming surgery for trans women – meaning breast augmentation and vaginoplasty or bottom surgery – is not available for people in Australia under the age of 18. Under legal precedent set by *Re Matthew* (2018), top surgery is available via the private health system for people experiencing severe dysphoria about their chest.

The case *Re Imogen* (2020) confirmed that administering puberty suppressing medication and GAHT requires the consent of doctors, children or adolescents *and* all parents or legal guardians. This means that if one or both parents or guardians does not consent, then the Federal Circuit and Family Court of Australia needs to authorise treatment.

One submission raised concerns about the delays and expenses imposed by going through a court process. This is particularly challenging when there is an absent parent or a parent with family violence intervention orders.[493]

A submission from 4 family law specialists claimed that individuals critical of gender-affirming healthcare have authored and spread papers and hosted seminars attempting to influence family lawyers, practitioners and the judiciary. The submission claimed:

> **[W]e have observed an ongoing and deliberate attempt within the legal profession (specifically family law) to continue to undermine the current gender affirming care model, including the specific work of the expert practitioners at the RCH [Royal Children's Hospital] via the legal system.[494]**

There is consensus among health practitioners who work with trans and gender diverse children and young people that access to puberty suppressants and GAHT is beneficial for their mental health and wellbeing. An evidence summary produced by headspace concluded:

> **Overall, the peer-reviewed literature suggests that GnRHa [puberty suppressing medication] is correlated with improved general functioning and peer relations, and reduced depressive symptoms, suicidal ideation, and behavioural and emotional problems in trans and gender diverse young people.[495]**

Reinforcing this point, a recent study published in the *Journal of Pediatrics* found that GAHT led to a 68% reduction in suicidality among trans and gender diverse young people.[496]

Consent for children and young people under the age of 18

Several submissions identified the legal requirement for parental consent as a barrier to the wellbeing and rights of children.[497] The Family Access Network explained: 'Accessing gender affirming care can be difficult for young people requiring consent from parents who are not supportive[,] which can result in key development intervention opportunities being missed'.[498]

Advocates for gender-affirming healthcare for children and young people support a framework around informed consent and *Gillick* competence. This would leave decisions about treatment solely with health professionals and children who demonstrate *Gillick* competence.

Gillick competence

Gillick competence refers to a case-by-case measure to evaluate the capacity of young people under the age of 18 to consent to medical care. The expression comes from a 1986 legal case. A child is *Gillick* competent if they have 'sufficient understanding and intelligence to enable [them] to fully understand what is proposed'.[499] This standard will vary depending on the nature of the procedure, with a greater level of understanding required for more significant procedures. It is the responsibility of healthcare providers to determine if a child or young person has the capacity to understand the reasons and consequences of treatment. If they have this capacity, then they are deemed *Gillick* competent and can provide informed consent.[500]

Gillick competence is a principle under the common law. In South Australia there is specific legislation dealing with the ability of young people to consent to medical treatment. It provides that young people 16 years of age and over can consent to medical treatment as validly and effectively as an adult.[501] Under age 16 they can consent without the need for parental approval if 2 medical practitioners agree that the treatment is in the young person's best interests and that the young person is *Gillick* competent (i.e. able to understand the nature, consequences and risks of the treatment).[502]

Many submissions expressed concern about the possible damage to children and young people's health when they are prevented from consenting to gender-affirming healthcare.[503] In contrast, one submission expressed concern that children and young people under age 18 are not competent to consent.[504]

Some criticisms of gender-affirming healthcare for children and young people cite a perceived conflict between the rights of parents and the rights of children. Some argued that health practitioners were overriding the rights of parents. The

Convention on the Rights of the Child recognises that parents have the primary responsibility for caring for their child.[505] This includes the responsibility to provide appropriate direction and guidance to their child in the exercise by the child of their own rights.[506] This interconnected set of rights and responsibilities recognises the agency of children and young people as rights bearers and not merely objects of protection.[507]

Q+ Law, an LGBTIQA+ legal service, stated that confusion often arises from the inconsistent information circulating about gender-affirming healthcare:

> **conflicting literature on widely endorsed medical processes has been used by other parents to oppose treatment. There has been further confusion since the publication of the Westmead study,[508] and the campaigning of the use of 'watchful waiting', which is not supported by clinicians and medical practitioners who treat children with gender dysphoria and has further contributed to the delay in the medical treatment of TGD minors.[509]**

A growing body of research demonstrates that many trans and gender diverse children and young people are well positioned to understand and consent to treatment over their own bodies. One study noted:

> **Through qualitative content analysis of interviews with trans youth, parents, and healthcare providers, we found that trans youth demonstrated the understandings and abilities characteristic of the capacity to consent to hormone therapy and that they did consent to hormone therapy with positive outcomes … granting trans youth with decisional capacity both the right and the legal authority to consent to hormone therapy via the informed consent model of care is ethically justified.[510]**

Barriers to accessing gender-affirming healthcare

Several submissions discussed barriers to accessing gender-affirming healthcare. The more common barriers included:

- lack of availability of gender-affirming healthcare service providers
- long wait times
- lack of GPs who had awareness and understanding of trans and gender diverse people
- limitations on Medicare coverage and cost implications
- limitations on private insurance coverage.

Submissions noted that these issues are compounded for people from intersecting marginalised backgrounds. For example, this includes people seeking asylum or refugees, imprisoned people,[511] people with disability, those in regional or rural areas, homeless people and those with low socio-economic status.[512]

Delays or inability to access gender-affirming healthcare can have adverse consequences for trans and gender diverse people's physical and mental health. For instance, research shows that when health professionals refuse or delay the provision of gender-affirming healthcare, it can instil a sense of hopelessness in trans and gender diverse people.[513] One key consequence of these barriers is that some people are self-administering hormones from unregulated markets.[514]

Costs

Several submissions identified cost as a key barrier to accessing gender-affirming healthcare.[515] Puberty suppressants for trans and gender diverse children are not on the Pharmaceutical Benefits Scheme (PBS).[516] Private health insurance excludes many other gender-affirming treatments,[517] as gender affirming surgeries are not assigned MBS items on the Medicare Benefits Schedule. Gender affirming surgery can cost tens of thousands of dollars. The Trans Health Research Group stated:

> **despite the strong evidence that gender affirming surgeries can be lifesaving for trans and gender diverse people, in Australia, gender-affirming surgery is classified as elective/cosmetic surgery by governmental guidelines. Therefore, gender affirming surgery is not provided in the public health sector, and Medicare only offers small rebates. Even with private health insurance, gender affirming surgeries result in prohibitive out-of-pocket expenses. Consequently, and as shown by our research, there are very high rates of unmet need for gender affirming surgery in the Australian trans and gender diverse community.**[518]

Other researchers noted that the cost of care itself is 'exacerbated by loss of income during post-surgery recovery periods, and the absence of gender-affirming leave'.[519] Some trans and gender diverse people draw on their superannuation to fund surgeries.[520] This can contribute to poverty, as one individual explained in their submission:

> **These expenses can mean the difference between being able to affirm one's gender identity or not – but are so high that they can effectively push some trans people into poverty. While for others, they are completely unaffordable. For example, in March 2018, the ABC reported that: 'There's a massive price tag on being transgender in Australia. For some, the cost of surgery and treatment for gender dysphoria will crack $100,000'.**[521]

Wider research and guidelines support these findings. For example, the Trans Pathways study found that among its surveyed 14 to 25-year-old participants, 15.5% wanted access to gender-affirming surgery 'but were unable to access what they want because of the cost'.[522]

Anti-pathologisation

For many years, doctors and the public considered trans and gender diverse children and adults to be ill ('pathologised'). Since the 1980s, internationally recognised manuals like the *Diagnostic and Statistical Manual of Mental Disorders* (DSM) and *International Classification of Diseases* (ICD) classified trans and gender people as having psychiatric conditions like 'transsexualism', 'gender identity disorder' or 'gender dysphoria'.

Trans and gender diverse people are not by definition ill; they are part of the rich diversity of human nature. The UN has highlighted that pathologisation is one of the root causes of human rights violations faced by trans and gender diverse people. In June 2019, the World Health Organization formally declassified trans identity as a mental illness in the ICD.[523]

Wait times and availability

Many submissions mentioned lengthy wait times to access gender-affirming healthcare.[524] The *Private Lives 3* study reinforced these submissions. It found:

> **less than half of trans women (49.5%; n = 142) and trans men (49.5%; n = 135), and one quarter (25.8%; n = 154) of non-binary participants, agreed or strongly agreed with the statement, 'I have been easily able to access gender affirming care when I have needed to'.**[525]

One study into the effects of waiting to access gender-affirming healthcare in Tasmania found that participants believed clinicians were wasting their time. They described waiting as straining their mental health and creating a great sense of uncertainty about their lives and futures.[526]

Several submissions noted that children who have begun puberty face significant waits to access gender-affirming healthcare.[527] Submissions noted that the Royal Children's Hospital in Melbourne – Australia's largest

provider of gender-affirming healthcare for children and young people – had a 2-year waitlist for new clients.[528] Waiting times for trans and gender diverse children and adolescents can have adverse effects on their physical and mental health. For instance, researchers presented evidence that lengthy waits are associated with an increase in eating disorders.[529]

Submissions noted that private practitioners are sometimes reluctant to provide gender-affirming healthcare,[530] especially for children and young people. This may, in part, be due to the legal implications for gender-affirming health care. One mental health service provider explained: 'a major medical insurer, [is] informing GPs that they will no longer be insured if they provide gender-affirming treatment to young people under 18 years of age'.[531]

Intersectional marginalisations

Some groups of people face intersecting barriers to accessing healthcare. One submission reported that imprisoned trans and gender diverse people face multiple barriers to gender-affirming healthcare, including administrative issues with referrals, limited providers and wait times of up to 2 years.[532] People seeking asylum and migrants often do not have access to Medicare. People whose first language is not English may face challenges finding healthcare providers who speak their language. There are also challenges finding interpreters who are both safe for trans and gender diverse people and are familiar with the relevant terminology.[533]

Submissions also noted challenges facing some trans and gender diverse people to access the NDIS. ColourFull Abilities, an LGBTIQA+ specific disability support service, stated: 'There are disparities in healthcare provision for trans and gender diverse participants within the NDIS, including limited access to gender-affirming care and medical treatments, surgeries, therapies, mental health support, and specialist services'.[534]

Lack of training

Several submissions identified a lack of training about gender-affirming healthcare as a barrier to access.[535] Often trans and gender diverse people have the burden of educating health professionals about trans and gender diverse people and gender-affirming healthcare.[536] The Curtin University Gender Research Network summarised: 'Limited awareness and understanding of gender diversity among healthcare professionals often leads to misgendering, discrimination and inadequate care for TGD patients (Poteat et al., 2013).'[537]

This situation is heightened for trans and gender diverse people who cannot access specialist centres or providers, and those who rely more heavily on generalist GPs. Limited access to gender-affirming specialists is part of a broader challenge around healthcare access in regional areas. The Illawarra Shoalhaven Gender Alliance explained:

> **In regional areas, general practitioners are the mainstay of health services, and if well trained can provide access to care, particularly through hub and spoke models to larger, centrally located multidisciplinary services as needed. This points to the need for a rapid investment not just in services but in curricula in health professional undergraduate and postgraduate training to upskill practitioners, particularly in medicine and psychology but also in allied health areas.[538]**

As the Trans Justice Project noted, one risk of inadequate training about trans and gender diverse healthcare is that it can create a vacuum where misinformation can flourish.[539]

Concerns about gender-affirming healthcare for children and adolescents

Submissions from some psychiatrists, psychologists, parent groups and private individuals expressed concerns about puberty suppressing medication and gender-affirming healthcare for young people under the age of 18.[540] The Affiliation of Australian Women's Action Alliances (AAWAA) described puberty suppressants and GAHT as 'treatments that rely on a limited evidence base [and that they] are by nature experimental and engage heightened human rights responsibilities'.[541]

There are several critical human rights considerations that relate to any discussion or form of treatment relating to gender-affirming healthcare for those aged under 18 years. These are:

- the best interests of the child should be a primary consideration (Article 3 of the *Convention on the Rights of the Child* [CRC])
- all children have the right to preserve their identity (Article 8 of the CRC)
- all children have the right to express their views freely in matters that affect them, including decisions that affect their health, and to have those views given due weight in a manner consistent with the evolving capacities of the child (Article 12 of the CRC)
- all children have the right to freedom of thought, conscience and religion (Article 14 of the CRC)
- all children have the right to the highest attainable standard of health and health care, including access to services, safe treatment, and a supportive environment (Article 24 of the CRC and Article 12 of *International Covenant on Economic, Social and Cultural Rights* [ICESCR])
- all children have the right to life (Article 6 of the *International Covenant on Civil and Political Rights* [ICCPR])
- all children have the right to be free from discrimination (Article 26 of the ICCPR).

Australian reviews have noted that the evidence base for the use of puberty suppressant medication and GAHT to treat young trans and gender diverse people is of 'satisfactory or low quality'. The reviews also indicate that the number of studies is growing each year and that findings are consistent.[542] As discussed earlier in this section, the term 'low quality' has specific meaning in the context of scientific evidence. It does not mean that that evidence classified as 'low quality' should be disqualified from consideration when developing guidelines or standards of care.[543]

A review of all American Academy of Paediatrics guidelines found that 90% of clinical interventions in child health are supported by low to moderate certainty evidence rather than high-quality randomised trials.[544] Ethical and practical constraints often limit paediatric randomised trials.[545] Contemporary evidence frameworks such as GRADE explicitly recognise that strong clinical recommendations in paediatrics may appropriately rest on consistent observational evidence, combined with clinical expertise and careful risk–benefit assessment.[546]

Some submissions discussed the implications of gender-affirming healthcare for infertility and sexual functioning.[547] They argued that the 'gender affirmation model', puberty suppression and hormones harm children and young people's bodies and wellbeing.[548]

The Australian Standards of Care and the WPATH standards of care require doctors to provide information on the risks and benefits of gender-affirming healthcare. As noted above, this includes discussing impacts on fertility with the young trans or gender diverse person, as well as their families and caregivers. Both standards of care recommend providing information about options and access for fertility preservation.[549] This is supplemented by existing protocols and standards for children and adolescents who undergo other treatments which may impact on fertility, such as treatments for cancer.

Some submissions which expressed concerns about gender-affirming healthcare for children and young people referenced the Cass Review undertaken in the United Kingdom.[550] These submissions suggested that advocates of the 'gender affirmation model' have social goals to foster diversity and undermine tradition.[551] They described gender affirmation as the 'promotion of gender identity ideology'.[552] A submission from a psychiatrist noted:

> **The Affirmation Model also attracts some health professionals who are not driven to provide evidence-based care but are instead driven by their own broader societal goals: to move away from biological relationships and biological reality, and to make society more diverse and less traditional.[553]**

The Cass Review

In 2020, the National Health Service (NHS) England commissioned the *Independent Review of Gender Identity Services for Children and Young People* – commonly known as the Cass Review.[554] The Cass Review final report, published in 2024, recommended against gender-affirming healthcare for trans children and young people. Instead, the Cass Review advocated greater focus on psychosocial support, psychotherapy and 'watchful waiting' until age 18. These alternatives to gender-affirming healthcare aim to unpack why a child or young person identifies as trans or gender diverse.[555] Based on the Cass Review, UK and Aotearoa New Zealand Health Ministers banned the general use of puberty suppressants for trans children and young people. In the UK they will only be available as part of NHS clinical trials.[556]

Since its publication, numerous doctors and health bodies that work in trans healthcare have published peer-reviewed articles criticising the Cass Review's methodology and findings, including in the *Medical Journal of Australia*.[557] Some of the most important criticisms are:

- The Cass Review identified and evaluated studies using methodologies and tools that were rated at high risk of bias.[558]
- There was significant emphasis on the lack of 'high quality' evidence, such as randomised control trials. However, bioethicists note that it would be unethical to deny treatment like puberty suppressants and GAHT to trans and gender diverse children and young people.[559]
- The Cass Review did not accept any lived and living experience of trans people and their families as evidence.
- The Cass Review team were not experts or practitioners in trans healthcare.

Some submissions to the Commission expressed concern that gender affirmation reinforces gender stereotypes. The submission from Genspect – an international alliance of parents and professional groups opposed to medicalised approaches to gender diversity – mentioned that 'the educational resources used by paediatric gender clinics and trans advocacy organisations … reinforce regressive sex stereotypes as part of an education program about "gender identity"'.[560] The Women's Rights Network Australia (WRNA) similarly criticised a trans and gender diverse charity which '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.'[561] Women's Forum Australia suggested:

> **the rise in gender dysphoria in young women and girls needs to be considered in light of the unique pressures they face in the areas of sexual violence, objectification in porn, entertainment and advertising, and the more general body image issues resulting from phenomena like social media, eating disorders, unhealthy interpersonal relationships, gender stereotypes, or other cultural expectations, which can cause them to hate their bodies and indeed being female.[562]**

Submissions critical of gender-affirming healthcare referenced some theories or concepts such as Rapid Onset Gender Dysphoria (ROGD).[563] Another common expression used by critics of gender-affirming healthcare is 'social contagion'. This refers to 'the seemingly spontaneous process by which information, such as attitudes, emotions, or behaviours, are spread throughout a group from one member to others'.[564] Concepts like 'Rapid Onset Gender Dysphoria' and 'social contagion' suggest that trans and gender diversity are the result of exposure to trans and gender diverse content on social media.[565]

Some submissions directly challenged these concepts. The Trans Justice Project described:

> **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 issu[ed] 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).[566]**

Peer-reviewed research published by the *Society for Research in Child Development* has also found that trans and gender diverse children's sense of their own gender was as consistent as their cisgender peers.[567]

State and territory pauses on gender-affirming healthcare for children and adolescents

In January 2025, the Queensland Minister for Health and Ambulance Services announced a pause on the Queensland Children's Gender Service prescribing puberty suppressants and GAHT to new patients (those already on medication would be permitted to continue). The Minister justified the decision based on 'contested evidence surrounding the benefits of Stage 1 [puberty suppressants] and Stage 2 [GAHT] hormone therapy for children and adolescents with gender dysphoria'.[568]

This pause came about despite the findings of a review of the Queensland Children's Gender Service published in July 2024 – 6 months earlier. That review concluded:

> **The informed consent process and the information contained within the consent forms for the commencement of puberty blockers and gender affirming hormones is comprehensive and considers the capacity of the child or adolescent and their family to provide informed consent. The risks and implications of commencing medical interventions for gender dysphoria are explained well. The process of making decisions about medical intervention is thoughtful, considered and evidence based.[569]**

Some Queensland parents of trans and gender diverse young people have reported their children experiencing significant distress since the implementation of the pause.[570] This echoes research conducted in the UK following the introduction of their ban on puberty suppressing medication.[571]

In October 2025, a court ruled that the Minister's directive was unlawful because he had not engaged in adequate consultation.[572] The Minister immediately issued a new directive pausing the prescription of puberty suppressing medication and hormone therapies for the treatment of gender dysphoria.

When the Minister announced the pause in January 2025, he also commissioned an independent review (the Vine Review) into the prescription of puberty suppressing medication and GAHT in Queensland. The Vine Review noted that their evidence reviews found 'some evidence of benefit', and that there was 'not good evidence' that either treatment caused harm in the short or medium term and little evidence of harm in the long term. It did not make recommendations but presented options around pausing or retaining the availability of treatment with puberty suppressants and GAHT. The Vine Review noted that continuing a pause on treatments in the public health system was the option with the most risks.[573] Nonetheless, on 19 December 2025, the Minister announced that the pause on prescribing puberty suppressing medication for trans and gender diverse children would continue until the completion of clinical trials in the UK. This is not expected until 2031.

On 21 December 2025, the Northern Territory Health Minister announced a pause on public health services prescribing puberty suppressing medication and GAHT to trans and gender diverse children. Medical associations and advocates for gender-affirming healthcare continue to raise concerns that these pauses will cause significant harm. In a statement, Royal Australian and New Zealand College of Psychiatrists President, Dr Astha Tomar, said that 'governments have a responsibility to meaningfully engage with the evidence … and to ensure that policy settings do not outpace or distort the clinical realities they are intended to address'.[574]

Detransition and Reidentification

Three submissions expressed concern about 'detransition'.[575] Detransition refers to when people reidentify with their sex recorded at birth after they have had medical or surgical interventions. The submissions used blogs and newspaper articles as sources to assert that there are 'growing ranks' of 'detransitioners'. Women's Forum Australia explained in their submission:

> **detransition stories are also similar: unresolved ongoing mental issues now compounded by medical and surgical damage to their bodies (including infertility, vaginal atrophy, loss of breasts and inability to breastfeed, loss of sexual function, osteoporosis, and more), feelings of bitterness towards the therapists who failed to safeguard their welfare, and experiences of rejection from the 'trans community' they formerly called home. Collectively, these personal testimonies offer a devastating challenge to the 'affirmation only' approach to gender transition.[576]**

Research shows that people may reidentify with their sex recorded at birth for a range of reasons and may reidentify permanently or temporarily. In one US survey of nearly 28,000 trans and gender diverse people, 8% reported some kind of reidentification. Of that group, 82.5% did so because of external factors like pressure from family and societal stigma.[577]

In Australia and overseas, empirical evidence demonstrates low rates of surgical regret and reidentification.[578] A study from WA's statewide gender diversity service for children and adolescents analysed all patient records between 2014–2020. It found that:

> **Patients who reidentified with their birth-registered sex comprised 5.3% (29 of 548; 95% CI, 3.6% –7.5%) of all referral closures. Except for two patients, reidentification occurred before or during early stages of assessment (93.1%; 95% CI, 77.2% – 99.2%). Two patients who reidentified with their birth-registered sex did so following initiation of puberty suppression or gender-affirming hormone treatment (1.0% of 196 patients who initiated any gender-affirming medical treatment; 95% CI, 0.1% – 3.6%).[579]**

The WA study found that reidentification is low and mainly occurs during the assessment process. This study is an example of best practice which distinguishes between desistance and detransition. Combining the rates of people who detransition with people who desist from gender affirmation can produce misleading results.

Desistance versus detransition

Desistance generally refers to when a person reidentifies with their sex recorded at birth before proceeding with medical interventions. This is distinct from detransitioning, when someone reidentifies after having undergone hormone treatment or gender affirmation surgery. The gender-affirming healthcare model works with clients to understand their gender identity and make informed decisions – which may include desistance.

An editorial in the *International Journal of Transgender Health* cautioned against how some researchers (and those who cited them) were producing misleading data by conflating rates of desistance with detransitioning. The editorial stated:

> **For clarity, researchers should distinguish between treatment discontinuation and changes in gender identity. They should also separately report on regret associated with treatment and the reasons for this regret, to properly contextualize data on the medical and social trajectories of trans young people.[580]**

Challenging False Information

As noted in section 2.2, the rise of misinformation and disinformation negatively influences how people feel about trans and gender diverse people. This has been especially acute around gender-affirming healthcare. The Royal Children's Hospital submission noted: 'misinformation and disinformation targeting TGD children is increasing in Australia, exposing trans youth to material that pathologizes their existence,

promotes trans hate and discrimination, and erodes confidence in trans healthcare'.[581]

Several submissions identified how health professionals' ideological bias and personal views may impact on trans and gender diverse people's right to health.[582] They were concerned about how some health practitioners were spreading false information about gender-affirming healthcare – especially for children – as part of wider campaigns against trans rights.

For instance, the Trans Justice Project described how 'Campaigns of medical disinformation aim to deny necessary medical intervention to TGD people and promote hesitancy among parents of children seeking gender-affirming care'.[583] The Kids Research Institute Australia, in reference to these campaigns, said that 'attempts to radicalise parents online jeopardise trans young people's access to appropriate gender-affirming care, and broader psychological support'.[584]

Submissions suggested that threats and calls to ban gender-affirming healthcare further spread false information and cause distress to trans and gender diverse people.[585] For instance, Your Community Health reported: 'the very real threat of future legislative changes has resulted in a rise in anxiety and psychological distress within the trans community. Access to hormones and gender-affirming care saves lives. When this is taken away, there are devastating consequences.'[586]

Conversion and suppression practices

A significant barrier to gender-affirming healthcare is the promotion and deployment of conversion practices. Conversion practices, also known as Sexual Orientation and Gender Identity Change Efforts (SOGICE), are commonly understood as 'a set of practices that aim to change or alter an individual's sexual orientation or gender identity'.[587] Such practices are 'based on the false belief that such core aspects of a person's identity are pathological or undesirable or can be changed.'[588] One Australian study found that around 4% of LGBTIQA+ Australians aged 14–21 years experienced conversion practices.[589]

The goal of these practices may be identity suppression (avoiding or concealing behaviour that is not heterosexual or cisgender) or identity change (becoming heterosexual or cisgender).[590] Researchers note that 'beliefs that sexuality and gender can be suppressed or changed can occur in a range of settings and can manifest in many ways'.[591]

Health clinicians, ethicists and social scientists have widely condemned conversion practices.[592] A group of independent medical experts observed that conversion practices are 'ineffective, inherently repressive, and [are] likely to cause individuals significant or severe physical and mental pain and suffering with long-term harmful effects'.[593] The Kids Research Institute Australia noted:

> **available evidence does indicate that conversion efforts for sexual orientation and gender identity are both associated with an increased risk of depression and suicidal ideation. People who have undergone such 'therapies' have reported serious and long-term harms including shame, self-hatred, social isolation, anxiety, depression, post-traumatic stress disorder, and suicidal ideation. At least one group of clinicians advocating both non-affirmation and conversion practices has been listed as a hate group by the [US-based] Southern Poverty Law Center.[594]**

Despite evidence that conversion practices cause significant harm, they are still 'practiced in every region of the world by health professionals, religious practitioners, and community or family members'.[595] In Australia, the group SOGICE Survivors produced the 'SOGICE Survivor Statement'. It calls on all governments to ban conversion practices, implement training to mental healthcare providers and to set up redress schemes for survivors of conversion practices.[596]

Two submissions reported personal experiences of medical practitioners who performed conversion and suppression practices.[597] These practices still happen, even though they are illegal in several states and territories.

The ACT, NSW, Queensland, South Australia and Victoria all have legislation which bans conversion or suppression practices in certain contexts.[598] The legislative frameworks are

not the same. Some of the key areas where state and territory conversion or suppression practice bans differ are:

- the terminology and definition of conversion or suppression practices
- who can lodge a complaint about conversion or suppression practices
- statute of limitations
- settings where the legislation applies (e.g. religious and secular settings, just healthcare settings)
- whether legislation provides examples of what is or is not a conversion practice
- if it is unlawful to take someone out of the state or territory to perform conversion or suppression practices.

In 2024, the ACT Government tabled a statutory review of the *Sexuality and Gender Identity Conversion Practices Act 2020* (ACT). The report identified awareness and need for education on legislation and conversion or suppression practices as the key theme raised by stakeholders.[599]

When the Tasmanian Government introduced a draft bill to ban conversion practices in 2023, LGBTIQA+ activists heavily criticised it. They argued it contained 'too many loopholes [that] will not prevent the conversion practices from occurring'.[600] That bill never passed, and conversion practices are not expressly prohibited in Tasmania.[601] They are also not prohibited in WA or NT.

A joint submission from the national LGBTIQA+ legal association Pride in Law, Victorian Women Lawyers and Liberty Victoria stated that both exposure to conversion practices and inconsistent legal protections pose a threat to trans and gender diverse people's rights.[602] Other submissions also made this point.[603]

One submission raised concerns that legislation banning conversion and suppression practices was wrongfully conflating sexual orientation with gender identity. The submission stated:

> **Gender identity is synonymous with gender dysphoria, a serious mental health condition where a person believes their body is incongruent with their biological sex, and which is often in part the result of other mental health issues and trauma. Seeking to assist a person to not be gender dysphoric should therefore not be considered a 'conversion practice'.**[604]

This interpretation of gender identity is at odds with the WHO, which noted that the redefinition of 'gender dysphoria' to 'gender incongruence' in *ICD-11* 'reflects current knowledge that trans-related and gender diverse identities are not conditions of mental ill-health, and that classifying them as such can cause enormous stigma'.[605]

In 2021 the Australian Psychological Society issued the position statement 'Use of psychological practices that attempt to change or suppress a person's sexual orientation or gender'. It states that 'approaches to mental health practice variously referred to as "reparative", "conversion" or "ex-gay" "therapy" are based on the assumption that being lesbian, gay, bisexual, transgender or queer (LGBTQ+) is indicative of psychological dysfunction, and that this can be "cured".'[606] The Australian Psychological Society's characterisation of conversion practices is important when considering non-affirming approaches to healthcare.

Alternatives to gender-affirming healthcare

Some submissions suggested alternative models to gender-affirming health care.[607] These included 'extended psychotherapy' or 'gender exploratory therapy'.

Some submissions suggested that being trans or gender diverse was the result of mental ill health, rather than the cause of mental health challenges.[608] One submission from a psychologist stated: 'The decision to ignore the mental health problems is based on the unproven theory that these problems are the result of their stated gender dysphoria, not the cause of it.'[609]

Advocates for gender-affirming healthcare and trans and gender diverse rights have challenged some of these 'alternatives' as misleading. A trans academic stated that mental health professionals who oppose gender-affirming healthcare:

> **employ misleading euphemisms like 'gender exploration' and 'watchful waiting' to disguise their harmful gender conversion practices, and who conduct methodologically flawed and ethically fraught clinical studies on vulnerable trans youth, while citing each other along with a growing body of trans-hostile misinformation, propaganda, and ideology to support their harmful practices.**[610]

The prevailing evidence base opposes these alternative approaches, as noted in an evidence summary from headspace:

> **The current review did not find any empirical research of alternative approaches to gender-affirming care that yielded positive mental health or wellbeing outcomes, despite the broad search strategy encompassing all approaches to gender-related distress in young people.**[611]

Research has shown that psychotherapy practices that start from a premise that being trans or gender diverse is wrong, unnatural, or that people who are trans or gender diverse can change, suppress or overcome their identity, have similarities with conversion practices.[612]

A trans academic who has conducted extensive research into 'gender exploratory therapy' included several points about the relationship between opponents of trans and gender diverse rights, their opposition to gender-affirming healthcare and the relationship to conversion practices. For instance, their submission questioned the wording of the NSW Conversion Practices Ban Bill 2024. They argued that the bill would exempt registered health practitioners who perform what are essentially conversion practices. They also noted that 'professional status' may legitimise 'a number of highly vocal trans-hostile mental health practitioners in Australia and abroad [who] have increasingly created confusion and fear about gender-affirmative health care'.[613]

3.4 Legal recognition of gender

- **Trans and gender diverse people face numerous difficulties around legal recognition of their gender. These challenges affect matters including name changes, government documents, health services, homeless and violence crisis support services, parentage and employment checks and clearances.**

- **The best practice model for legal recognition gives individuals the autonomy to self-identify their name and gender. In Australia, the Victorian and Tasmanian self-identification approaches to gender on birth certificates are a good model. Those jurisdictions allow individuals to nominate their own gender from a range of categories.**

Relevant human rights laws and principles

- The ***Universal Declaration of Human Rights*** (Article 6) and ***International Covenant on Civil and Political Rights*** (Article 16) recognise that 'Everyone shall have the right to recognition everywhere as a person before the law'.[614]
- **Yogyakarta Principle 3 – The Right to recognition before the law:**
  - No one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilisation or hormonal therapy, as a requirement for legal recognition of their gender identity. No status, such as marriage or parenthood, may be invoked as such to prevent the legal recognition of a person's gender identity. No one shall be subjected to pressure to conceal, suppress or deny their sexual orientation or gender identity.[615]

Gender identity and legal documentation

In Australia, identity documentation comes under a complex and overlapping web of state and territory laws. Some of the documents or areas that recognise gender include passports, birth certificates, marriage and parentage or parental rights. The 2 most prominent points that trans and gender diverse people have advocated for in relation to legal documents are:

- the right to change gender or names without having medical or surgical interventions
- the recognition of non-binary genders.

Progress on both points has been uneven across federal, state and territory jurisdictions. On non-binary recognition, the 2014 High Court case *New South Wales Registrar of Births, Deaths and Marriage v Norrie* confirmed that the NSW Registry of Births, Deaths and Marriages could register a person's sex in a way that was not limited to the binary of man or woman.[616]

At a federal level, from 1984 trans and gender diverse people could change the sex marker on their passports if they had gender affirming surgery. In 2011 the Foreign Minister introduced new guidelines allowing people to change the gender on their passports without having gender affirming surgery. These guidelines also allowed people to nominate the non-binary gender marker 'X' on their passports.[617]

In July 2013, in response to recommendations of the Commission,[618] the Attorney-General's Department published the 'Australian Government Guidelines on the Recognition of Sex and Gender'. These guidelines are similar to the rules on passports. There is no longer a requirement to have gender affirming surgery and/or hormone therapy to change someone's gender on any federal government record.[619]

The legal requirements around changing sex or gender markers differ across states and territories. In many jurisdictions, there may be requirements around length of residency or citizenship. Beginning in the ACT in 2014, state and territory governments amended legislation around changing sex or gender on birth certificates.[7]

Jurisdiction	Removed requirement for gender affirming surgery	Introduced non-binary sex or gender option(s)
ACT	2014	2014
NSW	2024	2014[8]
NT	2018	2018
Queensland	2023	2023
SA	2016	2016
Tasmania	2019	2019
Victoria	2019	2019
Western Australia	2011/2024[9]	2024

Several submissions to this report came before NSW and WA amended their legislation.[620] Those submissions highlighted the problematic medical and surgical requirements those states previously imposed for trans and gender diverse people.

Although states and territories no longer require gender affirming surgery, the jurisdictions have taken different approaches to birth certificate changes. South Australia, the Northern Territory and Western Australia require evidence that the trans or gender diverse person has undergone 'appropriate clinical treatment'. Trans and gender diverse advocates find this requirement to be problematic because it still pathologises them and falls short of self-identification.

Advocates point to the Victoria and Tasmania models as best practice for self-identification. In Victoria, a person who is 18 years of age or older may apply to the registrar to alter the record of their sex and nominate a different sex descriptor.[621] Victoria provides the individual with a broad range of available categories, or they can nominate their own.[622]

7 Note the years in this table are when legislation passed. Usually there was an implementation delay of between 6–12 months.

8 After *NSW Registrar of Births, Deaths and Marriages v Norrie*, residents of NSW could change their sex marker to 'non specific'. However, they still needed to have gender affirming surgery to make this or any other change.

9 The High Court ruled in 2011 that under the *Gender Reassignment Act 2000* (WA), a person only needed a medical intervention (e.g. GAHT) to change their gender marker, not gender affirming surgery. See *AB v Western Australia and AH v Western Australia* [2011] HCA 42. In 2024 the law changed to remove the requirement of medical interventions.

In Tasmania, a person who is 16 years of age or older may apply to have their gender registered on their birth certificate (in addition to their sex).[623] The gender recorded may be male, female or a non-binary description, or no gender marker at all.[624]

Those critical of trans and gender diverse rights have pushed to reverse laws around self-identification on birth certificates. At the time of publication, this has not happened in any jurisdiction.

Ongoing barriers to self-identification and recognition

Despite the progress on changing sex or gender on birth certificates and other government documents, several submissions described trans and gender diverse people facing challenges having their gender recognised. They also described legal change processes as inaccessible.

Many submissions also described barriers trans and gender diverse people face having their affirmed gender or names recognised in private and other non-government settings. Submissions noted these challenges in contexts such as health services, homelessness and violence crisis support services, as well as employment-related processes such as employment checks and clearances.[625] According to community organisation Parents for Trans Youth Equity, parents seeking to affirm their child's name and gender on legal documentation face an even more complex process. This can have implications for travelling, getting driver's licences, school enrolments and accessing healthcare.[626]

In the healthcare context, Your Community Health noted: 'It is commonly reported that some health and wellbeing workers refuse to use a client's pronouns and chosen name unless formally updated on a birth certificate or Medicare card'.[627] Similarly, Scarlet Alliance outlined the way that 'many sexual health services now require patients to disclose their name as it appears on identity documents (which may be a non-preferred or "dead" name for many TGD people) and/or require patients to disclose their Medicare information'.[628] As noted in section 3.2, this sometimes deters trans and gender diverse sex workers from undertaking sexual health checks.

According to Victoria Legal Aid, discrepancies between a person's legal name, sex marker and gender create barriers for trans and gender diverse people from getting parole and accessing housing, social security, education and work. Victoria Legal Aid also identified that a significant challenge in tertiary education is that 'birth names/dead names are used on university systems and are difficult to change and for one individual they were unable to graduate because the qualification was in her birth name/dead name and the university would not change it'.[629]

Submissions highlighted how this situation is particularly challenging for individuals who are in the process of transitioning. They often have not yet legally changed their name and gender on legal documentation. They are often forced to sign documents or receive services with their deadname.[630]

The Family Access Network noted that various organisations and businesses may continue to use a person's deadname. They gave an example of when seeking access to rental housing, the 'name on application may not match a person's gender presentation'.[631] Vixen effectively summarised:

> **[Trans and gender diverse] people often face inflexible systems which do not allow people to record chosen names, force trans and gender diverse people to be recorded by their legal sex at birth, and often will not be able to change their gender markers in systems.[632]**

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ANROWS highlighted an example when one trans woman had an interaction with a department of housing. The individual provided identification with her preferred name and letters from medical practitioners noting her gender transition. Still, the department insisted that she sign with her 'male birth name'.[633]

Even with amendments to laws around legal recognition and identification documents, trans and gender diverse people have few protections against deadnaming.[634] Organisations are not currently required to provide people the option of using a non-binary gender when information about them is recorded in the organisation's records.

When the SDA was amended in 2013 to provide protection against discrimination for trans and gender diverse people, a new exemption was introduced. This exemption recognised that many organisations had record keeping systems that only allowed people to be identified as male or female. Section 43 A(2) of the SDA says: 'Nothing in Division 1 or 2 makes it unlawful to make or keep records in a way that does not provide for a person to be identified as being neither male nor female.' This exemption was only ever intended to be temporary. The Explanatory Memorandum for the Bill noted:

> **The intention of these exemptions is to ensure that the new protections for gender identity and intersex status do not require a person or organisation to provide an alternative to male and female in any data collection or personal record. It will ensure that there is no requirement to amend forms as part of the new protections for gender identity and intersex status, which may be an onerous exercise for organisations.**
>
> **The need for these exemptions may be reconsidered in the future, if organisations (both government and private sector) have revised their data collection and record keeping practices to allow for a person to identify as neither male nor female. For example, the Government is currently developing guidelines on gender recognition for departments and agencies. Changes as a result of these guidelines may mean those departments and agencies would no longer require this exemption.[635]**

As noted above, those government guidelines were published in July 2013. It is now more than a decade since the amendments to the SDA commenced. In the Commission's view, it is time to repeal this exemption in the SDA.

Single-sex spaces

A few submissions voiced concern about potential abuses of self-identification laws and asserted that self-identification could lead to opportunistic offending by bad actors.[636] Other submissions highlighted the continuing limits and denial of rights around legal recognition and the impact this has on trans and gender diverse people.[637]

Trans and gender diverse people may experience discrimination accessing and enjoying single-sex spaces.

A few submissions viewed self-identification laws and trans people accessing single-sex spaces as a threat to women's rights.[638] For example, one submission stated:

> **I have always felt it was appropriate to refer to transwomen as women and to use feminine pronouns. Then I learnt about self ID and how easy it is now for a man to claim to be a woman, and, in the absence of any medical or surgical treatment, demand access to female spaces such as change rooms, associations, work roles and so on.[639]**

Some submissions and organisations have raised concerns about how including trans people can affect other people's rights and sense of safety. The areas include accessing drug and alcohol services, as well as single-sex spaces such as bathrooms, changing rooms, shelters and prisons.[640] Some commentators frame trans and gender diverse people – especially trans women – as predators who threaten others' safety.[641] These opponents of trans inclusion often call for policies that restrict access to certain spaces based on people's sex recorded at birth.

Women's Forum Australia referred to their submission to Queensland's Birth, Deaths and Marriages Registration Bill 2022. That submission stated:

> **Gender identities do not rape women, male bodies do. This fact, coupled with females' inherent vulnerability when it comes to their smaller size and strength, is one of the key reasons men should not be allowed to identify into women's single-sex spaces and services, and why such spaces must be based on biological sex, not gender.[642]**

An individual submission went further. It suggested that allowing trans and gender diverse people to access single-sex spaces would make it impossible to challenge criminal behaviour:

> **What we now have, is the people who would do harm to women and children, and people who have passive deviancies in their sexual arousals, that can simply walk into women's and children's spaces and at no point can they be challenged.[643]**

An individual submission by a legal academic suggested that currently trans and gender diverse rights are:

> **'trumping' women's and girls' rights when there is a conflict. This is not resolved just by insisting that 'transwomen are women'. The conflict could be dealt with by allowing women's groups that are not publicly funded to choose whether to be inclusive of male-bodied persons.[644]**

Surveys of the Australian population show majority support for trans and gender diverse people being allowed to self-identify and to access single-sex spaces that correspond to their affirmed gender.[645] Evidence does not support the assertion that trans and gender diverse-inclusive policies increase risk of harm in gendered facilities and spaces (such as toilet facilities or changing rooms).[646] A review of trans and gender diverse people's protections under Aotearoa New Zealand's *Human Rights Act 1993* conducted by Te Aka Matua o te Ture | Law Commission specifically noted:

> **More importantly, we have not identified any evidence in Aotearoa New Zealand or overseas of people who are transgender being significantly represented in offending statistics relating to crimes in public bathrooms and changing rooms. Nor have we found evidence of such offending statistics increasing in countries where anti-discrimination laws have been reformed.[647]**

Scholarly research shows that trans and gender diverse people face multiple barriers to accessing gendered facilities and spaces, including risks of verbal, physical and sexual victimisation.[648] Nonetheless, trans and gender diverse people's access to single-sex spaces continues to be an area of intense public debate.

Under the SDA, it is against the law to discriminate against a person because of their gender identity in particular areas of public life. This includes in the provision of goods, services and facilities. Excluding a trans woman from services or spaces that are for women would likely be unlawful discrimination. State and territory anti-discrimination laws contain similar protections.

The creation of single-sex spaces can also lead to discrimination against trans and gender diverse people. A noteworthy example is the 2024 Federal Court case *Tickle v Giggle*. This concerned indirect discrimination against trans woman Roxanne Tickle by an app (Giggle) that marketed itself as an online women's only space. Ms Tickle was excluded from the app based on her appearance. Ms Tickle's photo was reviewed and considered to not look sufficiently like a cisgender woman – and this amounted to indirect discrimination based on Tickle's gender identity.[649] At the time of this report's publication, the case was under appeal.

The SDA allows for some exemptions in specific circumstances, but these are limited and must be justified under the law. The SDA also allows certain kinds of positive discrimination that have the purpose of achieving real equality between different groups including people of different genders. These actions are called 'special measures' and do not amount to discrimination.

The Commission may grant temporary exemptions to some provisions under the SDA. Sections 30–43 of the SDA provide permanent exemptions, and section 7D addresses special measures. Because any temporary exemption must be consistent with the objectives of the SDA, the circumstances in which it is necessary or appropriate to grant such exemptions are limited.

Temporary exemptions are for no more than 5 years. The Commission must make decisions in an accountable manner. This generally involves providing the opportunity for public comment on exemption applications before the Commission makes a decision. Guidance outlines criteria and procedures to support the determination process for temporary exemption applications. The guidelines identify a range of considerations, including:

- the objectives of the SDA
- relevant provisions of the SDA
- whether an exemption is necessary
- reasons for seeking the exemption
- submissions by interested parties.[650]

Identity documentation and travel

Obtaining accurate documentation in geographical areas that require identity verification presents specific challenges for trans and gender diverse people. Submissions provided evidence of administrative, financial and medical hurdles which often prevented trans and gender diverse people from acquiring necessary immigration documents. Submissions noted that inconsistencies in identity documents can result in detainment, denial of travel or accusations of identity fraud at official ports of entry and exit.[651]

New technologies such as body scanners and facial recognition software also pose risks to trans and gender diverse people's privacy and security.[652] Several studies show that many trans and gender diverse individuals experience greater levels of stress and anxiety during travel, or limit or avoid international travel alltogether.[653]

4. Being Able to Participate

Trans and gender diverse people come from all walks of life and have the right to participate in all domains of society. This means they have the right to participate in the economic, social and cultural life of Australia. The domains highlighted in this section are some of the more prominent areas where trans and gender diverse people have highlighted barriers to their participation. They are not an exhaustive list, and many of the challenges identified apply in other parts of Australian public life.

Recommendation 14:

The Australian Government should:

a. amend section 37(1)(d) and repeal section 38 of the *Sex Discrimination Act 1984* (Cth) and make consequential amendments to the *Fair Work Act 2009* (Cth), as recommended by the Australian Law Reform Commission in its 2024 report 'Maximising the Realisation of Human Rights: Religious Educational Institution and Anti-Discrimination Laws'

b. request the Australian Law Reform Commission to further review and make recommendations about how to amend the exemption for religious bodies under section 37(1)(d) of the *Sex Discrimination Act 1984* (Cth).

Recommendation 15:

State and territory governments should review and amend their anti-discrimination legislation to ensure that trans and gender diverse people have equal access to publicly funded services, including those provided by religious bodies.

Recommendation 16:

The Australian Government Department of Education should require LGBTIQA+ and trans and gender diverse representation on key advisory groups, committees and rapid reviews. The Department should also establish an LGBTIQA+ Youth Advisory Group to provide input into:

a. education policy settings

b. the role of teachers

c. curriculum content

d. targeted anti-bullying program support.

Recommendation 17:

Federal, state and territory education departments should review their current policies, practices and curricula to ensure that they support an inclusive model. This model should embed inclusion of trans and gender diverse students as part of teacher training and professional development for all staff across all levels of government funded education institutions.

Recommendation 18:

Educational institutions receiving government funding should have policies to prevent discrimination and harassment of trans and gender diverse students, staff and parents.

Recommendation 19:

The Australian Government should expand the positive duty in the *Sex Discrimination Act 1984* (Cth) to cover protected attributes outlined in sections 5A, 5B and 5C of the Act.

4.1 Religion

- There are a range of religious exemptions under anti-discrimination laws which affect trans and gender diverse people. Because religious institutions run many social welfare services – usually with government funding – trans and gender diverse people are often uncertain if they can access these programs.

- Some trans and gender diverse people are also people of faith, but they can face marginalisation in some religious institutions and contexts.

- While some religious institutions welcome trans and gender diverse people, others exclude. Some of the religious institutions which exclude also have leaders who use hate speech towards the trans and gender diverse community.

- Conservative religious groups which express sentiments against LGBTIQA+ and trans and gender diverse people are growing in Australia.

Relevant human rights laws and principles

- **Article 18 of the *International Covenant on Civil and Political Rights*:** states that 'Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.'[654]
- **Article 18** also states: 'Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.'[655]
- **Yogyakarta Principle 21 – The Right to Freedom of Thought, Conscience and Religion:** states that 'everyone has the right to freedom of thought, conscience and religion, regardless of sexual orientation or gender identity. These rights may not be invoked by the State to justify laws, policies or practices which deny equal protection of the law, or discriminate, on the basis of sexual orientation or gender identity.'[656]
- **Yogyakarta Principle 21** also says that States shall 'Ensure that the expression, practice and promotion of different opinions, convictions and beliefs with regard to issues of sexual orientation or gender identity is not undertaken in a manner incompatible with human rights.'[657]

Affirming trans and gender diverse people of faith

There is little representative data on trans and gender diverse people in Australia's religious and spiritual beliefs. A small survey of multicultural and multifaith LGBTIQA+ Australians reported that 45% (48 respondents) were people of faith. The trans and gender diverse respondents identified themselves as Hindu, Christian, Jewish, Muslim and one just as 'spiritual'.[658] The Forcibly Displaced People Network's 'Inhabiting Two Worlds At Once' report found that out of 21 trans and gender diverse respondents, 5 identified their religion as Islam, 3 as Buddhism, one Christianity, one Hinduism and one Judaism.[659] Although these are small sample sizes, they show that trans and gender diverse people come from, and practice, all religions.

Trans and gender diverse people of faith can face marginalisation from both religious institutions and the LGBTIQA+ community. Reverend Josephine Inkpin, a trans woman who is an ordained Anglican priest and theologian, summarises: 'in the queer community, there still remains too much knee-jerk opposition to, and lack of real understanding of, people of faith. This feeds the right's wedging and weaponizing [of religion].'[660]

One individual submission from a trans Christian who for 2 years was a church pastor stated:

> **There are many TGD people coming into their identity as TGD within their own churches, Christian schools, faith-based communities and families;**
>
> **There are Christian parents and families who want to foster a loving environment for their TGD children, and seek out support from beyond their own faith communities or school.[661]**

Religion can provide protective mental health benefits for trans and gender diverse people. Indeed, Australian researchers have shown that 'With good pastoral care, faith and membership in a religious community can be key sources of protection and strength for LGBTQA+ people.'[662] In a systematic review of adolescents who identify as trans and gender diverse, researchers concluded that while 'religiously motivated stigma from parents or communities resulted in worsened mental health outcomes … intrinsic religiosity appeared to correspond to improved psychological well-being'.[663]

Religious interpretations of gender diversity

The UN Office of the High Commissioner for Human Rights (OHCHR) notes that most religious traditions do not exclude trans and gender diverse people.[664] Several religions commonly perceived as opposed to trans and gender diverse rights have more complex positions or interpretations. For instance, some interpretations of Christianity support ideas about gender, gender diversity and equality.[665] Equal Voices is 'an organisation advocating for the rights and inclusion of TGD people within the Australian Church'. Their submission stated:

> **Some churches celebrate TGD Christians and create places where people's whole identities can be lived – these places have all gender bathrooms, use gender neutral language in services and scripture readings, ordain TGD people as pastors and leaders, do not segregate groups based by gender.[666]**

Submissions to the federal parliamentary inquiry into the Religious Discrimination Bill 2021 also demonstrated acceptance of trans and gender diverse people across multiple faiths. For example, the Buddhist Council of NSW submitted that 'Buddhism affirms equality of the sexes, diverse genders and sexual orientations'.[667] Quakers Australia submitted:

> **Quaker organisations seek to treat all people equally and celebrate the gifts that diversity in age, race, ability, sex, gender and sexual orientation bring to us all. We have no desire to take up the 'sword' of discrimination against our fellow human beings.[668]**

The Anglican Church of Australia Public Affairs Commission stated: 'From an Anglican point of view, LGBTIQ+ Anglicans

are members and leaders in our church, so preferences and benefits are just as much for our LGBTIQ+ members as others.'[669]

There is also emerging scholarship that challenges transphobia within Islam. These advocates and scholars emphasise that 'Islam has always taken sides with the oppressed rather than with the oppressor since the day of its establishment, [including] taking a stand against transphobia, xenophobia and misogyny'.[670] Through revisiting Islamic texts, their historical context and the meanings of the language, these scholars and advocates show ways that Islam can embrace trans and gender diverse people.[671]

These examples show how religion can affirm and support trans and gender diverse people. However, trans and gender diverse people have reported mixed experiences with religious institutions. For example, the *Private Lives 3* study provides data about LGBTIQA+ respondents' religious identities. Although the data did not disaggregate trans and gender diverse people, it still provides insights into their experiences with religion. The study found:

> **Participants who indicated a religion other than 'no religion' and reported belonging to a religious/spiritual community were asked to what extent they feel it is LGBTIQ inclusive/friendly. Of the 1,236 participants who identified as being religious and who indicated that this question was relevant to them, one third (35.1%; n = 434) responded 'very' or 'extremely', 20.6% (n = 254) 'somewhat', 22.6% (n = 279) 'a little' and 21.8% (n = 269) 'not at all'.[672]**

A few submissions highlighted how many trans and gender diverse Christians have fraught relationships with their faith and face discrimination.[673] The same trans Christian pastor quoted earlier also highlighted that 'many TGD people cannot practice their faith within their own churches, or the church of their choosing, within Australia, as these faith communities subject TGD people to discrimination, suppression of identity (conversion practices) and rejection'. The submission also noted a 'lack of adequate training for religious leaders in supporting TGD people – particularly including lived experience and evidence-based information'.[674]

Religiously motivated hate speech and vilification

Some submissions noted that religious institutions may do more than just exclude trans and gender diverse people. Some religious leaders and followers spread hate speech towards the community, justifying it on religious grounds.[675] Researchers commissioned by the Tasmanian Government Department of Communities surveyed 825 LGBTIQ+ Tasmanians. They found:

> **Three groups of people were identified as perpetrating hate speech against LGBTIQ+ Tasmanians in the current moment. The most mentioned of the three was religious organisations. LGBTIQ+ Tasmanians hated how 'the views of these church leaders are often expressed in local media and that is very upsetting'. They identified a range of different groups (such as the Australian Christian Lobby, Catholic leaders, the preachers in shopping malls) as perpetrating hate speech against them in public spaces.[676]**

Two submissions specifically mentioned Sydney-based group Christian Lives Matter as a cause for concern for trans and gender diverse people.[677] Described as 'a group of conservative Catholics, many of them from the Maronite church', Christian Lives Matter has over 40,000 members across Facebook and Instagram. They use human rights language by arguing they are the victims of discrimination, pitting LGBTIQA+ rights against their religious rights.[678] Reflecting on incidents during the 2023 World Pride Conference and Sydney Gay and Lesbian Mardi Gras, Anti-Discrimination NSW noted that 'queer affirming faith communities faced homophobic vandalism and assaults on queer-inclusive faith spaces'.[679]

Violence during Sydney World Pride 2023

During and immediately after Sydney World Pride 2023, there was a series of anti-LGBTIQA+ incidents related to religion. On 2 occasions, vandals damaged rainbow steps at Pitt Street Uniting Church.[680]

A few weeks later, people associated with Christian Lives Matter attacked the group Community Action for Rainbow Rights. Members of that group were peacefully protesting a speech by then One Nation leader Mark Latham outside a church. Videos had circulated on WhatsApp days before the attack. The messages urged people to 'drag' the protesters 'by their fucking hair' and 'defend our family values'. Both the Catholic Archbishop of Sydney and the Maronite Eparchy of Australia, New Zealand and Oceania condemned the violence.[681]

Religion and conversion practices

Some submissions also criticised some religious institutions' support for conversion practices and the spread of misinformation (see section 3.3). As one submission noted, even beyond formal conversion practices, 'pastoral care often pressures TGD people to suppress their identities'.[682]

In Western Australia in 2021, a self-proclaimed supporter of 'sound methods of conversion therapy' visited churches to campaign against the banning of conversion practices.[683] Rainbow Futures WA's submission explained that the tour:

> **visited eight churches in the Perth CBD, Geraldton Anglican Cathedral and Albany Baptist Church for two events. They claimed to 'tell stories of hope, vision and dignity beyond LGBTQ+' but have been more accurately labelled as 'gay conversion practice' events.[684]**

These reported examples of hate speech and promotion of conversion practices contribute to popular perceptions that many religious institutions are hostile to trans and gender diverse people. These perceptions affect all trans and gender diverse people – whether they are people of faith or not – because of the influence religious institutions and organisations have in Australia.

Exemptions under anti-discrimination laws

All federal, state and territory anti-discrimination laws contain some exemptions for religious bodies. Section 37(1) of the SDA provides an exemption for religious bodies to lawfully discriminate in certain contexts. For instance, provisions of the SDA do not apply to ordination, training or education of religious leaders and the appointment of people to perform religious observances. This exemption is generally uncontroversial.

What has attracted more attention from LGBTIQA+ activists and their allies is the exemption under section 37(1)(d) of the SDA. It applies to:

> **any other act or practice of a body established for religious purposes, being an act or practice that conforms to the doctrines, tenets or beliefs of that religion**

> **or is necessary to avoid injury to the religious susceptibilities of adherents of that religion.[685]**

Under this exemption, religious institutions and their incorporated bodies may lawfully discriminate on the grounds of sex, sexuality, gender identity and intersex status. This includes religious bodies which provide critical social services – often with government funding – in areas such as healthcare and welfare.

There is one area of service delivery where the exemption does not apply: federally-funded aged care.[686] This exemption was included as part of the amendments to the SDA in 2013 because the Australian Government had received 'significant feedback … of the discrimination faced by older same-sex couples in accessing aged care services run by religious organisations, particularly when seeking to be recognised as a couple'.[687]

As discussed in section 4.2, section 38 of the SDA contains other exemptions for religious educational institutions. State and territory anti-discrimination laws also contain exemptions for religious bodies. The breadth of those exemptions varies across jurisdictions.

Many submissions discussed the religious exemptions under federal, state and territory anti-discrimination laws.[688] For example, Rainbow Futures WA noted that the *Equal Opportunity Act 1984* (WA) 'is filled with special carve-outs for religious bodies and educational institutions, allowing them to discriminate against trans and gender diverse people'.[689] One LGBTIQA+ advocate called for the removal of these 'special privileges that allow other publicly funded religious organisations to discriminate, across health, disability, aged care[,] housing and other essential community services'.[690]

Other submissions noted the physical harm that religious exemptions under anti-discrimination laws cause to the everyday lives of trans and gender people. This includes harm inflicted in education,[691] health,[692] and work.[693] For example, ACON expressed concerns that the section 37(1)(d) religious exemption under the SDA is 'allowing religiously affiliated hospitals and healthcare workers to refuse care to trans people on religious grounds'.[694] The Gender Centre stated:

> **The ongoing influence of religious and moral judgement continues in health policy and funding decisions; research design, approval, and funding; education policies and curricula; and many other sectors that influence the health and wellbeing of LGBTIQASB+ [LGBTIQA+, Sistergirl and Brotherboy] children.[695]**

Research from Equality Australia explored publicly available information from Australia's 70 largest faith-based service providers. They concluded that 'Almost 1 in 10 of Australia's largest faith-based service providers publicly discriminate against LGBTQ+ people, with a further 4 in 10 unclear in their position on LGBTQ+ inclusion'.[696] Although it is unknown how often religious bodies exercise their exemptions and discriminate against trans and gender diverse people, they have the right to do so. This may impact if and how trans and gender diverse people access services from religious-affiliated bodies.[697]

4.2 Education

- Under human rights laws and principles, everyone has the right to education.

- Trans and gender diverse people face significant social marginalisation in education facilities at all levels. Young trans and gender diverse people often withdraw from school due to feeling unsafe and unwelcome.

- Classroom teachers, school executives and administrative or support staff play a vital role in trans and gender diverse children and young people's education experience. Best practice requires dedicated teacher training and implemented school policies. Everyone should also have access to age-appropriate educational material on sexual, biological, physical and psychological diversity.

- Exemptions for educational institutions established for religious purposes under section 38 of the SDA are a significant barrier to inclusive education.

Relevant human rights laws and principles

- **Article 13 of the *International Covenant on Economic, Social and Cultural Rights*:** 'The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.'
- **Article 13(3) of the *International Covenant on Economic, Social and Cultural Rights*:** 'parents and legal guardians have liberty to choose the school for their children.'[698]
- **Article 18(4) of the *International Covenant on Civil and Political Rights*:** 'parents or legal guardians have the liberty to ensure that their children receive a religious and moral education that is in conformity with their own convictions'.[699]
- **Articles 28 and 29 of the *Convention on the Rights of the Child*:** these articles recognise all children's right to education. Article 28 recognises 'the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity'. Article 29 states that education should be directed toward:
  - The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations
  - The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin.[700]

- **Yogyakarta Principle 16 – The Right to Education:** states that everyone has the right to education, no matter their sexual orientation or gender identity. It also says that States shall:
  - Ensure that education methods, curricula and resources serve to enhance understanding of and respect for, inter alia, diverse sexual orientations and gender identities, including the particular needs of students, their parents and family members related to these grounds.
  - Ensure that laws and policies provide adequate protection for students, staff and teachers of different sexual orientations and gender identities against all forms of social exclusion and violence within the school environment, including bullying and harassment.[701]

Inclusive education

In 2019, all federal, state and territory education ministers signed the Alice Springs (Mparntwe) Education Declaration. It commits all Australian governments to promote excellence and equality in education. It also states that governments will work with educators to:

> **provide all young Australians with access to high-quality education that is inclusive and free from any form of discrimination … [and] ensure that education promotes and contributes to a socially cohesive society that values, respects and appreciates different points of view and cultural, social, linguistic and religious diversity.[702]**

In addition to non-discrimination, education research outlines the effectiveness of actively LGBTIQA+ affirmative schools. The affirmative approach focuses on 'the sum effects of a school's academic atmosphere, community of interpersonal relationships, physical and emotional safety, and institutional structures'.[703]

Australian federal, state and territory education departments do not provide information about affirmative education. However, the Aotearoa New Zealand Ministry of Education's website 'Supporting LGTBIQA+ students' provides advice about how to make schools affirmative. The website includes:

- guidance on how to build knowledge about LGBTIQA+ identities
- the design of inclusive whole-school systems and processes
- ways to address immediate environmental and social needs
- tips to develop an inclusive classroom culture and curriculum.[704]

Ensuring safety, inclusion and affirmation requires dedicated school policies. Adequate training for teachers has a significant impact on the livelihoods of trans and gender diverse young people. Equality Tasmania, the state's leading advocacy group for LGBTIQA+ people, noted in its submission: 'there is a decreasing rate of complaints from the public school system due to an increase in teacher training and student pride groups'.[705]

Debates over inclusive education

In Australian schools, policies to support students with diverse sexualities and genders are ad hoc, uneven and unregulated. Teacher training to create affirming environments and support trans and gender diverse students is also patchy.[706] In the absence of state-led strategies, it is up to other government departments, the community and non-profit sector to offer resources to support affirmative education.[707] Individual schools or sector leaders (i.e. religious school bodies) decide whether they wish to adopt these resources.

When community and non-profit groups have offered resources to schools, they have faced significant pushback. Melbourne Bisexual Network wrote how groups and individuals critical of trans and gender diverse rights were:

> **Seeking to prevent young people from accessing information about TGD people, by censoring or manipulating curriculum;**
>
> **Seeking to exclude TGD children and young people from schools altogether;**
>
> **Threatening or terminating the employment of teachers who are TGD or who provide space for non-traditional views on gender.**[708]

Several submissions discussed the rise of misinformation and disinformation occurring in and about schools. They were especially concerned with how false information portrays trans and gender diverse young people.[709] The Victorian Pride Lobby said that 'far-right targeting of the LGBTIQA+ community in Victoria is a long running issue, the root of which can be traced back to the campaign against the Safe Schools Coalition in 2016'.[710]

In many instances this vocal opposition has led schools to cease promoting affirmative education. The most high-profile example of this was the Safe Schools Coalition. This was a program to support teachers to affirm LGBTIQA+ children and young people in schools. In 2016 conservative politicians and media ran an effective campaign of misinformation and disinformation. Four submissions cited the campaign against the Safe Schools Coalition as having a negative impact on trans and gender diverse people.[711]

Safe Schools Coalition

This was a program that began in Victoria in 2010 and in 2013 received federal funding to go national. The Safe Schools Coalition offered resources which teachers and school administrators could draw on to discuss sexual and gender diversity. Safe Schools had 2 principal aims: to combat bullying, and to affirm LGBTIQA+ children and young people.

In early 2016, conservative politicians and media began campaigning against the Safe Schools Coalition. They argued that the program was 'sexualising' young people and was inappropriate. Despite a government review saying the program was appropriate, politicians and the media continued to attack the program. Staff from organisations which were part of the Safe Schools Coalition reported harassment and threats of violence.

Every state and territory government except Victoria ended the program when the funding expired.[712]

Parents' rights

A minority of submissions expressed concern that inclusive education may conflict with parents' rights.[713] For instance, Parents of Adolescents with Gender Distress – Victoria (PAGD) worried about a 'systemic disregard' for their right to be 'protected by society and the State'. PAGD argued that:

> **contrary to the principles of both the Education and Training Reform Act 2006 [Vic] and the Child Youth and Families Act 2005 [Vic], school personnel have intentionally excluded and alienated parents from discussions regarding their child's gender distress and mental wellbeing.**[714]

PAGD further claimed that schools 'implement "social transition" without consulting parents'.[715] An individual submission similarly described 'school policies which allow a student to socially transition at school without the parent's knowledge or consent'.[716]

Other submissions have raised concerns that the term 'parents' rights' is being used as part of a campaign against LGBTIQA+ inclusive education and policies in schools. Research on far right and populist movements in Australia notes that 'parental rights discourse depicts queer adults as predatory figures aiming to corrupt young people and erode the "natural" family structure seen as the foundation of "Western" society'.[717] Equality Tasmania described 'parental rights' discourse as a co-option of human rights language which 'attempts to stamp out LGBTIQA+ inclusion initiatives in schools'.[718]

Article 18(4) of the ICCPR and Article 13(3) of ICESCR focus on the liberty of parents with respect to the education of their children. These liberties sit alongside the rights of children.

Research shows that what scholars commonly refer to as the 'anti-gender movement' (see section 2.1) often targets policies and educational programs that promote gender equality, LGBTIQA+ rights and gender diversity. The movement opposes any sex education programs that include discussions of gender identity and sexual orientation.[719]

Evidence shows that a majority of Australian parents do not agree with this perspective. Instead, the majority support inclusive sex education programs. A nationwide, representative survey of parents of children attending government schools (N = 2,093) found that:

> **The Australian media deploys the 'conservative parent argument' against gender and sexuality diversity-inclusive curricula [but] ... Over 80% of parents supported gender and sexuality diversity-inclusive RSE [Relationships and Sex Education] topics across primary and secondary government schooling. Approximately 60% of Australian parents endorsed a whole-school approach to gender and sexuality diversity-inclusivity in government schools.[720]**

Submissions from trans and gender diverse people, activists and parents expressed concerns about schools which lacked comprehensive and inclusive sex education.[721] ARCSHS said that the 'educational curriculum rarely includes trans identities or histories, further contributing to the erasure of trans experiences'.[722]

Fundamentally, children have the right to feel safe being themselves. Part of that safety means being in a school environment that affirms them and where all children learn that being trans or gender diverse is part of the diversity of humanity.

Bullying, harassment and marginalisation

Many submissions highlighted that trans and gender diverse people face significant social stigmatisation and marginalisation in education settings. This happens at all levels, in early childhood, primary, secondary and tertiary institutions.[723] The hostility and discrimination against trans and gender diverse people includes verbal and physical attacks. Equality Australia's submission included this quote from a non-binary student:

> **I have been a victim of targeted discrimination at school and online since 2022, I am confident it still happens but not to my face. I had been getting misgendered, people would say my name wrong on purpose, they'd find my personal Facebook and make TikTok account[s] with offensive usernames and my deadname. I have also at one stage been told to kill myself repeatedly by one student.[724]**

A psychologist who specialises in LGBTIQA+ mental health highlighted emerging research about the rise of masculine supremacy groups and influencers like Andrew Tate. The submission linked these groups and influencers to the promotion and normalisation of transphobia and queerphobia in schools.[725] This suggests that discrimination against trans and gender diverse children and young people is part of a broader challenge of sexism and gender inequality confronting schools.[726]

Bullying and harassment – be it from peers or school staff – can lead to multiple poor outcomes for trans and gender diverse students.

Absence and connectedness

Two academics from Western Sydney University who research schools and wellbeing outcomes highlighted that 'TGD students' sense of connectedness to school [is] significantly lower than reported by mainstream high schoolers'.[727] This is important because school connectedness is a significant predictor of educational success and attainment.[728]

Several submissions noted how discrimination and marginalisation within schools contribute to absence rates. The advocacy organisation Parents for Transgender Youth Equity said 'that it is not unusual for TGD children to be unable to attend school for a period of time, which could be weeks or years, due to their experiences at school'.[729] The Royal Children's Hospital Melbourne submission noted that 'trans youth are often unable to learn in traditional school settings, that remain unsafe'.[730] This means trans and gender diverse children and young people are more likely to terminate education altogether.[731]

Leaving school

Other submissions linked bullying, harassment and exclusion in schools with trans and gender diverse young people's increased rates of homeschooling or discontinuing education altogether.[732] Parents for Trans Youth Equity gave the example of one parent who wrote:

> **My child stopped attending school midway through Year 3. I spent that 6 months struggling to find another school, then I realised that there was no school for us.[733]**

Sexual harassment

At university, trans and gender diverse students are at higher risk of sexual harassment. The 2021 National Student Safety Survey found that 14.7% of transgender and 22.4% of non-binary survey respondents experienced sexual harassment in the past 12 months. This compared to 10.5% of cisgender women and 3.9% of cisgender men students.[734]

Role of education staff

Adults in schools – be they teachers, administrators or other workers – play crucial roles. They may take steps to prevent bullying and harassment, to respond to it, or to enable it. An audit of publicly available policy guidance for Australian government schools found that 'educators often do not have the necessary supports or guidance in relation to addressing GSD [gender and sexuality diverse] biased-based bullying or providing relevant curriculum content inclusions'.[735]

Submissions reinforced the importance of how adults handle trans and gender diverse issues in schools. Teachers, administrators and other staff can bring their own prejudices. Even those who want to be supportive often lack comprehensive training or face barriers due to school policies or curriculum.[736] Researchers who work on school inclusion for trans and gender diverse children and young people noted that:

> **parents of TGD students described educators who were unfamiliar with gender diversity and reluctant to acknowledge or affirm this – both at the broad conceptual level, as well as with respect to their child's gender identity – with ramifications for their child's wellbeing and desire to remain at school.[737]**

Parents for Trans Youth Equity quoted this parent who sought school support to affirm their child's gender:

> **I said to the [school] counsellor[,] look she's you know a kindy kid, she's changing uniform and I'm worried about her being bullied. If she needs someone to talk to can she come to you? And she said 'I'm very busy and this isn't my field of expertise'.[738]**

The lack of school policies and procedures pushes responsibility for trans and gender diverse issues onto parents. A researcher and psychotherapist who regularly works with trans and gender diverse young people described parents having to advocate for 'their children to be respected and included in school communities, particularly regarding toilet access, and use for correct names and pronouns'.[739] Other researchers reported

that parents had to work hard to make schools accommodate their children's needs, 'particularly with respect to administrative recognition of their child's name … and desired elements of the school uniform'.[740]

Religious schools and section 38 of the SDA

A large proportion of the Australian educational workforce works in schools affiliated with religious institutions.[741] Many submissions were concerned with the right of religious educational institutions and private schools to discriminate against students and staff on the basis of sexual orientation and gender identity.

The SDA and state and territory anti-discrimination laws protect students and staff in educational institutions. *The Fair Work Act 2009* (Cth) also prohibits discrimination based on sexual orientation and gender identity in employment settings. These protections apply to teachers and other education staff.

However, section 38 of the SDA grants exemptions to 'educational institutions established for religious purposes'. In order to qualify for the exemption, the institution must be conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed.

Sections 38(1) and (2) permit these institutions to discriminate in decisions about the employment or dismissal of employees and contract workers on the grounds of sex, sexual orientation, gender identity, marital or relationship status or pregnancy. Section 38(3) permits these institutions to discriminate against students or prospective students on the grounds of sexual orientation, gender identity, marital or relationship status or pregnancy. These provisions permit discrimination when the educational institutions carry out the conduct in good faith to avoid injury to the religious susceptibilities of adherents of that religion or creed.[742]

In summary, section 38 means that religious educational institutions are exempted from important anti-discrimination protections in the SDA dealing with employment and education. This means it can be lawful for them to discriminate against trans and gender diverse students, contractors and staff.

Several submissions commented on the negative consequences of section 38. Equality Australia explained:

> **Section 38 of the *Sex Discrimination Act 1984* (Cth) allows religious educational institutions to expel a student or fire a teacher simply because they are transgender or gender diverse, among other attributes. Our national report on LGBTQ+ discrimination in faith-based schools found that there is a systematic suppression of positive and public expressions of LGBTQ+ identities and lives in religious schools in Australia, with independent schools more likely to be discriminatory rather than affirming places for LGBTQ+ people.[743]**

As Victoria Legal Aid's submission noted, the broad exemptions under section 38 apply to a range of institutions all the way from early childhood education centres through to schools, colleges and universities.[744]

In March 2024, the Commonwealth Attorney-General tabled the Australian Law Reform Commission's review into Religious Educational Institutions and Anti-Discrimination Laws. This report gave practical advice for how to repeal section 38 of the SDA and amend section 37(1)(d). The proposed amendments would make it unlawful for religious educational institutions to discriminate based on protected attributes (including gender identity), while ensuring that these institutions could continue to uphold their beliefs.[745] The Australian Government has indicated it will not proceed with any proposed amendments without bipartisan support.[746]

Religious schools and exemptions to state and territory anti-discrimination laws

State and territory anti-discrimination laws also have some exemptions for religious schools. Several submissions raised concerns about these exemptions.[747] The nature of state and territory religious exemptions vary. Some are broad like the federal exemption. For instance, Anti-Discrimination NSW's submission commented on the *Anti-Discrimination Act 1977* (NSW) having broad exemptions:

> **ADNSW [Anti-Discrimination NSW] supports a review of the scope and breath of the exceptions for 'private educational authorities' in the ADA [*Anti-Discrimination Act 1977*]. For example, sections 38C(3)(c) and 38K(3) allow private educational institutions to discriminate in areas of employment and education on the grounds of transgender status.[748]**

In October 2024, the NSW Government updated some of its legislation relating to LGBTIQA+ rights. Early drafts of the bill would have narrowed some of the anti-discrimination exemptions for religious schools and updated language to protect all LGBTIQA+ people from discrimination. The Government stripped these sections from the bill to secure parliamentary support. As a result, part 3A of the *Anti-Discrimination Act 1977* (NSW) (sections 38C and 38K), which outlines unlawful discrimination on 'transgender grounds', continues not to apply to private educational authorities. The *Star Observer* summarised that in NSW: 'religious schools and other institutions can fire, expel, or refuse to work with LGBTQIA+ people based solely on their sexual orientation or gender identity'.[749]

Other state and territory religious exemptions are narrower, and some state and territory laws have different exemptions for students and staff. The narrowest exemptions in the ACT, Tasmania and Victoria only allow religious educational institutions to discriminate when it relates to roles or activities where the religious belief or practice is an inherent requirement, such as clergy.[750]

The Northern Territory had similar narrow exemptions, but in October 2025 the Northern Territory Government amended the *Anti-Discrimination Act 1992* (NT) to broaden religious exemptions.[751] This was the first time an Australian government extended, rather than narrowed, religious exemptions to anti-discrimination law.

Research has found that LGBTIQA+ employees experience discrimination where exemptions exist. For example, teachers 'in NSW faith-based schools experienced organisational discrimination that was legal according to NSW legislation. They had no job security and no recourse to claims of wrongful termination of employment due to discrimination'.[752]

Inconsistencies in state and territory versus federal laws

The different approaches to religious exemptions have, in some jurisdictions, created a clash between state and territory versus federal law. This has come to public attention especially in Tasmania and Victoria. Representatives of educational institutions established for religious purposes have argued publicly that state anti-discrimination laws do not apply *because* Commonwealth law overrides state laws. In Victoria, this is the subject of a court case where a non-binary teacher sued the Melbourne Archdiocese Catholic Schools over discrimination.[753]

In Tasmania, the Executive Director of Catholic Education Tasmania appeared before a state parliamentary inquiry into discrimination and bullying in schools. He said that protections under the *Anti-Discrimination Act 1998* (Tas) against discrimination on the basis of sexual orientation and gender identity did not apply where there was an exemption under federal law. He cited section 38 of the SDA and said: 'If there's a conflict between state law and federal law on a particular matter, federal law always abides, overrules the state law'.[754]

It remains to be seen how courts would interpret the relevant state and federal anti-discrimination laws. The current situation leaves confusion, which can enable discrimination. Indeed, Equality Tasmania expressed the view that 'faith-based schools are prosecuting a crusade against "gender ideology" which demonises gender-affirming practices'.[755] Amending or repealing section 38 of the SDA could resolve the inconsistencies. Otherwise, it will be up to a court to determine which law applies.

4.3 Employment

- **Discrimination in the workplace is a pervasive issue which contributes to economic disadvantage faced by trans and gender diverse people.**

- **Discrimination in the workplace can be direct (i.e. bullying someone because they are trans or gender diverse) or indirect (i.e. requiring someone to select binary gender options on documents).**

- **Evidence shows that the most effective strategies move beyond preventing discrimination to more proactive organisation-wide strategies to affirm trans and gender diverse people in the workplace.**

Relevant human rights laws and principles

- **Articles 6 and 7 of the *International Covenant on Economic, Social and Cultural Rights*:** outline the right to work in favourable conditions:
  - **Article 6.1:** 'States Parties are to recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.'
  - **Article 7b:** 'States Parties are to recognise the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular … safe and healthy working conditions.'[756]
- **Yogyakarta Principle 12 – The Right to Work:** states that 'Everyone has the right to decent and productive work, to just and favourable conditions of work and to protection against unemployment, without discrimination on the basis of sexual orientation or gender identity'. The principle also contains provisions directing States to take necessary measures to eliminate and prohibit discrimination in employment and to ensure equal employment and advancement opportunities in the public service.[757]

Trans and gender diverse employment experiences

There is limited Australian data on trans and gender diverse people's employment numbers and experiences. Even when workplaces or studies collect data, many trans and gender diverse people often hide their gender identity for safety reasons. The 2025 Australian Workplace Equality Index (AWEI) Employee Survey found that 52.7% of trans and gender diverse respondents were open about their gender identity to all or most of their colleagues, while 47.2% were only open to a select few or to nobody at work. This represented a small increase on 2024 and earlier results.[758]

The data that exists about trans and gender diverse people's experiences in the Australian workforce paints a grim picture. *Private Lives 3* found that 46.5% of trans men (N = 138), 46.3% of non-binary people (N = 442) and 42% of trans women (N = 118) reported an income below the poverty line.[759] A 2018 survey of 928 self-identified trans and gender diverse people in Australia found that:

> **The unemployment rate of 19% was three times that of the Australian general population rate of 5.5% in May 2018 and well above the youth unemployment rate (12.2%). Notably, 33% of respondents perceived discrimination in employment. Unemployment may also occur due to difficulty with name and identity documents, discrimination in basic housing and health care, and the impact of mental health conditions such as depression and anxiety on an individual's ability to seek or maintain employment.[760]**

The TRANSform longitudinal study of 807 trans and gender diverse people found that, when compared to the general Australian population, the participants experienced 4 times' higher rate of unemployment. Furthermore, of those who were working:

- 1 in 5 (19%) were working multiple jobs out of necessity
- 1 in 5 (21%) were working in a job below their skill level
- 1 in 6 (18%) wanted and were available to work more hours than they were currently working.[761]

Importantly, the limited data that does exist about trans and gender diverse people's employment experiences is not intersectional. That is, it does not break down the distinct experiences and challenges facing trans and gender diverse people from diverse backgrounds including First Peoples, culturally and racially marginalised people, age or people with disability.

Many submissions by trans and gender diverse individuals and non-government organisations suggested that transphobia contributed to hiring bias and unequal opportunities. However, they also noted that this was hard to prove.[762]

Research shows that trans and gender diverse people in Australia experience barriers in workplaces at both institutional and interpersonal levels.[763] The Family Access Network's submission suggested that the growth in transphobic rhetoric in recent years has made it socially acceptable to express views against trans and gender diverse people and rights in the workplace.[764] Your Community Health's submission stated: 'In our experience providing trans healthcare and a trans specific WorkSafe program, we hear about the types of discrimination trans people experience in the workplace, including physical threats and verbal harassment, malicious gossip, deliberate misgendering, [and] transphobic jokes'.[765]

Research shows that trans and gender diverse people face some of Australia's highest rates of work-related gendered violence, discrimination and harassment.[766] According to research conducted by the International Labour Organization:

> **Many transgender respondents reported being rejected at the job interview stage simply because of their appearance. Problems within the workplace include the inability to obtain identity documents that reflect their gender and name, reluctance of employers to accept the way they dress, being discouraged from using bathrooms appropriate to their gender, and increased vulnerability to bullying and harassment by workmates.[767]**

In the TRANSform longitudinal study, 1 in 20 participants (6%) reported being physically threatened, harassed or assaulted at work in the past 12 months. Furthermore, 1 in 15 (7%) had left a job in the past 12 months because they did not feel safe.[768]

Trans and gender diverse people also experience greater rates of workplace sexual harassment. ANROWS reported that in a survey of LGBTQ young people, '80% of transgender (binary and non-binary inclusive) participants had experienced WSH [workplace sexual harassment], which was significantly higher than the 74% of cisgender participants who had experienced WSH'. Thirty per cent had experienced 'intrusive comments about their anatomy'.[769]

'Time For Respect', the fifth national survey on sexual harassment in Australian workplaces, outlined the Commission's findings on the prevalence, nature and reporting of sexual harassment in Australian workplaces. The survey was conducted in 2022 with over 10,000 Australians. The survey did not distinguish trans and gender diverse people, except for those who indicated their gender was non-binary. Of the 62 non-binary respondents:

- 99% had been sexually harassed at some point in their lifetime
- 67% had been sexually harassed at work in the last 5 years.[770]

Impacts of workplace discrimination and harassment

Data from the TRANSform longitudinal study shows that workplace experiences can be positive for trans and gender diverse people. Of the 807 surveyed participants, 9 in 10 (88%) 'agreed' or 'strongly agreed' that they were treated fairly and respectfully by their supervisors, and 9 in 10 (89%) 'agreed' or 'strongly agreed' that they were treated fairly and respectfully by their coworkers.[771] That study and others also showed the challenges facing those trans and gender diverse people who are not being supported or respected at work.

Research shows that some trans and gender diverse people avoid mistreatment at work by hiding their gender identity, refraining from asking their employer to use their correct pronouns or quitting their jobs.[772]

Discrimination may come not only from colleagues, but also from clients or customers. A submission from 2 Western Sydney University education academics discussed harassment that teachers face from students, which affected their wellbeing:

> **Interviews with a small cohort of TGD teachers revealed the added injury of experiencing harassment by students, particularly without recognition of this or support from school leadership, and the impact of these experiences on these educators' confidence and desire to remain in the classroom longer term (Ullman, 2020).[773]**

The 2025 AWEI Employee Survey found:

- 13% of trans and gender diverse respondents reported workplace incivility behaviours to their manager, grievance officer or equivalent person
- 15.6% of trans and gender diverse respondents called out workplace incivility behaviours *and* reported it to their manager, grievance officer or equivalent person
- 20.6% of trans and gender diverse respondents reported serious bullying behaviours to their manager, grievance officer or equivalent person
- 17% of trans and gender diverse respondents called out serious bullying behaviours *and* reported it to their manager, grievance officer or equivalent person.[774]

Workplace discrimination is one part of the broader, interrelated barriers to equality that trans and gender diverse people face. The Family Access Network explained some connections:

> **Misinformation and disinformation can lead to trans and gender diverse people experiencing harassment and discrimination in obtaining and retaining housing which has flow on impacts to trans and gender diverse people's ability to access and participate in employment and education to earn income and improve housing stability.**
>
> **Experiencing anti-trans harassment, discrimination and misinformation in education and employment settings impacts trans and gender diverse people's ability to focus and perform well in these settings which can lead to education being discontinued or employment being terminated or resigned, which in turn impacts income and housing.[775]**

The Positive Duty

Evidence shows that the most effective strategies move beyond preventing discrimination to more proactive organisation-wide strategies for wider culture change.[776] In late 2022, the Federal Parliament passed the *Anti-Discrimination and Human Rights Legislation (Respect at Work) Act 2022* (Cth). This law amended the SDA to introduce a positive duty on workplaces to prevent workplace sexual harassment, sex-based harassment, sex discrimination, hostile work environments and victimisation.

The positive duty requires organisations and businesses to take reasonable and proportionate measures to eliminate these forms of unlawful conduct, as far as possible. This means workplaces must take *proactive* steps to prevent discrimination and harassment, rather than just being reactive to redress harms.

The Australian Human Rights Commission has enforcement powers to inquire into a duty holder's compliance with the positive duty and to ensure compliance with the positive duty. These powers include the ability to conduct inquiries, issue compliance notices, apply to federal courts for compliance orders and enter into enforceable undertakings.[777]

Federally, the positive duty does not extend to other protected attributes, including gender identity, sexual orientation and intersex status (as well as race, disability and age). Some state and territory jurisdictions have a positive duty which also applies to other protected attributes. For instance, under Victorian and Northern Territory anti-discrimination laws, the positive duty covers all protected attributes, including gender identity.[778]

Workplace policies and training

The implementation of workplace trans and gender diverse specific policies and practices is inconsistent and dependent on the goodwill or capacity of an organisation. Many workplaces do not have trans and gender diverse awareness training, gender affirmation policies or information technology systems that appropriately record gender. Inadequate representation of trans and gender diverse people often results in policies that do not reflect trans and gender diverse people's needs.[779] One submission suggested inadequate training and affirmative policies may lead to trans and gender diverse people losing or changing jobs.[780]

Even where there are policies to protect or affirm trans and gender diverse people, cultural and attitudinal barriers persist. In many instances, the specific requirements of trans and gender diverse employees are incorporated into anti-discrimination or LGBTIQA+ policies. These often do not properly distinguish between sexuality and gender identity. In other workplaces, diversity strategies are often limited to women or First Peoples. Best practice suggests that policies need to cover sexuality and gender identity both together and separately.[781] These policies should also embed intersectional inclusion, rather than treating it as an 'add-on'.[782]

Workplace systems and data

Another barrier to inclusive workplaces is background checks and clearance processes. This links to some of the problems around self-identification discussed in section 3.4. One submission noted that trans and gender diverse staff must navigate their deadnames and legal names on all checks, clearances, certificates and other documentation.[783] This also extended to superannuation, where funds may have binary gender options like F/M or Ms/Mr. This forces the employer or manager to have a conversation with the staff member to 'choose an option which we are all aware will not affirm them'.[784] This shows how even when employers aim to affirm trans and gender diverse employees, the systems often create barriers.

Gender binaries extend to high-level data collection about workplace employment. The Workplace Gender Equality Agency (WGEA) is an Australian Government statutory agency created by the *Workplace Gender Equality Act 2012* (Cth). WGEA's purpose is to promote and improve gender equality in Australian workplaces. One of WGEA's biggest jobs is to collect, analyse and publish data about gender equality in Australian workplaces.[785] WGEA has traditionally framed gender in binary terms and has not focused on trans and gender diverse people. Organisations may voluntarily report non-binary data to WGEA.[786]

In 2021, ACON's submission to a review of the *Workplace Gender Equality Act 2012* (Cth) said about data collection:

> **ACON recommends that employers collect data to better understand gender diversity within their workplace to enable the provision of support. Disclosure by employees should always be optional but can reduce some barriers that trans and gender diverse people may face in the workplace such as identification, criminal record and/or reference checks, for example.[787]**

Noting the above barriers, there are several proactive, practical steps workplaces can take to ensure culturally safe work environments. These actions also reflect many suggestions from the submissions:

- respecting trans and gender diverse people's genders, names and pronouns in person and on systems
- hiring of trans and gender diverse people in ongoing roles
- regularly sharing pronoun preference
- having inclusive bathrooms in addition to gender-specific ones
- having inclusive uniform policies
- having gender affirmation plans and leave
- providing trans and gender diverse awareness training
- undertaking trans and gender diverse inclusive data collection.[788]

Gender affirmation plans

In recent years, workplaces and institutions like universities have been developing policies and guides about gender affirmation. These guides or policies aim to support both employees who want to affirm their gender (often called 'transitioning'), as well as managers and employers. One tool that many workplaces are using is the gender affirmation plan. Gender affirmation plans are a way for employers and employees to discuss how best to navigate matters like name changes, updating systems, how to disclose to colleagues and clients, personal presentation and access to gendered facilities or uniforms. The Victorian Public Sector Commission provides a good example of a guide to support managers as employees affirm their gender.[789] Several workplaces – with the support and advocacy of multiple unions – have also introduced gender affirmation leave. Employees can access this leave to do tasks related to gender affirmation, such as medical treatment or to visit registries to update identity documents.

4.4 Sport

- **Internationally, sport bodies have increasingly been banning or severely restricting trans and gender diverse people's participation in sport.**

- **In Australia, trans and gender diverse people face both informal and formal exclusion from all levels of sport from local community through to elite and professional sport. This happens despite the existence of guidelines and policies to support trans and gender diverse people's inclusion in sport.**

- **Trans and gender diverse people also experience harassment in gyms, leisure centres and public spaces.**

Relevant human rights laws and principles

- **Article 27 of the *Universal Declaration of Human Rights*:** states that 'Everyone has the right to freely participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits'.[790]
- **Article 15 of the *International Covenant on Economic, Social and Cultural Rights*:** recognises the right of everyone 'to take part in cultural life'.[791]
- **Article 31 of the *Convention on the Rights of the Child*:** affirms the 'right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts'.[792]
- **The Yogyakarta Principles plus 10:** contains additional recommendations relating to sport. The recommendations are for sporting organisations to:
  - Take practical steps to create welcoming spaces for participation in sport and physical activity, including installation of appropriate changing rooms, and sensitisation of the sporting community on the implementation of anti-discrimination laws in the sporting context for persons of diverse sexual orientations, gender identities, gender expressions, and sex characteristics.
  - Ensure that all individuals who wish to participate in sport are supported to do so irrespective of sexual orientation, gender identity, gender expression and sex characteristics, and that all individuals are able to participate, without restriction, subject only to reasonable, proportionate and non-arbitrary requirements to participate in line with their self-declared gender.
  - Remove, or refrain from introducing, policies that force, coerce or otherwise pressure women athletes into undergoing unnecessary, irreversible and harmful medical examinations, testing and/or procedures in order to participate as women in sport.[793]

Benefits of physical activity and sport

Sport and physical activity have important health benefits for everyone. This applies to people of all ages, including children and young people. Research on physical activity in trans and gender diverse populations shows a relationship between gender-affirming healthcare, physical activity and gender dysphoria. Gender-affirming healthcare contributes to better body satisfaction. This has the flow-on effect of trans and gender diverse people taking more interest in exercise and healthy physical activities. Physical activity also helps trans and gender diverse people to prepare for gender affirming procedures and maintain good mental health.[794]

Submissions pointed to the important benefits of trans and gender diverse people participating in sport and physical activity. Your Community Health stated:

> **As a healthcare service, we know sport is integral in maintaining positive health and wellbeing, through both exercise and community connection. For trans people who already experience poorer health and wellbeing outcomes, barriers to exercise need to be removed. Equal access to sport, free from discrimination, is a human right not all can enjoy.[795]**

Research on improving physical activity and health outcomes for trans and gender diverse people consistently points to the need for safe and accessible spaces.[796] Indeed, one study identifies that 'the practice of physical activity and sports is … an important coping mechanism that helps trans individuals deal with the gender identification process'.[797] Because trans and gender diverse populations experience many health disparities (see section 3.2), it is even more important that those who want to participate in sport are supported to do so.

Anti-discrimination laws and sport in Australia

Trans and gender diverse people have been participating in Australian sports for decades.[798] Under the SDA, it is unlawful to discriminate based on sex or gender identity in sport unless the different treatment amounts to a special measure or there is an exemption. The most pertinent part of the SDA is section 42:

> **nothing in Division 1 or 2 renders it unlawful to discriminate on the ground of sex, gender identity or intersex status by excluding persons from participation in any competitive sporting activity in which the strength, stamina or physique of competitors is relevant.[799]**

State and territory anti-discrimination laws also have exemptions for sport. Like other exemptions, the breadth varies across jurisdictions. Anti-Discrimination NSW explained in their submission:

> **Section 38P [of the *Anti-Discrimination Act 1977* (NSW)] provides a broad exception permitting the exclusion of transgender persons from participating in any sporting activity for members of the sex with which the transgender person identifies. The exception does not extend to the coaching or administration of sporting activity. Other jurisdictions have narrower exceptions, such as allowing discrimination in competitive sporting activity for people aged 12 and over where the strength, stamina or physique of competitors is relevant.[800]**

The ACT, Victoria, Western Australia, Queensland, South Australia and Northern Territory use similar language in their sport exemptions as the federal legislation: when 'strength, stamina, or physique' is relevant to the sport or activity.[801] Section 29 of the *Anti-Discrimination Act 1998* (Tas) allows for exceptions to sporting activities 'by restricting participation to persons of one gender of 12 years of age or more'.[802] The Tasmanian clause explicitly reflects the main purpose of many of these exemptions: to legalise separate women and men's sports. Yet, the clauses also apply when considering trans and gender diverse people's participation in sport.

Guidelines for the Inclusion of Transgender and Gender Diverse People in Sport

In June 2019, Sport Australia and the Australian Human Rights Commission, in collaboration with the Coalition of Major Professional and Participation Sports (COMPPS), released the 'Guidelines for the Inclusion of Transgender and Gender Diverse People in Sport'. These guidelines were developed in consultation with trans and gender diverse athletes and experts in inclusion and gender diversity. They offer principles to assist the sports sector around the participation of trans and gender diverse athletes, particularly at the community level. They outline the relevant legislative frameworks as well as ways sporting organisations and clubs can be inclusive through leadership, codes of conduct, uniforms, facilities and data collection.[803]

While the guidelines are not legally binding, many Australian sporting organisations have applied them. In August 2019, Cricket Australia launched its policy for trans and gender diverse players' inclusion.[804] In October 2020, 8 more peak national sporting organisations launched inclusion policies which aligned with the guidelines:

- AFL
- Hockey Australia
- Netball Australia
- Rugby Australia
- Tennis Australia
- Touch Football Australia
- UniSport Australia
- Water Polo Australia.[805]

Barriers and exclusion from sport

Despite the guidelines and anti-discrimination protections, research suggests that trans and gender diverse people in Australia are significantly underrepresented in sport and physical activity compared with their cisgender peers.[806]

Multiple factors are driving trans and gender diverse people, especially trans women, out of sport:

- the introduction of exclusionary policies from global sports bodies
- hostile sport environments
- a lack of appropriate policies at the grassroots and community level of sport.[807]

Other barriers to sport and physical activity are internal. For instance, many trans and gender diverse people experience dysphoria, fear and anxiety about other people's reactions and possible discrimination.[808]

Research in Australian sport has shown that discrimination and transphobia are common and persistent. This drives trans and gender diverse people away from sport clubs and spaces.[809] Many sport and exercise professionals lack understanding and cultural competence to work with and cater to the needs of trans and gender diverse people.[810]

Submissions identified other barriers trans and gender diverse people face. These include needing to provide evidence of legal and medical gender change. Parents for Trans Youth Equity cited work conducted with a university researcher that 'identified that parents navigate a complex set of legal documentation requirements to affirm their child's name and gender [which] is important for TGD children to … play community sports'.[811] Switchboard Victoria also noted that trans and gender diverse children and young people experience discrimination in sports in and out of school.[812]

There is one notable exception to these reports about trans and gender diverse people facing exclusion: research has shown that trans and gender diverse people experience far lower rates of discrimination in queer and inclusive clubs.[813] These clubs demonstrate how affirming environments can support trans and gender diverse people.

Gyms and fitness facilities

The 'Free to Exist' report collected comprehensive Australian data about sport and sexual orientation, gender identity and sex characteristics. The report found that young LGBTIQA+ people are using gyms and leisure and fitness facilities at higher rates than they are engaging with organised sport. This is in part because these spaces do not necessarily enforce a gender binary. Trans and gender diverse people can do activities such as gym classes and weight training individually.[814]

Yet, the report also found that gyms, leisure centres and public spaces may be sites of discrimination and harassment. Some trans and gender diverse participants spoke of being misgendered by staff and receiving intrusive and inappropriate comments from other patrons.[815]

International debates about participation in sport

For decades, opponents of trans and gender diverse rights have used sport to argue against anti-discrimination laws or other initiatives to support trans and gender diverse people. Indeed, they have often brought up sport because of the passions it generates among the cisgender majority. It is easy to play on myths and misunderstandings about trans and gender diverse people in sport.[816]

Debates involving sport and trans and gender diverse people have become more prominent in the last decade. The debates have focused especially on whether trans women have physical advantages which would impact on the fairness of sporting competitions. Policies, practices and discussions about sport often exclude non-binary people and trans men.

There are complex factors which influence sports performance. As numerous scholars who work in fields of kinesiology (sport science), law, policy and gender studies have written, evidence does not support claims that all trans women would, by virtue of having gone through male puberty, automatically have unfair advantages in sport.[817]

The focus on trans women's perceived advantage and threats to safety disregards

the diversity of trans women. Indeed, as researchers have noted, opponents of trans women in sport make assumptions about both cisgender and trans women which arbitrarily set parameters of 'masculine' and 'feminine' bodies. These arbitrary judgements hurt not only trans women, but also people with IVSC (also known as intersex variations) and cisgender women whose bodies do not fit within supposed norms.[818]

Both advocates and opponents of trans women's participation in sport have pointed to scientific studies to argue their cases. However, a literature review performed by the Canadian Centre for Ethics in Sport found that most studies referenced to oppose trans women's participation in sport 'have used either cis men or sedentary [physically inactive] trans women as proxies for elite trans women athletes'.[819]

Another recently published evidence review found that evidence from 52 studies did not support the theory that trans women have an inherent athletic advantage over cisgender women.[820]

Internationally, the debates over trans and gender diverse people in sport have led many peak sporting bodies to ban trans women's participation at all or some levels. These bodies include World Rugby, World Athletics, Union Cycliste Internationale, International Rugby League and World Aquatics. Most of these bans apply only to trans women who went through 'male puberty' – meaning those who did not take puberty suppressants as children. Many of the groups, politicians and media calling to ban trans women from sport also oppose gender-affirming healthcare for children and young people.

Since 2021, the International Olympic Committee (IOC) has taken a sport-by-sport approach to trans and gender diverse inclusion – allowing the sport bodies to set the rules for participation in the Olympics. In November 2025, though, media reported that the IOC was preparing to release a new policy which would effectively ban trans women who went through male puberty from competing.[821]

In recent years, some organisations which claim to support women's sports have framed trans women as a threat to cisgender women athletes or to women's sport in general. Critics have pointed out that these organisations focus only on trans and gender diverse people in sport, rather than other challenges affecting women in sport. For instance, one study with cisgender women rugby players found that they did not consider trans women's participation to be a priority. Instead, they cited as their biggest challenges: men's sexist and homophobic behaviours and attitudes, sexual harassment at social events, overt discrimination, subtle discrimination (e.g. prioritising men for physiotherapy) and unsafe and substandard training facilities.[822]

Australian attitudes towards trans and gender diverse participation in sport

Submissions from trans and gender diverse people, advocates and researchers opposed any formal or informal exclusion from sport. ACON argued that 'sport plays such a significant role in the lives of Australians and is often seen as the platform for change in societal attitudes. Sports policies and practices must pave the way for inclusivity, ensuring trans people can participate fully and safely.'[823]

A minority of submissions opposed trans women's participation in sport – often in the context of their arguments about single-sex spaces (see section 3.4). These submissions echoed international debates about unfair advantages and safety. For instance, one individual wrote:

> **Trans women, more often than not, are larger bodies which could inflict serious damage to a biological woman if there was a collision or stumble. This matter cannot be ignored for the safety of women, the integrity of women's sport and the rights of women to be comfortable and safe in whatever they wish to pursue.[824]**

Women's Forum Australia's submission to Queensland's Birth, Deaths and Marriages Registration Bill 2022 also suggested that trans and gender diverse 'inclusion means that women and girls who would otherwise have a chance to compete or to excel, miss out, either because a male athlete has taken their spot or their placing.'[825]

The public debates have led to bullying, harassment and discrimination against trans women in sporting environments. For example, submissions from ACON, Switchboard Victoria, Your Community Health and Inner City Legal Centre described sport as a key area where 'trans people are the targets of escalating anti trans and gender-based hate campaigns'.[826] Illawarra Shoalhaven Gender Alliance cited members who reported that 'trans and gender diverse people, particularly women, [are] being verbally intimidated and harassed at places such as community leisure facilities resulting in a reluctance for them to participate in health promoting physical activities'.[827]

Community versus elite sport

The 2019 'Guidelines for the Inclusion of Transgender and Gender Diverse People in Sport' distinguish between approaches for elite or high-performance competitions versus grassroots or community sport. According to the Australian Institute for Sport (AIS), all national sporting organisations have their own ways to classify elite athletes.[828] The AIS also has a framework known as FTEM to distinguish between elite and grassroots or community sport: Foundations – Talent – Elite – Mastery.[829]

Many of the debates about trans women in sport tend to conflate the grassroots and elite environments. At the elite and high-performance levels, policies need to consider sport-specific factors and the 'the range of competitive advantages and abilities that are already accepted in the cisgender population'.[830] However, there are very few trans and gender diverse athletes competing and eligible to participate in elite competitions, both in Australia and internationally.[831]

Most trans and gender diverse people participate in grassroots and community sport. Best practice at that level – as reflected in the 2019 guidelines – is to prioritise inclusion.[832]

5. Appendices

5.1 Appendix A: previous Australian Human Rights Commission documents addressing trans and gender diverse rights

- 'Sex Files: The Legal Recognition of Sex in Documents and Government Records – Concluding Paper of the Sex and Gender Diversity Project' (2009): This project explored legal recognition of people's sex and gender on documents and in government records. The final report made recommendations about how to improve legal recognition and change of gender in government records.
- 'Addressing sexual orientation and sex and/or gender identity discrimination: Consultation report' (2011): In 2010 the Commission began a consultation process to hear people's experiences of discrimination on the grounds of sexual orientation or gender identity. The consultation report addressed a range of areas of public life, including: anti-discrimination laws, education, health, aged care, prisons and legal recognition on documents.
- 'Resilient Individuals: Sexual Orientation, Gender Identity, and Intersex Rights' (2015): This report explored the discrimination and marginalisation faced by LGBTI+ people in Australia. It highlighted policy reform needed to address issues of systemic discrimination enforced through binary and traditional views of gender identity.
- 'Religious Exemptions under the SDA – Information Sheet' (2017): This document explained the provisions in the SDA that allow religious organisations to legally discriminate against individuals based on sex, sexuality or gender identity.
- 'Guidelines for Including Transgender and Gender Diverse People in Sport' (2019): These guidelines provided recommendations for sports organisations to create inclusive environments for trans and gender diverse individuals. The document emphasised how to retain fair competition while upholding the right of trans and gender diverse people to participate safely in all levels of sport.
- 'Wiyi Yani U Thangani (Women's Voices)' (2020): This report brought together findings and recommendations from Australia's first national consultation with Aboriginal and Torres Strait Islander women. The report includes the voices of First Peoples who identify as transgender, and as Sistergirls and Brotherboys.
- 'Trans and gender diverse people's rights in Australia' (2026): These are 3 explainer documents which provide summaries of concepts and laws around trans and gender diverse people's rights in Australia. There are 3 explainer documents covering an overview of trans and gender diverse people's rights, legal protections and rights for trans and gender diverse young people

5.2 Appendix B: Yogyakarta Principles and plus 10 principles[833]

Principle 1	the Right to the Universal Enjoyment of Human Rights
Principle 2	the Rights to Equality and Non-Discrimination
Principle 3	the Right to Recognition before the Law
Principle 4	the Right to Life
Principle 5	the Right to Security of the Person
Principle 6	the Right to Privacy
Principle 7	the Right to Freedom from Arbitrary Deprivation of Liberty
Principle 8	the Right to a Fair Trial
Principle 9	the Right to Treatment with Humanity while in Detention
Principle 10	the Right to Freedom from Torture and Cruel, Inhuman or Degrading Treatment or Punishment
Principle 11	the Right to Protection from All Forms of Exploitation, Sale and Trafficking of Human Beings
Principle 12	the Right to Work
Principle 13	the Right to Social Security and to Other Social Protection Measures
Principle 14	the Right to an Adequate Standard of Living
Principle 15	the Right to Adequate Housing
Principle 16	the Right to Education
Principle 17	the Right to the Highest Attainable Standard of Health
Principle 18	Protection from Medical Abuses
Principle 19	the Right to Freedom of Opinion and Expression
Principle 20	the Right to Freedom of Peaceful Assembly and Association
Principle 21	the Right to Freedom of Thought, Conscience and Religion
Principle 22	the Right to Freedom of Movement
Principle 23	the Right to Seek Asylum
Principle 24	the Right to Found a Family

Principle 25	the Right to Participate in Public Life
Principle 26	the Right to Participate in Cultural Life
Principle 27	the Right to Promote Human Rights
Principle 28	the Right to Effective Remedies and Redress
Principle 29	Accountability
Principle 30	the Right to State Protection
Principle 31	the Right to Legal Recognition
Principle 32	the Right to Bodily and Mental Integrity
Principle 33	the Right to Freedom from Criminalisation and Sanction on the Basis of Sexual Orientation, Gender Identity, Gender Expression or Sex Characteristics
Principle 34	the Right to Protection from Poverty
Principle 35	the Right to Sanitation
Principle 36	the Right to the Enjoyment of Human Rights in Relation to Information and Communication Technologies
Principle 37	the Right to Truth
Principle 38	the Right to Practise, Protect, Preserve and Revive Cultural Diversity

5.3 Appendix C: Sample of international trans and gender diverse rights

This appendix outlines some examples of the experience of trans and gender diverse rights internationally. These are just select examples and not an exhaustive list of all nations and their initiatives. The examples are a mix of both positive and negative reforms around trans and gender diverse rights.

Criminalised jurisdictions

There are still many countries that criminalise trans and gender diverse people. The International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) is a federation of over 2,000 non-profit organisations worldwide that campaign for LGBTIQA+ human rights. In September 2020, ILGA published the most recent edition of its 'Trans Legal Mapping Report'. This report explored the legal situation in 143 member states of the United Nations. According to that report, 13 countries criminalised trans and gender diverse people through 'cross-dressing' laws. Punishments range from imprisonment and corporal punishment to death. These countries were Brunei, the Gambia, Indonesia, Jordan, Kuwait, Lebanon, Malawi, Malaysia, Nigeria, Oman, South Sudan, Tonga and the United Arab Emirates. There were 37 additional countries that have laws which disadvantage trans and gender diverse people, often through anti-homosexual laws and provisions.[834]

Since that report's publication, several countries have rolled back various trans and gender diverse rights.

Pacific

Most Pacific nations – including Tonga, Papua New Guinea, Solomon Islands, Tuvalu, Cook Islands and Kiribati – have no legal protections for trans and gender diverse people. In Samoa, workplace anti-discrimination law includes gender as a protected attribute,[835] but the Samoa Fa'afafine Association has indicated that this does not apply to fa'afafine or fa'afatama.[836] Fiji's 2013 constitution bans discrimination based on sexual orientation, gender identity or expression.[837] However, there are no provisions in Fijian law for people to change their legal gender.

Aotearoa New Zealand introduced self-identification legislation in 2023. This means individuals can change sex and gender markers on birth certificates based on self-identification. They do not require supporting evidence from medical practitioners to make these changes.[838]

In November 2025, the Aotearoa New Zealand Government announced a ban on prescribing puberty suppressants for trans and gender diverse children. This ban is in effect until the completion of clinical trials in the United Kingdom. That is not expected until 2031.[839]

Asia

Since 2014, India has recognised a third gender. The Indian Supreme Court ruled in *National Legal Services Authority v Union of India* that trans and gender diverse people have a right to legal recognition of their self-identified gender.[840]

Similarly, Pakistan introduced the *Transgender Persons (Protection of Rights Act) 2018*. This law guarantees fundamental rights to trans and gender diverse people and prohibits discrimination. In 2023, the Federal Shariat Court of Islamabad struck down some provisions of the law around self-recognition of gender.[841]

Latin America

In 2020, Argentina passed a law that introduced a quota that reserves 1% of government jobs for trans and gender diverse people.[842] This added to existing legislation which recognises trans and gender diverse rights. For instance, the *Gender Identity Law 2012* says that everyone has a right to recognition of their gender identity.[843]

In February 2025, the Argentinian president issued a decree modifying the *Gender Identity Law 2012* to ban gender-affirming healthcare for children and young people

under the age of 18. The decree also limited trans and gender diverse people in the criminal justice system from accessing accommodation in their affirmed gender.[844]

In Colombia, legislators introduced the Comprehensive Trans Law into the legislature in June 2025. The law followed public outcry after the brutal murder of trans woman Sarah Millery. The bill would introduce anti-discrimination protections, self-identification for legal recognition of gender, the introduction of non-binary and trans or travesti gender markers, require data collection around gender identity and includes sections recognising intersectionality. The bill must still pass through the legislature – but it is the first time such a bill has made it to legislative debate in Colombia.[845]

Africa

As noted above, several African nations have criminalised trans and gender diverse people through cross-dressing laws.

South Africa tends to have the continent's most progressive laws relating to LGBTIQA+ people. The 1994 Constitution enshrines protections from discrimination on the basis of sex, gender and sexual orientation. *The Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000* also outlaws unfair discrimination and harassment for protected attributes which include sex, gender and sexual orientation. Although the laws do not explicitly mention gender identity, courts and the South African Human Rights Commission have interpreted the protections to apply to trans and gender diverse people.[846]

On legal recognition of gender, as early as 1974 – under Apartheid – the *Trans Rights Law* amended the *Births, Deaths and Marriages Act* to permit people who had gender affirming surgery to change their gender markers. The post-Apartheid government passed the *Alteration of Sex Description and Sex Status Act 49 of 2003*. This requires someone to have undergone a medical or surgical procedure to update the gender markers on their birth certificates.[847]

Europe

European countries have been at the forefront of introducing and/or expanding equality laws to include trans and gender diverse people. For example, in 1972, Sweden was the first country to allow legal change of gender and introduced free gender affirming surgery. In 2024 the Swedish Parliament passed a new law that lowered the age of who can change their legal gender to 16 years.[848]

In 2023 the Spanish Parliament passed legislation extending protections and rights for trans and gender diverse people. The law introduced self-identification for anyone over the age of 16 to change their legally recognised gender. There are also provisions for children aged 12–16 to change their legally recognised gender either with parental consent or court approval. The law also banned conversion practices.[849]

The European Court of Human Rights and European Court of Justice have also played key roles to support legal recognition and protection for trans and gender diverse people. The European Court of Justice case *P v S and Cornwall County Council* (1996) concerned a trans woman who lost her job after disclosing to her employer that she was undergoing a gender affirming procedure. The European Court of Justice held that this constituted sex discrimination under the Equal Treatment Directive in the Charter of Fundamental Rights. This directive enshrines the right to equal treatment between men and women. The Court reasoned that under this right, a person being dismissed on the grounds of undergoing gender reassignment 'is treated unfavourably by comparison with persons of the sex to which he or she was deemed to belong before undergoing gender reassignment'.[850]

United Kingdom

Until mid-2025, human rights laws in the United Kingdom were relatively favourable for trans and gender diverse people. For example, the *Equality Act 2010* includes 'gender reassignment' as a protected attribute. This protects any individual who is 'proposing to undergo, is undergoing or has undergone a process (or a part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex'.[851]

Under the *Gender Recognition Act 2004* trans and gender diverse adults may legally change their gender. However, the process is not based on self-identification. Individuals must apply to the Gender Recognition Panel to receive a Gender Recognition Certificate. The application requires:

- the person to have lived in their affirmed gender for 2 years
- medical evidence confirming a diagnosis of gender dysphoria
- a statement of intent to live in their affirmed gender until they die.[852]

In recent years there have been other restrictions imposed on trans and gender diverse rights. For instance, following the publication of the Cass Review, in March 2024 the Health Minister banned the prescription of puberty suppressants to trans and gender diverse children through the NHS.

In April 2025, the United Kingdom Supreme Court ruled in *For Women Scotland Ltd v The Scottish Ministers* that, under the *Equality Act 2010*, the word 'sex' only refers to a person's sex recorded at birth.[853] Following the ruling, the UK Equality and Human Rights Commission (EHRC) issued interim advice that trans and gender diverse people could only access single-sex facilities (i.e. bathrooms) and services aligned with their sex recorded at birth. Human rights groups have noted that this has major negative consequences for trans and gender diverse human rights in the United Kingdom.[854]

United States

Across the United States, federal and state legislatures have been debating and passing laws to restrict trans and gender diverse rights. The Trans Legislation Tracker shows a significant increase in bills introduced and passed in the last 5 years:

Year	Number of bills introduced	Number of bills passed
2021	153	18
2022	174	26
2023	615	87
2024	701	51
2025	1,022	126

These bills have targeted trans and gender diverse rights in healthcare, sport, bathrooms, prisons and education.[855]

Since January 2025, President Donald Trump has issued several executive orders restricting trans and gender diverse rights. One executive order signed in January recognises 2 sexes – male and female – and says that gender cannot be changed.[856] A week later an executive order banned trans and gender diverse people from the US military unless they used facilities and uniforms aligned with their sex recorded at birth. In February 2025, another executive order banned trans and gender diverse athletes from competing in women's sports when there was federal funding attached.

Some state governments have responded to these debates and actions by strengthening protections for trans and gender diverse people. However, the current trajectory in the United States suggests more challenges for trans and gender diverse rights.

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