



Youth Pride Network

Submission to the Law Reform Commission Project 111

Review of the Equal Opportunity Act 1984

Table of Contents

Gender History/ Gender Identity Discrimination	1
Intersex status discrimination	3
Exemptions	3
Charities and Voluntary Bodies	4
Religious Educational Bodies Employment Exception	4
Provision of Education Exemption	5
Goods and Services	6
Prohibiting Conversion practices	7
Other notes	7

Act Overview

The *Equal Opportunity Act 1984* (WA) ('the Act') states:

"The objects of this Act are —

(a) to eliminate, so far as is possible, discrimination against persons on the ground of sex, marital status or pregnancy, family responsibility or family status, sexual orientation, race, religious or political conviction, impairment, age, publication of relevant details on the Fines Enforcement Registrar's website or, in certain cases, gender history in the areas of work, accommodation, education, the provision of goods, facilities and services and the activities of clubs;"¹

For LGBTIQ+ young people, the Act is not serving this object.

The Act currently excludes large parts of the LGBTIQ+ community, including most transgender, non binary, intersex and asexual young people.

Many critical parts of LGBTIQ+ young people's lives are exempted from protection, including school, employment, volunteer organisations, charities and accommodation services. YPN is deeply concerned at the suggestion to expand exemptions in the Act to the provision of goods and services.

To make the Act fit for purpose, the YPN recommends:

- removing the requirement that trans and gender diverse people must be in receipt of a recognition certificate from the Gender Reassignment Board in order to access the Act.
- recognising genders outside the binary to protect non-binary individuals.
- the introduction of protections on the grounds of sex characteristics.
- amending exemptions for voluntary bodies and charities.
- removing the religious educational bodies employment exception in its entirety.
- removing exemptions relating to the provision of education.
- YPN vehemently opposes the introduction of any exemptions relating to the provision of goods and services.
- introducing a legislative strategy to address conversion practices however recommends this be done in a separate process, in consultation with survivors.
- changing the definition of 'sexual orientation' to encapsulate the breadth of sexual orientations including asexual people and other identities.
- removing exemptions for accommodation provided by religious bodies under ss 33AM(3), 35Z(3).

¹ *Equal Opportunity Act Western Australia 1984* (WA) pt 1, s 3(a). Available [here](#).

Gender History/ Gender Identity Discrimination

YPN strongly supports removing the requirement that trans and gender diverse people must be in receipt of a recognition certificate from the Gender Reassignment Board in order to access the Act.

YPN strongly supports recognising genders outside the binary to protect non-binary individuals.

YPN strongly rejects the transphobic ideology of the other submissions to the discussion paper.

Removal of requirement for Gender Reassignment Board ('GRB')

As noted in the Law Reform Commission's Discussion Paper ('the Discussion Paper'), trans and gender diverse young people experience horrific and unacceptable rates of discrimination in the WA community. This discrimination is a significant contributor to the harrowing statistic that over 50% of trans and gender diverse young people have attempted suicide.² In the Transpathways report it was found that 75% of young trans people had been diagnosed with depression and 75% had been diagnosed with anxiety.³

Despite this, very few trans and gender diverse people have access to protection under the Act. This is exacerbated for trans and gender diverse young people who, in many cases, are not able to access a 'reassignment procedure' as defined in the *Gender Reassignment Act 2000 (WA)*.⁴ In YPN's submission to the Law Reform Commission's Project 108, many trans and gender diverse young people provided their experiences of the Gender Reassignment Board.⁵ Many young people were unable to access this process for reasons including:

- it was not appropriate for them to do so;
- they did not have supportive parents willing to assist them;
- they could not afford the prohibitive cost of medical procedures;
- they could not access specialist doctors due to long waitlists; or
- they did not want to undergo those procedures.⁶

The United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (The Rapporteur) has previously set out that requiring trans and gender diverse people to undergo any form of medical procedure as a condition of accessing

² Strauss, P., Cook, A., Winter, S., Watson, V., Wright Toussaint, D., Lin, A. (2017). *Trans Pathways: the mental health experiences and care pathways of trans young people*. Telethon Kids Institute, Perth, Australia. Available [here](#).

³ Strauss, P., Cook, A., Winter, S., Watson, V., Wright Toussaint, D., Lin, A. (2017). *Trans Pathways: the mental health experiences and care pathways of trans young people*. Telethon Kids Institute, Perth, Australia. Available [here](#).

⁴ *Gender Reassignment Act 2000 (WA)* s 3.

⁵ Youth Pride Network, *Submission to Law Reform Project 108* (2018). Available [here](#).

⁶ Youth Pride Network, *Submission to Law Reform Project 108* (2018). Available [here](#).

legal gender recognition is a violation of their right to physical integrity and self-determination.⁷ The Rapporteur has stated these practices amount to ill-treatment or torture.⁸ By having this requirement in the Act, Western Australia is currently in contravention of these rights.

Trans and gender diverse young people have an inalienable human right to non-discrimination as laid out in *Articles 2 and 26* of the *International Covenant on Civil and Political Rights*, and *Article 2* of the *Convention on the Rights of the Child*.^{9 10} These rights are currently being denied by the Act in its current form. Any amendment of the Act that falls short of providing trans and gender diverse young people the same protection afforded to young people on other grounds, for example sexual orientation, will be a continuation of this violation.

Changes to the recognition of gender identities

It is critically important that gender identities outside the binary of 'men' and 'women' are protected by the Act. Non-binary young people, or young people with a felt sense of gender that does not fall within the gender binary, are subject to enormous amounts of discrimination¹¹. Currently, non-binary people cannot be recognised by the GRB and therefore are not afforded any protections.

In the 'Writing Themselves In 4' report:

- 65.8% of non-binary young people felt unsafe or uncomfortable at their educational institution;
- 44.6% had missed at least one day at school due to feeling unsafe or uncomfortable;
- 52.8% of non-binary young people had experienced verbal, physical or sexual harassment based on their gender identity;
- 13.2% of non-binary participants had attempted suicide in the last 12 months; and
- 62% of non-binary young people had difficulties accessing toilets.¹²

These horrifying statistics point to the enormous amount of discrimination that non-binary young people experience in all areas of life and the need for comprehensive protections.

It is also incredibly important that non-binary people are understood to be different to intersex people. As is noted again later in this submission intersex and non-binary people have very different life experiences and endure different forms of discrimination. In the largest study to

⁷ Report of the special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment 5 January 2016, UN Doc A/HRC/31/57, para 49. Available [here](#)

⁸ Report of the special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment 5 January 2016, UN Doc A/HRC/31/57, para 49. Available [here](#)

⁹ United Nations Human Rights (1976, March 23). *International Covenant on Human Rights Part 2: Article 1*. Available [here](#).

¹⁰ Velásquez Rodríguez Case. (1988). Inter-American Court of Human Rights. (ser.C) No. 4, para 176.

¹¹ Hill, A., Lyons, A., Jones, J., McGowan, I., Carman, M., Parsons, M., Power, J., Bourne, A. (2021). *Writing themselves in 4*. La Trobe University. Available [here](#).

¹² Hill, A., Lyons, A., Jones, J., McGowan, I., Carman, M., Parsons, M., Power, J., Bourne, A. (2021). *Writing themselves in 4*. La Trobe University. Available [here](#).

date of intersex people in Australia, only 8% identified as transgender.¹³ A strong understanding of the difference between sex and gender is important for ensuring that these protections are comprehensive and effective.

Submission from other parties

Some submissions to the Discussion Paper purport incorrect and harmful transphobic ideology, that provide an example of the discrimination transgender people are subject to.

Transgender people are recognised by the United Nations, the Royal Australian College of General Practitioners, the Australian Medical Association and the Australian Human Rights Commission.^{14 15 16} Assertions that try to invalidate trans identities are not supported by evidence. The validity of trans identities should not be open to debate. As scholar Judith Butler has recently articulated, the opposition to the idea of 'gender' is linked to many fascist, anti-LGBTIQA+ rights movements across the world.¹⁷

While we understand the Commission does not seek to impose a 'particular view' on this issue, the Commission will propose recommendations for legislative reform. If the Commission chooses to adopt the positions of the parties expressing transphobic ideology by denying or limiting transgender people's access to the Act they will be tacitly endorsing those viewpoints. This will send a strong message to the community that transgender people are not equal citizens and will likely lead to an increase in discrimination experienced by transgender people.

Additionally, in response to the submission identifying that gender history only formulates 1% of the complaints made in the 2018-2019 financial year, YPN submits that this is likely due to the barriers in place to accessing the Act. As has been noted above this is absolutely not a representation of the prevalence of discrimination in the transgender community. This statistic is quite concerning and likely represents poor engagement of the Equal Opportunity Commission with the transgender community.

Intersex Status Discrimination

YPN strongly supports the introduction of protections on the grounds of sex characteristics.

¹³ Jones et al. (2016) *Intersex: Stories and Statistics from Australia*. Summary available [here](#).

¹⁴ United Nations Human Rights. (2018). *Report on Legal Recognition of Gender Identity and Depathologization*. Available [here](#).

¹⁵ Australian Medical Association. (2014). *AMA Position Statement: Sexual and Reproductive Health*. Available [here](#).

¹⁶ Lyons. A. (2017) *Transgender Health: Journey to Care*. Good Practice (4). Available [here](#).

¹⁷ Butler, J (2021, 23 October) Why is the idea of 'gender' provoking backlash the world over? *The Guardian*. Available [here](#).

YPN would like to acknowledge the submission of Intersex Human Rights Australia to this review and support the contents of that submission.¹⁸ We strongly urge the Commission to read the submission of IHRA and to centre the voices of intersex people in developing their recommendations.

Intersex people are born with sex characteristics that do not fit typical definitions for female or male bodies. Because of the perception of intersex bodies as different, intersex people can experience stigmatisation, discrimination and harmful practices, including medical interventions intended to make intersex bodies more typically female or male.¹⁹ Currently, intersex people do not receive protection under the Act.

YPN is deeply concerned about the conflation of gender history and intersex issues in the Discussion Paper. Transgender and intersex communities have very different needs and face very different types of discrimination; conflating their experiences will lead inappropriate responses for both groups.

The lack of current protections violates intersex people's rights to non-discrimination as laid out in Articles 2 and 26 of the International Covenant on Civil and Political Rights and Article 2 of the Convention on the Rights of the Child.^{20 21} The UN has also recognised that non-consensual surgeries on intersex children and infants are a form of torture.²² Despite this, these practices still occur every day in Western Australia. This year, Australia signed a joint statement around the rights of intersex people at the United Nations.²³

Additionally, the current lack of protection is inconsistent with the *Sex Discrimination Act 1984* (Cth) which protects sex.²⁴

Intersex young people face discrimination, particularly in the school system, which takes many forms, including bullying.²⁵ Strong protections are vital to prevent discrimination in education and employment.

¹⁸ Intersex Human Rights Australia, *Submission on reform of anti-discrimination law in Western Australia* (2021) Available [here](#).

¹⁹ Intersex Human Rights Australia, *Submission on reform of anti-discrimination law in Western Australia* (2021) Available [here](#).

²⁰ United Nations Human Rights (1976, March 23). *International Covenant on Human Rights Article 1*. Available [here](#)

²¹ Velásquez Rodríguez Case. (1988). Inter-American Court of Human Rights. (ser.C) No. 4, para 176.

²² Méndez, J. (2013). *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. Human Rights Council 22nd Session: Article 3. Available [here](#).

²³ United Nations Human Rights Council (2021, October 4). *48th Session: Joint Statement on the Human Rights of Intersex Persons*. Available [here](#).

²⁴ *Sex Discrimination Act 1984* (Cth) s 5. Available [here](#).

²⁵ Lum, S. (2016). *Youth*. Intersex Human Rights Australia. Available [here](#).

YPN notes particularly the importance of terminology to best represent the experiences of intersex people. We support the IHRA recommendation to create grounds on the basis of sex-characteristics and refer to their submission on the importance of this language.²⁶

Exemptions

Charities and Voluntary Bodies

YPN strongly supports removing exemptions for charities and voluntary bodies.

LGBTIQA+ young people experience discrimination in all walks of life, including in the course of volunteering for, or receiving services from a charity or voluntary body. This is particularly important as LGBTIQA+ young people experience high levels of family rejection and so are more likely to experience homelessness and poverty which means that they will often require the assistance of charity or voluntary organisations.²⁷ Additionally, volunteership is a key part of Western Australian civic participation and LGBTIQA+ young people deserve the right to contribute to their communities as anyone else does.

While YPN acknowledges that some charities or voluntary bodies may need to restrict access if there is a particular target of service provision (e.g. only providing services for young people) the law should be formulated in a way that would not allow exclusions based LGBTIQA+ or other specific identities if it is not relevant to the services provided by the charity or voluntary body. Importantly, this cannot exclude trans and gender diverse people from services of their affirmed gender (e.g. trans women being rejected from women's domestic violence shelters).

YPN's initial submission to this review outlined the experiences of LGBTIQA+ young people who had experienced discrimination:

"I tried to access a variety of homelessness services when I was kicked out of home after coming out. The vast majority of services made it clear that my identity was at odds with their religious beliefs and it meant I spent a lot more time on the street than I needed to. [if I was protected by law] I would have been housed right way and it would have saved months and months of trauma, distress, and eventual suicide attempts from occurring."

*"I know people that might still be alive if they had access to better support."*²⁸

²⁶ Intersex Human Rights Australia, *Submission on reform of anti-discrimination law in Western Australia* (2021) Available [here](#).

²⁷ Strauss, P., Cook, A., Winter, S., Watson, V., Wright Toussaint, D., Lin, A. (2017). *Trans Pathways: the mental health experiences and care pathways of trans young people*. Summary of results. Telethon Kids Institute, Perth, Australia. Available [here](#).

²⁸ Youth Pride Network (2019). *Review of the Equal Opportunity Act 1984 (Western Australia)*. Available [here](#).

Religious Educational Bodies Employment Exception

YPN strongly supports removing the religious educational bodies employment exception in its entirety.

YPN is aware of many instances where LGBTIQ+ staff have been fired from schools because of their LGBTIQ+ identity.^{29 30} Even in instances where staff do not get fired, they often feel significant pressure to hide their LGBTIQ+ identity for fear of discrimination or losing their job. Hiding your LGBTIQ+ identity at work is incredibly detrimental to someone's ability to thrive in their workplace, and contributes to a decline in mental health. Many LGBTIQ+ people can attest that this experience is degrading and inhumane.

Additionally LGBTIQ+ students are often aware that teachers are hiding their identities at school and many young people who responded to our initial submission noted this sent a strong, harmful message that who they are is something they should be ashamed of.³¹

YPN acknowledges that there are particular ministers of religion associated with a school that may be hired in accordance with the religious belief however YPN does not support exemptions for any other teaching staff, administrative staff or contract workers. Teachers are trained and admitted in accordance with regulations monitored by the WA Government and education in WA is provided in accordance with State and Federal education standards. This acknowledges that while religious schools are allowed some freedoms, they fundamentally need to adhere to particular standards outlined by the government. Non-discrimination should be one of these standards.

Provision of Education Exemption

YPN strongly supports removing exemptions relating to the provision of education.

YPN's initial submission outlined the breadth of instances where LGBTIQ+ young people have been discriminated against in religious schools. These experiences include:

- Expulsion;
- Threats of expulsion;
- Feeling compelled to hide their LGBTIQ+ identity;
- Students being told they would "burn in hell";
- Direct discrimination from teaching staff, students and pastoral care staff;
- Bullying policies that did not specifically address bullying related to LGBTIQ+ identity;

²⁹ Grieg, B. (2017, November 22). You're gay? You're out! Gay teacher sacked due to WA law loophole. *WA Today*. Available [here](#).

³⁰ Schneiders, B., Millar, R. (2021, August 10). Steph Lentz was sacked this year for being gay. It was perfectly legal. *The Sydney Morning Herald*. Available [here](#).

³¹ Youth Pride Network (2019). Review of the Equal Opportunity Act 1984 (Western Australia). Available [here](#).

- Being denied the ability to affirm their gender at school;
- Refusal to bring same-gender partners to school formals.³²

These experiences had long lasting effects on these young people far beyond their time at school. Young people outlined how these experiences made them feel wrong, broken and unworthy.

Many LGBTIQ+ respondents noted additional vulnerabilities that meant they were unable to leave a discriminatory school. For example, many young people at these schools are often from families who do not support their identity or their desire to attend a different school. This means that these young people do not have a safe place to express their identity in either the home or at school. Many LGBTIQ+ young people from regional areas didn't have other options, particularly to complete year 11 and 12 or if they were in receipt of an educational scholarship. Additionally, many LGBTIQ+ young people who discover their identity while in school internalise the messages and violence they experience to the extent they did not have capacity to advocate for themselves.

For many LGBTIQ+ young people the result of this discrimination is that they disengage with schooling altogether. YPN is aware of many LGBTIQ+ young people, particularly trans and gender diverse young people who experience such severe harassment and bullying they have had to stop schooling. In the Writing Themselves In 4 Report, 60% of LGBTIQ+ young people had missed a day at their education setting in the last 12 months due to feeling unsafe or uncomfortable due to their gender or sexuality.³³

LGBTIQ+ young people have a right to education under article 28 of the Convention of the Right of the Child and this is being denied when they are not supported in a school environment.³⁴ The message that young people receive from school is that they are wrong, broken, and not worthy of protection.

Quotes from LGBTIQ+ young people who contributed to YPN's initial submission articulate this issue further:

"I only came out several years after school, my gender and sexuality were very suppressed. Even without outright discrimination it was enough that all the conversations were heteronormative and that being gay wasn't an option."

"When I came out as trans they had already cause [sic] a student to 'voluntarily' leave and told my mum they'd do the same to me if I didn't quiet down about being trans."

³² Youth Pride Network (2019). Review of the Equal Opportunity Act 1984 (Western Australia). Available [here](#)

³³ Hill, A., Lyons, A., Jones, J., McGowan, I., Carman, M., Parsons, M., Power, J., Bourne, A. (2021). *Writing themselves in 4*. La Trobe University. Available [here](#).

³⁴ United Nations Human Rights. (1990). *Convention on the Rights of the Child: Article 28*. Available [here](#).

“I was unable to go to the staff about what I was experiencing [bullying] because I knew it would not be taken seriously and that it was likely I would be expelled.”

“My school actively ignored bullying on the basis of gender or sexuality, even when complaints were raised.”

“A close friend of mine who was openly trans was refused the ability to wear a suit to our school ball and eventually left the school in our final year due to the discrimination he faced.”

“I had a teacher tell me I'm going to hell during a Religion & Life lesson.”

“I attended a rural Anglican high school and my chaplain was blatantly discriminatory to members of the LGBTQI community.”

“When you're a teenager, your high school is your world. And the world we lived in sent a very clear message that it preferred us to not exist. Just because they weren't actively expelling queer students doesn't mean they weren't deeply hurting us in ways that we would carry with us for many years to come.”

It is unconscionable to allow this discrimination to continue and be sanctioned in the WA education system.

Goods and Services

YPN vehemently opposes the introduction of any exemptions relating to the provision of goods and services.

LGBTIQA+ young people face high levels of discrimination in the community. YPN is very concerned that these provisions would endorse and lead to an increase in this discrimination. Introduction of these provisions would send a strong message to the LGBTIQA+ community that they are not worthy of protection from discrimination in all parts of their life.

LGBTIQA+ young people suffer from high rates of ‘minority stress’ which is the anxiety caused from anticipation of discrimination and discrimination in the community.^{35 36} The ability for any business providing goods and services to discriminate against LGBTIQA+ people would lead to an increase in this minority stress, which is correlated with poor mental health outcomes and suicide rates.

³⁵ Almeida, J., Johnson, R. M., Corliss, H. L., Molnar, B. E., & Azrael, D. (2009). Emotional distress among LGBT youth: The influence of perceived discrimination based on sexual orientation. *Journal of Youth and Adolescence*, 38. Available [here](#).

³⁶ Casey, L. J., Wootton, B. M., & McAloon, J. (2020). Mental health, minority stress, and the Australian Marriage Law postal survey: A longitudinal study. *American Journal of Orthopsychiatry*, 90(5). Available [here](#).

Prohibiting Conversion Practices

YPN supports the introduction of a legislative strategy to address conversion practices however supports this being done in a separate process.

As is outlined in the SOGICE Survivors Statement, the leading statement on this work, this legislation needs to be multifaceted to properly address the experiences of conversion practices.³⁷ Through our work, YPN has heard many concerning experiences of young people being subject to conversion practices. However, to properly address these practices there needs to be a comprehensive approach developed in collaboration with survivors of conversion practices. While the Equal Opportunity Commission will form an important part of this process, the legislation needs to be broader reaching than just this body and so should be done through a separate process.

Other notes

YPN supports changing the definition of ‘sexual orientation’ to properly encapsulate the breadth of sexual orientations including asexual people and other identities.

YPN strongly supports removing the exemption under ss 33AM(3), 35Z(3) for accommodation provided by religious bodies.

LGBTIQA+ young people are at higher risk of rejection and subsequent homelessness.³⁸ The Western Australian Government has a responsibility to ensure the right to adequate housing, without discrimination.³⁹ Most government accommodation services are provided by a religious organisation. Within these services, discrimination is prevalent in both the behaviour of staff and the systemic exclusion of LGBTIQA+ young people.⁴⁰ Additionally, in some unregulated services, LGBTIQA+ young people are subjugated to conversion practices and outright rejected by the service. In a system where the Government relies on the capacity of these services and there are often very few available beds, LGBTIQA+ young people are often making impossible decisions between staying in unsafe homes or sleeping rough and staying in accommodation that is discriminatory in some other way. This exemption must be removed or limited.

³⁷ Sexual Orientation and Gender Identity Change Efforts Survivors (2018) SOGICE Survivor Statement. Available [here](#).

³⁸ United Nations Human Rights. (2015). *Joint Statement on Ending Violence Against Lesbian, Gay, Bisexual, Transgender and Intersex People*. Available [here](#).

³⁹ Committee on Economic, Social and Cultural Rights, General Comment No. 4: The right to adequate housing (Art 11.(1)) of the Covenant), 1991, [6].

⁴⁰ Youth Pride Network, State of Play Report: LGBTIQA+ Youth Homelessness, 2021, Unpublished.

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