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# Human Rights for Transgender Citizens

## Moving Beyond Legislation

Paper presented to the Amnesty International Global Human Rights Conference held in Sydney, 30th October – 1st November 2002 by Roslyn Houston

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In Australia, there have been a number of worthy achievements in regard to legislative and policy amendments/updates that afford protection from harassment of or discrimination against transgender citizens.

***The Tasmanian Police Offences Act 1935, Section 8 (1)(d) ... gave some police officers a licence to bully, intimidate and threaten transgender citizens with arrest or prosecution.***

Certain other countries, that describe themselves as great democracies, appear to be lagging in this regard. For example, transgender people are murdered in the most chilling and vicious ways at a disturbing rate in the United States.

In Tasmania we now have the *Anti-Discrimination Act (Tas.) 1998* which gives transgender people a level of protection from verbal or physical abuse, harassment and of course - discrimination.

### Between sunset and sunrise

The antiquated Tasmanian *Police Offences Act (Tas.) 1998, Section 8 (1)(d)* was repealed in 2001. It was, to put it mildly, a well-overdue repeal. It was also a joke. The Act made it illegal for a 'male' person to dress in female attire "between sunset and sunrise".

The last ten years of the existence of the Act did not see many transgender women arrested or prosecuted but it did give some police officers a licence to bully, intimidate and threaten transgender citizens with arrest or prosecution. Thankfully, I was one of the more fortunate ones in this regard.

In recent years this harassment, for the most part, seems to have occurred as a means for some to pick on transgender people during police random breath testing ... between sunset and sunrise. It was a cynical transphobic exercise in discrimination.

The Act however, was not cynically utilised "between sunset and sunrise" to intimidate entertainers such as Barry Humphries, a.k.a. Dame Edna; Carlotta and her Beautiful Boys Revue nor other notable and less notable cross-dressing celebrities who landed on Tasmania's shore. To discriminate against well-known celebrities probably never even entered the minds of those officers, it was much easier to hassle the disempowered. Neither was the Act used to harass male footballers who participated in football club parties in drag. In fact, police officers have told me of at least two instances when male police officers went to police-related functions or parties dressed as women ... between sunset and sunrise.

The Act was at best a means for some to foist upon transgender citizens double standards or, at worst, it was a blatantly selective harassment of transgender citizens by the boys in blue. It also legitimised verbal and physical abuse by redneck members of the broader Tasmanian community - I have borne the brunt of this and still have to pinch myself to confirm that the Act really has been committed to the rubbish bin of history.

### Challenging Transphobia

After three years of advocacy and giving evidence on behalf of the transgendered, the Department of Education - Equity Standards Branch (Tasmania) recognised the inherent difficulties of bullying and harassment for transgender students, in addition to lesbian, gay and bisexual students. The outcome is a policy entitled 'Challenging Transphobia', along with other ongoing initiatives.

On the surface this all seems pretty good for transgender people and of course is potentially incredibly wonderful stuff. Utilising such protections in the form of legislation or policy however can be problematic for transgender people. Why is this so?

### The Anti-Discrimination Commission and Safety Issues in accessing the Anti-Discrimination Tribunal

The Anti-Discrimination Commission office in Hobart has, since its inception, been under-resourced with staff stretched to the limit. This

obviously makes investigation of claims a slow and difficult process, although this could be changing.

The Anti-Discrimination Tribunal is also under-resourced; some cases take well over a year before a decision is finally handed down, and some take even longer. Clearly, one should not hold one's breath hoping for a quick decision when the hearing process in the court is completed.

But there is a more malevolent side that someone must face when he or she elects to go through the Anti-Discrimination Tribunal process, as a transgender person. It is dangerous accessing and leaving the actual court premises. There is only security guard protection inside the courthouse proper. Once someone leaves via the glass revolving door, he or she is on his or her own.

If one does not have a family, it is dangerous for a friend to come along for moral or emotional support - there is 'guilt by association' in the eyes of the respondent (perpetrator of violence) and his or her family and cronies.

A witness can be intimidated into not giving evidence on behalf of the transgender. Well after the Tribunal hearing has wound up, witnesses or friends who were at a hearing with the complainant may be intimidated by various subtle and unsubtle means. Perpetrators of this type of predatory behaviour are essentially cowardly, but they can also be violent and vengeful.

The perpetrator may use any lie or method of coercion at his or her disposal to discredit and defame the complainant. Furthermore it is preferred by the Tribunal that hearings be open to the public and this includes the media. A transgender-related case may be a good 'angle' for the media on a slow news day, generating coverage of the proceedings. The victim of verbal and physical abuse and discrimination goes on being a victim. One's confidence in the legal system is hardly boosted through going through such an ugly process.

Moreover the Tribunal expects the parties to have no legal representation in the hearing and this makes the contest uneven if the perpetrator has been through the legal system before. Cross-examining someone who has perpetrated verbal abuse and violence on one is about as intimidating as it gets. A complainant may well ask, "why am I putting myself through this nightmare ... should I have simply turned the other cheek ... should I simply stay indoors from now on?"

And what do you think are the most exasperating things of all during a Tribunal hearing? To have a respondent look you straight in the eye and say that you abused him or her. Or to hear his or her family and cronies give testimony which is simply unbridled perjury, yet sound convincing uttering it. Or to go through days when the case is being heard with no family or friends to support you because, if they did, they would become targets of abuse or violence outside the courthouse ... sometime, somewhere. A Tribunal hearing can be the most hostile and lonely of places on this planet.

### **Still hanging in there: Remnants of unfavourable attitudes post-repeal of the *Police Offences Act (Tas.) 1998, Section 8 (1)(d)***

The *Police Offences Act (Tas.) 1998, Section 8 (1)(d)* may have bitten the dust in recent times and Tasmania may arguably, have one of the better police departments in Australia and the world. There are sometimes glimpses however, of much less than ideal police attitudes in regard to transgender citizens.

Overall, things appear to have improved. But increasingly I believe that in the case of some officers, they would sooner believe the recounting of events by a white Anglo-Saxon/Celtic heterosexual/heterosexual-identifying male - even if he is a particularly unsavoury person, than listen to the recounting of events by a transgender woman.

Criminal legal actions undertaken by a transgender woman against a violent male may dematerialise through apparent police incompetence or some kind of systemic transphobia. Perhaps it is a combination of both. It would certainly be naive to think that the repeal of Section 8 (1)(d) would magically dissolve ingrained transphobic attitudes.

There is much more work for transgender people to do in the next few years. Not just in regard to our basic human rights but to be listened to in the first instance and, hopefully, regarded as valid and productive citizens - irrespective of highly regarded and fine-reading legislation or policy. If I sound somewhat disillusioned, you are right. If it sounds as if I am sometimes on the verge of giving up, you are wrong.

The Department of Education's 'Challenging Transphobia' policy; not gone, not forgotten ... just unheard of and invisible.

Sometimes when I look at the Department's 'Challenging Transphobia' policy, I cringe when I realise it is overdue for an update. It had to be completed within a certain time frame and that did not allow for it to be a more succinct and sophisticated policy document. Although the drafting of the policy document took on the views of a number of transgender people and a legal academic, it could do with less terminology and a crucial general re-work. Some recently received input will be a great help. Yet from the policy's inception in early 2000 until the present, it is sobering to realise that most school or college Principals, Vice-principals, school/college counsellors and school/college teachers have never heard of it - even though it is on the Department's website.

In other words, principals, vice-principals, counsellors and teachers know nothing about students who may have a transgender quality and even less about transgender people per se.

Their knowledge of transgender people is, in all probability, confined to film, television or other media images. Images which, as many of us already know, are full of stereotypes and misconceptions. We have to correct that for, as previously mentioned, school or college can be a place of harassment and bullying for a transgender student.

I remember my harrowing high school days in a rural 'football town'. Words can never fully describe those horrendously dark, confused, repressed, bizarre and isolating days. The shame of feeling so out of kilter compels one to never utter what one truly feels about one's gender identity. That is not healthy for a young person.

Others have gone through the same hell, and history is no doubt repeating itself somewhere at this very moment. That is not healthy for young people. It is intolerable - we are obliged to do something - we must never forget these young people. To be and feel so forsaken is an indictment on what is a pervasively smug heterosexual-insistent society that also insists on a binary structure of gender.

Yes, we have survived, some of us only by the skin of our teeth. Do we want others to continually go through the same crushingly isolating existence? Do we want young people to be able to discuss their feelings and not jeopardise their long-term mental health and wellbeing? Do we want a safe and understanding environment where people are able to discuss their feelings without the risk of abuse or social condemnation?

## **Restraining Orders: Over-used and definitely abused.**

Restraining orders are a means of protecting oneself. I have had to utilise this form of legal protection on more than one occasion. There are men who, sometimes quite craftily, want to goad me or other transgender women into fisticuffs, so that they can teach us a lesson in manhood and how wonderful it is to be 'normal' and to still have their 'balls'. Such men are sad, sad specimens of humanity, much less men. I do not feel sorry for them ... not even for a second.

A not uncommon occurrence it seems, at least in Tasmania, is that a perpetrator of physical abuse, including domestic violence against women, will apply for a restraining order to be placed on the victim, alleging that the events happened the other way round. Perpetrators of violence should never, never, never be underestimated. Some are incredibly resourceful and vindictive and often, to use the vernacular, as "cunning as a shithouse rat".

## **Conclusion**

This paper was a struggle for me to complete and therefore hardly enjoyable to write. I would write something and then delete it and start again because a part of me wants to tiptoe and not be seen to be vexatious. It is important to extrapolate some important issues but not get people or organisations offside. For instance I don't like levelling criticism at Tasmania Police for past or current inadequacies as I train officers and recruits.

But how do you educate without naming the reasons for providing such education? Education in a transgender sense has to be ongoing and I don't see that changing for quite some time. It is about moving beyond legislation. Legislation may not always protect us but it can be complemented with reasoned and logical argument about the human rights of transgender citizens.

Of course, much of what has been discussed in this paper probably has relevance for transgender people in other parts of Australia. Perhaps overseas delegates to this conference will also see more than the odd similarity of experience.

This short paper barely scratches the surface but no doubt there will be others here and elsewhere, who will do some really good scratching of their own.

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