

Pride in Protest Provocations Conference
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LEGALLY TRANS

A zine about anti-trans lawfare in 'Australia'



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0. INTRO

Despite the fact that nearly 80% of people in “Australia” believe that trans people should live free from discrimination and have the same rights as others, a relatively small and identifiable number of people have dedicated themselves to rolling back the few legal protections we currently have.

I have spent the last four years studying law and the last three years independently researching how zealous fascists are arguing and fundraising for legal campaigns in “Australia” that take their inspiration, encouragement and material support from an international network of anti-trans campaigners.

I outline here a brief history of the development of the law as it relates to trans & gender diverse people, share knowledge about current local campaigns (including how these are materially supported), and the limitations/criticisms of legal advocacy as a tool for trans & queer liberation, and questions for discussion among comrades on potential approaches and responses to the acceleration of anti-trans legal campaigns.

I believe what is currently happening to trans rights in the UK/US imperial core can and will happen here, unless queer activists & accomplices are watchful and prepared to counter it. This zine arms queers with an overview of how the law views gender and gender transition, the nature of local threats to our current protections, and creates a space to start formulating a serious and collective response.





I. THE LAW

Customary law and lore of country and kinship represents the oldest continuing legal system on this land. This law survives colonisation and continues to be practiced by First Nations peoples across so-called Australia.

The Australian legal system is the product of British settler colonialism and in many ways, replicates its structure and its rules. Similar 'common law' systems are found in other countries like Aotearoa New Zealand, Hong Kong, India, Jamaica and Canada, whose people and histories have seen the blight of British imperialism.

Today, the Australian government operates a legislature and an executive administration to make and implement its laws, with a judiciary that operates as a mechanism to enforce, challenge, dispute and interpret those laws. The court cases that result from this process are the subject of this work.

The use of strategic litigation has resulted in the establishment of a national minimum wage, a system of native title, and protections for the environment. It can change the law and prompt legislative responses from the government of the day.

However, it's important to recognise that true trans and queer liberation cannot be achieved by working only within existing systems, and there are substantial practical limits on what legal proceedings can do to address the inherent violence of a white supremacist, patriarchal, capitalist society.

II. TRANS LEGAL HISTORY

The development of a gender system predates what we understand as laws, and the male-female binary was deeply embedded in the context of early colonial law in 'Australia' and British laws during the 1800s.

At that time, married women had no separate legal personality to their husbands. A married woman during this period became a *femme couvert* or 'covered woman', which meant she could not own things, enter contracts, be sued, get into debt or work in exchange for wages.

Political agitation and protest led to the passage of Married Women's Property Acts in the UK and Australia between 1870-1890. This 'transition' further fused the idea of a two-gender system into law.

Since the 1980s, Australian courts have developed an approach to transgender/transsexual people that attempts to fit our bodies and experiences into the existing gender system, by identifying them as either male or female.

At first, courts heavily focused on the 'legal sex' of the trans body; but progressively broadened the test to account for identity and social recognition. In the last decade, the High Court of Australia has acknowledged that not every person is 'unequivocally male or female', but the implications of that view have yet to be fully explored.

These cases were decided in the context of an evolving set of legislative rules that prescribe methods of legal gender recognition, produced by decades of dedicated collective action and organising. That important work continues today.

III. ANTI-TRANS LITIGATION IN AUSTRALIA

Across the Anglosphere, and particularly in the UK, there is a growing international movement of people who believe that legal protections for trans people should be abolished. They want it to be socially acceptable, and legally defensible, to harass, intimidate and exclude trans people from public life.

These actors present a real and material threat to the future health, safety and political emancipation of every trans person you know. Among them are politicians, lobbyists, journalists, publishers, academics, physicians, and lawyers.

They seek to amplify their extreme and violent rhetoric by setting up crowdfunding campaigns, new media channels and 'astroturf' organisations all over the country. A focal point for this energy is the conduct of strategic litigation.

Two of their current local projects are:

- Lesbian Action Group's sustained campaign against human rights bodies to secure an 'exemption' that would entitle them to exclude trans women from public events
- Giggle for Girls and Sall Grover's appeal against a Federal Court finding that both unlawfully discriminated against a trans woman in blocking her from a 'female-only' social media application.

The UK case initiated by anti-trans group For Women Scotland, determined in April 2025, has galvanised local reactionaries into thinking that with enough cash and dogged persistence, they will win their fight to exclude trans people from all areas of public life.

We should expect that these efforts will continue in the months and years to come.

IV. THE LIMITS OF LEGAL PROCESSES

Legal advocacy and strategic litigation have clear and inherent limits as tools for advancing the position of trans people and all other marginalised groups.

It's good to acknowledge the work of, and hard-won benefits that flow from, law reform. Decriminalisation, discrimination protections and bans on practices that actively cause harm to our communities and particularly to our children – these are worth fighting for.

However, fighting to keep the boot off our necks enough to breathe is not the end of liberation. The courage and conviction of generations before ours has shown, time and time again, that civil disobedience and collective action are what drives change.

We must set our hearts on dismantling the system of coercive control that says what we can and cannot be. Working within a system that privileges technical legal expertise and procedural rules will never deliver what we all demand: true autonomy and freedom in our lives, bodies and relationships.

V. DISCUSSIONS

- How should we respond to anti-trans legal strategies? What messages do we want to send?
- What are the strengths and capacities of our own local networks? Who are we connected to or nearby?
- Who can we forge new connections with, and where?
- What strategies, practices and tactics might we learn from listening to others, and to our own history?

VI. SOURCES

(in chronological order of publication)

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