



Submission from the Professional Association for Transgender Health South Africa (PATHSA) on the Prevention and Combating of Hate Crimes and Hate Speech Bill [B9B-2018]

The Professional Association for Transgender Health South Africa (PATHSA) is an interdisciplinary health professional organisation working to promote the health, wellbeing, and self-actualisation of transgender and gender diverse people. PATHSA makes the following submissions and comments:

- We welcome the Bill and appreciate the efforts which have been made to arrive at legislation that may prevent, or address harms aimed at transgender (hereafter trans), gender diverse or non-binary (TGDNB) people. TGDNB is an umbrella term for all whose gender identity is not aligned with their sex assigned at birth.
- We welcome the inclusion of the grounds “gender identity or expression or sex characteristics” as a basis for a hate crime or hate speech, noting that TGDNB people are particularly affected by stigma and discrimination because their gender presentation does not conform to social expectations and norms.
- We welcome the emphasis in the Bill on prevention, not just prosecution, and we call for resources to be made available to create a social and cultural climate of acceptance towards TGDNB people.
- On the question of resources, we call for meaningful data collection on hate crimes and hate speech, to better inform prevention work.
- We would like to note that the school is a particular context where harm can be aimed at TGDNB children and teenagers, and we would like to see protection from hate crimes or hate speech aimed at young people specifically.
- We would like to know if hate crimes or hate speech, aimed at for example a child of a TGDNB person, because that person is TGDNB (or assumed to be so), is recognised under the Act.
- We would like to know if deliberately misgendering someone or refusing to use that person’s preferred pronoun, title, or name, in the commission of another offence, is

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considered a hate crime, or if these acts fall under the category of *crimen injuria*, which is excluded from the Act.

- Although the question of discrimination on the grounds of “sex characteristics” is envisaged in the Act, we would like to see more explicit mention of intersex people who are often under-recognised and under-represented in legal protections. Intersex people fall on a spectrum of sex characteristics and because their sex assigned at birth may not align with subsequent gender identity, some intersex people would fall into the category of TGDNB.
- We call for discussion on possible hate crime aimed at TGDNB people to include the question of public bathrooms. As “moral panic” around gender diversity increases, we argue that not only is it possible that TGDNB people will be harassed in public bathrooms, but that gender non-conforming, cis-identifying (that is, they identify with sex assigned at birth), people are likely to be subjected to hateful behaviour.
- While we acknowledge questions of free speech and religious freedom, we note with concern that it is in these very religious spaces where stigma and discrimination happen and call for vigilance in monitoring religious spaces.
- In addition some TGDNB people [face](#) bureaucratic inertia, misinterpretation of the law and frank stigma when they approach the Department of Home Affairs to make name and sex marker changes.
- In sum, we call for reassurance that TGDNB people are protected by, and included in, this Act. This is a community which is deeply affected by high levels of stigma in health, educational, occupational, and social settings.

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