



Submission to the Review of the Guardianship and Administration Act 1990 (WA) – Project 114

Joint Submission from
Youth Pride Network, Transfolk WA, Living Proud and WAAC

May 2025

Law Reform Commission of Western Australia

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Re: Submission to the Review of the Guardianship and Administration Act 1990 (WA) – Project 114

We welcome the opportunity to contribute to the Law Reform Commission's review of the *Guardianship and Administration Act 1990 (WA)*.

This submission is made jointly by Transfolk WA, Youth Pride Network, Living Proud WA, and WAAC. It highlights the critical need for law reform to ensure the rights, safety, and dignity of trans and gender diverse (TGD) young people are meaningfully protected within guardianship and administration frameworks.

TGD young people face unique and intersecting forms of discrimination, compounded by limited legal safeguards and systemic invisibility. We urge the Commission to adopt reforms that centre inclusion, self-determination, and human rights.

1. Respect for identity is foundational to capacity and care

The Act must make it explicit that a person does not have impaired decision-making capacity merely because of their gender identity, gender expression, sexuality, or sexual and romantic relationships. Ambiguity enables discrimination and paternalism under the guise of protection.

Guardians and administrators must not substitute their own views in place of the person's will and preferences, particularly where a lack of understanding or discomfort with trans and gender diversity exists. Instead, they should be required to uphold and affirm a person's identity across all decisions, particularly those involving healthcare, housing, legal documents, and social supports.

2. Affirming decision-making: From substitution to support

Supported decision-making should be the default approach under the Act. Substitute decision-making powers should only be used as a last resort, and always in ways that uphold the individual's expressed identity. TGD young people must be empowered to participate in

decisions that affect their lives, including those relating to their bodies, names, pronouns, relationships, and access to affirming care.

3. Providing legal recognition to ‘chosen family’

The Act should also explicitly extend the definition of ‘family’ to include chosen family. Many TGD people, especially young people, are estranged from biological relatives and rely on chosen family for care and support. Guardianship law must not compound this harm by excluding those best placed to act in a person’s interests.

4. Unimpeded access to gender-affirming healthcare

The Act must recognise that access to gender-affirming care is essential healthcare for TGD people. Research shows that access to gender-affirming care significantly improves mental health, reduces suicidality, and increases engagement with life [1]. The legislation must prohibit guardians from obstructing timely access to gender-affirming care on the basis of personal beliefs.

We recommend that:

- Gender-affirming healthcare be recognised as medically necessary.
- Consent processes follow standard medical protocols, without additional legal hurdles based on guardianship.
- Sterilisation provisions be clearly separated from gender-affirming treatments, which may cause infertility as a side effect but are not sought for sterilisation purposes.

5. Safeguards against abuse and disrespect

TGD people in guardianship arrangements must be protected from misgendering, disrespect, and neglect. We recommend that guardians and administrators should be legally required to:

- Ensure care settings are affirming and inclusive.
- Use correct names and pronouns that affirm the young person’s identity.
- Support changes to legal identity documents in line with the person’s gender.

Robust mechanisms must also be in place for TGD people to challenge guardianship arrangements that are non-affirming or harmful; this includes accessible complaints pathways,

independent advocacy, and regular review of guardianship orders with the meaningful involvement of the individual concerned.

6. Intersectional inclusion and the rights of TGD people with disability

TGD people with intellectual disability face compounded risks under guardianship: their capacity is often wrongly assumed to be absent, their sexual and gender identities are dismissed or erased, and they are frequently denied access to appropriate sexual health education and affirming care [2].

Research has shown that these restrictions can paradoxically increase risk by forcing young people to seek connection or expression in unsafe spaces in which they are further marginalised [3].

We recommend that the Act must:

- Affirm the sexual and gender identity of people with disability as real, valid, and worthy of respect.
- Require guardians and services to undertake cultural safety and gender diversity training.
- Recognise the legitimacy of decision-making by young people with disability, with appropriate support where needed (as opposed to blanket substitution).

7. Lived experience must shape reform

Too often, the voices of TGD people are left out of systems designed to govern their lives. Guardianship law must be co-designed with the communities it affects. TGD people must be recognised as experts in their own experiences, and their input must guide policy, practice, and law reform.

Thank you for considering this submission. We would welcome the opportunity to discuss these issues further.

Yours sincerely,

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References

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- [3] Craig, Shelley L., Margaret F. Gibson, Megan L. McInroy, Jessica F. McCready, and Alex A. Eng. 2022. 'Seeking Safer Sexual Spaces: Queer and Trans Young People