



Human Rights  
Commission  
*Te Kāhui Tika Tangata*

# To Be



Kia noho au ki tōku anō ao

# Who I Am

Report of the Inquiry into Discrimination Experienced by Transgender People  
He Pūrongo mō te Uuitanga mō Aukatitanga e Pāngia ana e ngā Tāngata Whakawhitiira



Human Rights  
Commission  
*Te Kāhui Tika Tangata*

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## Foreword

Trans people strive to live lives of dignity in communities throughout New Zealand.

The youngest person to meet with the Inquiry was an 11-year-old intermediate school student; the oldest was in her late seventies. We heard from trans people who are in business, who are farmers, academics, artists, health professionals, sex workers, economists, managers, trades- people, parents and grandparents. They referred to themselves in many ways: whakawāhine, fa'afafine and fakaleiti gave submissions alongside Male-to-Female (MtF) and Female-to-Male (FtM) transsexuals, cross-dressers, androgynous genderqueer people, and some intersex people. Others simply wanted to be known as a man or woman.

In recognition of that diversity, the Inquiry has chosen to use the generic term 'trans'. Trans people said what they held in common was the struggle to come to terms with who they are, to have others accept them and to be able to live fulfilled lives in the sex they know themselves to be.

Human rights are about dignity, equality and security for every person. This report documents for the first time the obstacles to dignity, equality and security for trans people in New Zealand. It shows how discrimination impacts on all aspects of their lives; how from a very young age it can threaten their personal safety, deny a secure family life, undermine health, opportunities to learn, to join a sports team, to get a job, to commit to a career. Equally, it records and acknowledges stories of achievement and of triumph over great adversity.

This report has tried to reflect the courage and generosity of the trans people and of their family members, colleagues and friends who shared their stories. The Inquiry is indebted to trans and community groups who welcomed us to their hui, fono and conferences. The Inquiry also greatly appreciated the engagement with key government agencies and with health professionals who work with trans people.

The Inquiry's findings show clearly that being trans is not a lifestyle choice; it is simply one dimension of the rich diversity that is humanity.

Trans people came to the Inquiry seeking no special treatment but simply recognition of the rights that other New Zealanders take for granted. The report records many of the proposals that trans people brought to the Inquiry. It recommends four areas for immediate attention:

- increasing participation of trans people in decisions that affect them
- strengthening the legal protections making discrimination against trans people unlawful
- improving access to health services, including gender reassignment services
- simplifying requirements for change of sex on a birth certificate, passport and other documents.

And in light of the human rights of intersex people:

- acknowledges significant human rights issues affecting intersex people that merit urgent attention.

The Inquiry members, lead Commissioner Joy Liddicoat, Chief Commissioner Rosslyn Noonan and Commissioner Warren Lindberg, were supported by a small team of Human Rights Commission staff. Special thanks are due to our excellent project manager Jack Byrne, and to Julie Watson, Robert Hallowell, Gilbert Wong and other staff in each of our three offices who helped out in numerous ways. We were reduced from three to two members in February 2007 when Warren Lindberg, who first proposed the Inquiry, resigned to take up a senior position in the Ministry of Health. This report has benefited greatly from his initial participation and subsequent advice and guidance.

The superb portraits are the work of photographer Rebecca Swan.

We are committed to working with trans people, with government agencies and with health professionals to implement these recommendations over the next three years.

*Rosslyn Noonan*      *Joy Liddicoat*

Rosslyn Noonan  
Chief Commissioner  
Te Amokapua

Joy Liddicoat  
Commissioner  
Kaihautu

The Inquiry was conducted under Section 5(2) (h) of the Human Rights Act 1993 by which the Commission may:

**“inquire generally into any matter, including any enactment or law, or any practice, or any procedure, whether governmental or non-governmental, if it appears to the Commission that the matter involves, or may involve, the infringement of human rights”.**

### **Terms of Reference**

1. The Commission will inquire into:

- (a) the nature and extent of discrimination experienced by transgender people
- (b) the accessibility of public health services to transgender people (incorporating the minimum core obligations of both the primary and secondary health services, including, but not limited to, gender reassignment services)
- (c) the barriers faced by transgender people when attempting to gain full legal recognition of their gender status.

2. To consider, as a result of these inquiry processes, whether to make recommendations on:

- (a) changes to legislation, regulations, policies and practices
- (b) other steps required to reduce the level of marginalisation experienced by transgender people.

# Executive Summary

## Kia noho au ki tōku anō ao

In 2006 the Human Rights Commission launched the world's first inquiry by a national human rights institution into discrimination experienced by transgender people.

The focus was on three areas: experiences of discrimination, access to health services, and barriers to legal recognition of gender status.

The Inquiry process placed emphasis on participation of and accountability to the widest possible range of trans people. Trans people come from every sector of New Zealand society and the visibility of the breadth of that diversity is the most effective challenge to stereotypes that too frequently blight the lives of trans people.

Gender identity and its expression vary greatly. This report acknowledges that.

The word 'trans' has been adopted where it has been necessary to use a generic term.

Over eighteen months the Inquiry met with some 200 people aged from the early teens through to people in their seventies. Many came as individuals – trans people, their partners, family, friends and colleagues. Others represented trans advocacy organisations, community groups and unions. Submissions also came from health professionals, academics and government agencies.

The Inquiry has found that trans people strive for a life of dignity and many succeed in doing so. Yet repeatedly trans people have had to triumph over severe, sometimes heart-breaking, adversities. Their choice was never about lifestyle, but the realisation of a core part of their identity.

The Inquiry did not seek to identify new or specific rights for trans people. Rather it took the rights set out in the *Universal Declaration of Human Rights*, part of international human rights law and to some extent domestic New Zealand law, and asked whether trans people experience those rights at least to the same extent that other New Zealanders do.

### Social context

Historically, societies in all parts of the world included people who, today, would be described as trans. In New Zealand, there is evidence that traditional Māori communities were inclusive of whakawāhine, while in

other Pacific countries female social roles (such as fa'afafine in Samoa, and fakaleiti in Tonga) were traditionally accepted for some males.

Yet there have also been periods when trans people were punished severely for defying strictly defined categories of morally or legally appropriate behaviour and dress for women or men.

Trans people challenge the view that someone born with a male body was always a man or, indeed, that a person always identifies as a man or a woman, rather than belonging to a third gender or sex. Today, gender identity issues and the rights of trans people are increasingly part of international human rights debates.

### Children and young people

Trans children and young people have the right to be accepted for who they are, but are dependent on others, parents and teachers, to ensure those rights are understood and protected. The visibility of some trans young people has highlighted major barriers within schools, at work, playing sport, accessing health services and actively participating in their community. It is the responsibility of society at large to address these concerns so that trans children's rights, including their right to education, are realised. There is an urgent need for information and resources for trans children and young people, their parents and families and schools.

### Equality and freedom from discrimination

Trans people in New Zealand face discrimination that undermines the ability to have a secure family life, to find accommodation, to work, to build a career and to participate in community life. At worst, there was constant harassment and vicious assault. Trans people faced daily challenges simply to find acceptance and do the things other New Zealanders take for granted.

The evidence presented in this report demonstrates many critical policy areas where no consultation has taken place with trans people and decisions have been made based on extremely limited knowledge about the impact on them. Trans people must be given the opportunities to participate

in decisions that affect them. This will require government agencies to work collaboratively with them to address the priorities identified in this report.

There must be no doubt that trans people are protected from discrimination under the Human Rights Act 1993. The Inquiry considers that section 21(1) (a) of the Human Rights Act 1993 should be amended to state clearly that sex includes gender identity.

## Health

The Inquiry found significant gaps and inconsistencies in the provision of health services. The services that are available are ad hoc and provided by a few dedicated health professionals. Most trans people cannot access the gender reassignment services necessary for them to live in their gender identity and appropriate sex.

The vast majority of services are not available within the public health system, resulting in many trans people bearing the cost of private assessments and medical treatments, either in New Zealand or overseas. The cost of gender reassignment services is a significant barrier to many trans people.

Trans people and health professionals are consistent in how to address these problems. The first priority is to build on the Inquiry by having the Human Rights Commission facilitate discussions between trans people, health professionals and the Ministry of Health to map out clear treatment pathways and standards of care.

## Citizenship

The Inquiry uses the term 'citizenship' to convey a sense of belonging and participation in society. This wider lens of active and full citizenship is applied to three aspects of most significance for trans people: official documents issued by the state, the situation of New Zealand citizens born overseas, and privacy-related rights.

A strong case is made for trans people to be able to obtain official documents that reflect their gender identity. The effect of current law and policy is that many trans people do not have, and cannot obtain, official documents that contain consistent information about their gender identity

and sex. The report recommends changes to current law to simplify requirements for change of sex on a birth certificate, passport and other documents. The Inquiry advocates a threshold that should apply across all official documents.

Most trans people experience difficulty having their rights to privacy respected. For many, disclosure resulted in discrimination and other threats to their security. The Inquiry found that the current law provides an adequate basis for trans people to assert their rights to privacy of personal information and for agencies holding such information to be clear about their responsibilities to protect it. Inconsistencies in practice require attention.

## Intersex issues

While the Inquiry's terms of reference were limited to trans people, intersex people made submissions that have raised significant human rights issues. These merit urgent consideration and will require broader consultation with intersex people and their families, relevant government agencies and health professionals.

There are significant issues specific to intersex people in relation to medical procedures performed on children and young people with intersex conditions. Having access to full medical records, including those used as the basis for any legal change of sex, is critically important for intersex people. The absence of such records compounds the invisibility, secrecy and shame felt by many.

## The legal framework

The legal framework protecting the human rights of trans people is complex and confusing. Two areas are explored in depth: the application to trans people of the anti-discrimination provisions of the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993, and legal policies for changing sex on a birth certificate and other official state documents.

The Inquiry concludes that trans people would be better protected by a specific reference to gender identity in the Human Rights Act 1993 so a consistent, non-discriminatory definition of a person's sex applies across all laws.

## Recommendations

Enabling effective participation by trans people in decisions that affect them by:

- recognising and supporting the leadership and advocacy of trans people
- increasing government agencies' consultation and collaboration with trans people, starting with the priority areas outlined in this report

Reducing discrimination and marginalisation experienced by trans people by:

- clarifying, for the avoidance of doubt, that protection from sex discrimination in the Human Rights Act 1993 includes protection from discrimination on the grounds of gender identity
- recognising that protection from discrimination under the Human Rights Act 1993 requires policies and practices to be inclusive of trans people, whatever their sex or gender identity
- the Human Rights Commission, together with trans people, developing a human rights education programme to address human rights and discrimination issues for trans people.

Improving trans people's access to public health services and developing treatment pathways and standards of care for gender reassignment services, through the Ministry of Health working in co-operation with trans people and health professionals.

Simplify the requirements for changing sex details on a birth certificate, a passport and other documents to ensure consistency with the Human Rights Act by:

- Amending section 28(3)(c)(i)(B) and (C) of the Births, Deaths, and Marriages Registration Act 1995 by substituting the 'physical conformity' threshold with the requirement that someone 'has taken decisive steps to live fully and permanently in the gender identity of the nominated sex'
- allowing the Family Court to make a declaration as to sex for overseas-born New Zealand citizens

Consider the specific human rights issues facing intersex people, through the Human Rights Commission undertaking in-depth work in consultation with intersex people and other relevant government agencies.

## Whakarāpopotanga Kaiwhakahaere

I te tau 2006 i whakarewahia e te Kāhui Tika Tangata te uiuitanga tuatahi o te ao katoa nā tētahi whakahaere tika tangata ā motu mō te aukati e pāngia ana e ngā tāngata whakawhiti ira. E toru ngā wāhi i arohia atu e te Uiuinga Taitamatāne, Taitamawahine Hoki: ko ngā whai wāhitanga ki ngā aukatitanga, te urutanga ki ngā ratonga hauora, me ngā āraitanga mai ki te whakaaetanga o te mana whakawā tāne, wahine, hua atu.

Ko te hātepe uiuitanga i aro atu ki te whai wāhitanga me te papanga ki ngā momo tāngata whakawhiti ira whānui. Ka ahu mai ngā tāngata whakawhiti ira mai i ngā wāhanga katoa o te iwi whānui o Aotearoa, a ko te kaha kitea mai o tēnei kanorau te āhuatanga tōtika rawa atu hei wero i ngā whakapae e pēhi nei i ngā tāngata whakawhiti ira.

He tino rerekē te tuakiri tangatatanga me ōna whakaputanga. Ka whakamana tēnei pūrongo i tēnei. Ko te kupu 'trans' te kupu kano i tikina hei whakamahi i ngā wāhi e tika ana.

I roto i te tekau mā waru marama i tūtaki te Uiuuitanga ki ngā tāngata neke atu i 200 mai i ngā tamariki neke atu i te 11 ō rātau tau, tae noa ki ngā tāngata kei ngā whitu tekau e haere ana. He maha rātau i haere takitahi mai – ngā tāngata whakawhiti ira, ō rātau makau, whānau, hoa me ngā kaimahi. Ko ētahi he māngai nō ngā whakahaere whakawhiti ira, rōpū hāpori me ngā uniana. I tuku tonu mai anō ngā tohunga hauora, tohunga mātauranga me ngā tari kāwanatanga.

Ko tā te Uiuuitanga i kite, ko te whakapau kaha o ngā tāngata whakawhiti ira ki te rapu i tētahi ao whai mana mō rātau me te tutuki anō o te maha o ēnei tāngata i tēnei. Engari he maha ngā wā, e kake ai ngā tāngata whakawhiti ira i ngā taiepa whakatūtaki nui, a he patu ngākau hoki i ētahi wā. Ko tā rātau i kōwhiri ai, ehara mō te āhua noho engari ko te whakamanatanga i te tūāpapa o tō rātau tuakiri.

Kāore te Uiuuitanga i kimi i tētahi tautuhitanga hou, i ngā tika motuhake rānei mō ngā tāngata whakawhiti ira. Engari i titiro kēhia ko ngā tika e rārangi mai ana i roto i te Whakapuakitanga Whānui o ngā Mana o te Tangata, tētahi wāhanga o te ture tika tangata o te ao me ētahi wāhi o



ngā ture ā motu o Aotearoa, me te pātai anō mēnā e whai pānga ngā tāngata whakawhiti ira ki ēnei tika pērā i te nuinga o Aotearoa.

### **Te horopaki ā iwi**

Mai rā anō, i roto i ngā iwi puta i te ao, ngā momo tāngata ka kīa i ēnei rā, he tangata whakawhiti ira. I Aotearoa, kei roto i ngā taunakitanga e kī ana i roto i te ao Māori ō nehe, i whakaaehia ngā whakawāhine, otirā he taunakitanga anō nō ngā whenua o te Moana nui ā Kiwa e whakamana ana i ngā tūranga wāhine ā iwi (pēnei i te fa’afafine i Hāmoa, me te fakaleiti i Tonga) mō ētahi o ngā tāne.

Engari he wā anō i kaha te whakawhiu o ngā tāngata whakawhiti ira mō te whakahē i ngā take tikanga paihere, ahakoa matatika, ā ture rānei mō ngā whanonga tōtika mau kaka hoki mō ngā wāhine me ngā tāne.

Ka werowero ngā tāngata whakawhiti ira i te whakaaro mō te tangata i whānau tāne me noho tonu hei tāne, te noho pūmau tonu rānei o te tangata hei tāne, wahine rānei, me te kore aro kia huri rātau ki tētahi ira tuatoru. I ēnei rā, ko ngā take tuakiri ira me ngā tika mō ngā tāngata whakawhiti ira, e kaha te uru haere ki roto i ngā whakawhitinga kōrero mō ngā tika tangata o te ao.

### **Ngā tamariki me ngā taiohi**

Hi tika tō ngā tamariki me ngā taiohi whakawhiti ira kia whakaaehia rātau mō tō rātau āhua tonu, engari e whirinaki ana rātau ki ētahi atu tāngata, ki ō rātau mātua me ō rātau kaiako, kia pūmau ai tonu te tiaki me te mārama ki ēnei tika. Nā te kitenga i ngā taiohi whakawhiti ira, kua mārama ki ngā tauārai i roto i ngā kura, i te mahi, ngā hākinakina, te toro ki ngā ratonga hauora me te whakauru anō hoki ki roto i te hapori. Kei te iwi whānui tonu te kawenga ki te whakarite i ēnei āwangawanga e mana ai ngā tika o ngā tamariki, me ō rātau tika anō mō te mātauranga. He tino kōhukihuki te hiahia o ngā pārongo me ngā rauemi mō ngā tamariki me ngā taiohi whakawhiti ira, ō rātau mātua, ō rātau whānau me ō rātau kura.

### **Te mana ōrite whakawātea mai i te aukati**

Ka whai pānga ngā tāngata whakawhiti ira i roto i Aotearoa ki te aukatitanga e tāmi ai ō rātau kaha ki noho pai ai i roto

i te whānau, ki te kimi wāhi noho, ki te mahi, ki te whanake mahi me te whakauru ki roto i te hapori. Ko te mea tino hē rawa, ko te rite tonu o te whakatīwheta me te tūkinu. Ia rā ka pā mai ngā uauatanga ki ngā tāngata whakawhiti ira ia rā kia whakaaehia rātau me te mahi i ngā mahi e mahia noahia e ngā tāngata o Aotearoa.

Ko ngā taunakitanga e whakatakotohia ana i roto i tēnei pūrongo he whakaatu i ngā kaupapa maha koretake, arā he kore whakawhiti kōrero me te hunga whakawhiti ira, me te hanga whakatau i runga i te kuare mō ngā pānga ki ngā tāngata whakawhiti ira. Me mātua whai wāhanga te hunga whakawhiti ira ki te hanga whakatau e pā ana ki a rātau. Me mahi tahi ngā tari kāwanatanga me te hunga whakawhiti ira ki te whakatika i ngā mea tuatahi e tautuhia mai i roto i tēnei pūrongo.

Me mātua pūmau te tāwharau i ngā tāngata whakawhiti ira mai i te aukatitanga i raro i te Ture Tika Tangata 1993. Ko te whakaaro a te Uiuutanga mō te wāhanga 21(1)(a) o te Ture Tika Tangata 1993, me whakatika tēnei kia mārama ai te kī ka uru te tuakiri ira ki roto i te tangatatanga.

### **Hauora**

I kitea anō e te Uiuutanga ngā hapa nui me ngā kotititanga i roto i ngā ratonga hauora. Ko ngā ratonga e wātea ana he kore tōtika me te torutoru noa iho o ngā tohunga hauora pūmau e whakarato ana i ēnei. Kāore e taea e te nuinga o ngā tāngata whakawhiti ira te whakauru ki ngā ratonga whakatika ira e tika ana kia pai tā rātau noho i roto i tō rātau tuakiri tangatatanga me te ira tangatatanga tōtika.

Kāore te nuinga o ngā ratonga i te wātea i roto i te pūnaha hauora ā iwi, whāia ka riro tonu mā te maha o ngā tāngata whakawhiti ira e utu i ngā aromatawai me ngā tirotirotanga tinana i Aotearoa, i tāwahi rānei. He ārai nui te utu o ngā ratonga whakatika ira ki te maha o ngā tāngata whakawhiti ira.

He tōtika te hunga whakawhiti ira me ngā tohunga hauora ki te whakatika i ēnei raruraru. Ko te mea tuatahi mai i tēnei Uiuutanga ko te takawaenga a te Kāhui Tika Tangata i ngā whakawhitinga kōrero i waenga i te hunga whakawhiti ira, ngā tohunga hauora me te Manatū Hauora ki te whakatakoto mahere maimoatanga me ngā paearu manaakitanga.



## Raraunga

Ka whakamahia e te Uiuitunga te kupu raraunga hei whakaata i te matenui me te whai wāhitanga ki roto i te iwi whānui. Ko te whānuitanga o tēnei noho me te tūrurutanga o te raraunga ka pā ki ngā āhuatanga nui rawa e toru mō ngā tāngata whakawhiti ira; ko ngā pepa ōkawa e tukuna ana e te Kāwanatanga, te wāhanga o ngā tāngata o Aotearoa i whānau ki tāwahi, me ngā tika e pā ana ki te munatanga.

He tautohe nui kua whakatauhia mō te hunga whakawhiti ira e taea e rātau te tiki i ngā pepa ōkawa e whakaata ana i tō rātau tuakiri tangatatanga. Ko te pānga o ngā ture me ngā kaupapa o te wā, he kore whai wāhi nō te maha o ngā tāngata whakawhiti ira ki te tiki i ngā pepa ōkawa e mau ai ngā pārongo tōtika mō tō rātau tuakiri tangatatanga me te ira tangatatanga. Ka taunakihia e te pūrongo kia whakarerekēhia ngā ture o te wā kia māmā ai te whakarerekē i te ira tangatatanga i runga i te tiwhikete whānau, uruwhenua me ētahi atu pepa. Ka kōrero anō te Uiuitunga kia pā anō te paepae ki ngā pepa ōkawa katoa.

Ko te nuinga o ngā tāngata whakawhiti ira kāore i te whakamanahia ō rātau tika muna. Mō te nuinga, ina whākina mai e rātau, ka pā mai te aukatitanga me te mōrearea ki tō rātau haumarū. I kitea e te Uiuitunga ka āhua pai te whakarato a te ture o ēnei rā mō te hunga whakawhiti ira ki te tāpae i ō rātau tika muna mō ngā pārongo whaiaro me te mārama anō o ngā tari e pupuri ana i ēnei pārongo ki ō rātau kawenga mō te tiaki i tēnei. Me whakatika i ngā mahi kotititanga.

## Te ruaruanga taha wahine, taha tāne

Ahakoia i whāiti mai ngā ture whakahaere o te Uiuitunga ki te hunga whakawhiti ira, i tukuna e ngā tāngata ruaruanga ngā tonono e whakaatu ana i ngā take tika tangata nui. Me mātua aro mai ki ēnei whakaaro me te whakawhiti kōrero anō me ngā tāngata ruaruanga, ō rātau whānau, ngā tari kāwanatanga e tika ana, me ngā tohunga hauora.

Kei reira ētahi take nui e hāngai ana ki ngā tāngata ruaruanga, e pā ana ki ngā hātepe whakaora e whakahaerehia ana ki ngā tamariki me ngā taiohi he āhuatanga whakawhiti ō rātau. He mea tino nui mō ngā tāngata ruaruanga, kia whai wāhi atu rātau ki te katoa o ngā whakaaturanga hauora, me ērā hoki e whakamahia ana

hei tūāpapa i te takahuritanga ā ture o te tangatatanga. Nā runga i te koretanga ō ēnei whakaaturanga ka taumaha anō te kore e kitea, te munatanga me te whakamā e pēhi ana i a rātau.

## Te pou tarāwaho ā ture

He tino whīwhiwhi me te pōhēhē te pou tarāwaho ā ture e tiaki ana i ngā tika tāngata o te hunga whakawhiti ira. E rua ngā wāhanga i āta hōparatia, ko te pānga ki ngā tāngata whakawhiti ira o ngā wāhanga aukati-kore o te Ture Pire Tika 1990 me te Ture Tika Tangata 1993 me ngā kaupapa ture mō te takahuri ira tangatatanga i runga i te tiwhikete whānau me ētahi atu pepa ōkawa kāwanatanga.

Ko te whakatau a te Uiuitunga ka pai ake te tiakina o te hunga whakawhiti ira e tētahi wāhanga ake mō te tuakiri tangatatanga i roto i te Ture Tika Tangata 1993, e rite tonu, e aukati-kore ana te whakamārama i te ira tangatatanga o te tangata ki roto i ngā ture katoa.

## Ngā tauanaki

E whakamana ana i te urutanga tōtika mai o ngā tāngata whakawhiti ira ki roto i ngā hanga whakarite e pā ana ki a rātau mā:

- te whakamana me te tautoko i te kaiārahitanga me te māngaitanga o te hunga whakawhiti ira
- e whakapiki ana i te uiuitanga me te whakawhiti kōrero o ngā tari kāwanatanga me te hunga whakawhiti ira, mā ngā mea tuatahi i roto i tēnei pūrongo hei tīmata i tēnei.

Te whakaiti i te aukatitanga me te panatanga e pāngia e te hunga whakawhiti ira mā:

- te āta whakamārama, kia kore e rangirua, ko te whakamarutanga mai i te aukati tangatatanga i roto i te Ture Tika Tangata 1993 kei roto anō i tēnei ko te whakamaru mai i te aukatitanga tuakiri tangatatanga.
- te whakamana i te whakamarutanga mai i te aukatitanga i raro i te Ture Tika Tangata, e hiahiatia ana ngā kaupapa me ngā mahi e uru mai ai te hunga whakawhiti ira, ahakoia tō rātau ira tangatatanga, tuakiri tangatatanga hoki.
- te whakawhanake a te Kōmihanga Tika Tangata me te hunga whakawhiti ira, i tētahi kaupapa mātāuranga tika tangata hei whakatika i ngā tika tangata me ngā take aukati mō ngā tāngata whakawhiti ira.

Ko te whakapai ake i te whai wāhitanga o ngā tāngata whakawhiti ira ki ngā ratonga hauora tūmatanui me te whakawhanake i ngā huarahi maimoatanga me ngā paearu manaaki mō ngā ratonga whakatika ira tangatatanga, mā te mahi tahi a te Manatū Hauora me ngā tāngata whakawhiti ira me ngā tohunga hauora.

Ko te whakamāmā i ngā whakaritenga mō te whakarerekē i ngā āmiki tangatatanga i runga i te tiwhikete whānau, uruwhenua me ētahi atu pepa e tōtika ai ki te Ture Tika Tangata mā:

- te whakatika i te wāhanga 28(3)(c)(i)(B) me (C) o Te Ture Rēhita o ngā Whānau, Mate, me ngā Mārena 1995 mā te whakakapi i te paepae 'physical conformity' me tētahi whakaritenga 'e tūturu, e pūmau hoki te noho a te tangata ki roto i te tuakiri tangatatanga i tohua e ia'
- te whakamana i te Kōti Whānau ki te hanga whakapuakitanga mō te ira tangatatanga o ngā tāngata o Aotearoa i whānau mai ki tāwahi.

Te whakaaroaro ki ngā take tika tangata e tika ana e pā ana ki te tangata ruaruanga, mā te whakahaere a te Kāhui Tika Tangata i ngā mahi hōhonu me te tangata ruaruanga me ētahi atu tari kāwanatanga e tika ana.

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# 1. Introduction

## Kupu Whakataki

1.1 Human rights are about dignity, equality and security for all human beings. When the Human Rights Commission completed the first comprehensive review of the status of human rights in New Zealand in 2004, trans people emerged as one of the most marginalised groups, unsure even if they were covered by the anti-discrimination protections of the Human Rights Act 1993 (Human Rights Commission, 2004). Few experienced dignity, equality or security in their daily life.

1.2 In 2005 *Mana ki te Tangata: the New Zealand Action Plan for Human Rights* acknowledged the unique barriers preventing trans people from full participation in society and recommended an inquiry into the discrimination faced by them (Human Rights Commission 2005a). The Human Rights Commission consequently consulted trans people and their organisations about the parameters for such an inquiry, to be conducted under section 5(2) (h) of the Human Rights Act.

1.3 The resulting terms of reference were agreed by the Commission in August 2006 and focused on three of the most significant issues identified by trans people: discrimination, health services (including but not limited to gender reassignment services), and legal recognition of gender status. The Inquiry was mandated to make recommendations on changes to legislation, regulations, policies and practices, and on any other steps required to reduce the level of discrimination experienced by trans people.

1.4 The Inquiry report makes four key recommendations to deal with the discrimination faced by trans people. Two require simple legislative change; the other two are matters of policy and practice. They concern:

- participation of trans people in decisions that affect them
- steps necessary to reduce discrimination, stigmatisation and marginalisation, including an amendment to clarify protection under the Human Rights Act
- improved access to health services and development of treatment pathways and agreed standards of care for gender reassignment services by the Ministry of Health in cooperation with trans people and health professionals

- simplification of the requirements for change of sex on a birth certificate, a passport and other official documents to better align them with the Human Rights Act.

1.5 And with regard to the human rights of Intersex people, the Inquiry report recommends:

- in-depth consideration by the Human Rights Commission and relevant government agencies of the specific human rights issues facing intersex people.

1.6 In this report the generic term 'trans' has been used to encompass the great diversity of people who came to the Inquiry, including those who referred to themselves, among other terms, as transsexual, male-to-female, female-to-male, transgender, whakawahine and fa'afafine. A list of terms and definitions follows this introduction.

### Report structure

1.7 Trans people come from every sector of New Zealand society. The Inquiry heard from young as well as older people. They included business people, professionals, retail workers, farmers and sex workers. The report is structured to give voice to the trans people who came to the Inquiry; to demonstrate their diversity; to allow their words and experiences to reach beyond the Inquiry team to the wider community; and to ensure their priorities are heard and understood.

1.8 The report begins with the profiles of ten trans people. Their stories tell how they have come to terms with who they are, their search for acceptance and how they live lives of dignity.

1.9 Throughout history trans people have been present in every society, a part of every culture. A short section sets out, in broad terms, the historical, social and cultural context within which trans people struggle to find recognition as full citizens.

1.10 In chapter 3 the focus moves to the experiences of trans children and young people asserting their gender identity from a very young age. There are moving accounts of the difficulties they and their families face in putting a name to, let alone dealing effectively with, their reality.

Chapter 4, on equality and freedom from discrimination, provides troubling evidence of how difficult even the ordinary things in life can be for an adult who is trans.

**1.11** Chapters 5 and 6 focus on health and citizenship, two areas that severely impact on a trans person's wellbeing and sense of security. The Health chapter identifies the disadvantage experienced by trans people in accessing health services and the enormous obstacles to access gender reassignment services which are vital to the wellbeing of trans people. The Citizenship chapter explains the importance of having official documents such as birth certificates, drivers' licenses and passports accurately state the sex they live as.

**1.12** A small number of intersex people made submissions. These are summarised in Chapter 7. The specific issues of intersex people merit further attention.

**1.13** Chapter 8 reviews the legal framework and identifies where amendment is required. Finally Chapter 9 details the Inquiry's findings in relation to the terms of reference and explains the report's proposals and recommendations.

**1.14** This report aims to accurately relate the experiences of trans people; to provide reliable and up-to-date information about the laws, policies and services that affect them; and to explore what works well, what does not and why that might be. The perspectives of government agencies are integral to the information and analysis provided.

## Human rights framework

**1.15** From the outset the Inquiry adopted the human rights approach. This involved:

- linking of decision-making to human rights standards set out in the relevant covenants and conventions
- identification of all relevant human rights involved, and a balancing of rights and responsibilities, where necessary prioritising those of the most vulnerable, to maximise respect for all rights and rights-holders
- an emphasis on the participation of individuals and groups in decision-making that affects them
- non-discrimination among individuals and groups through equal enjoyment of rights and obligations

- empowerment of individuals and groups by allowing them to use rights as leverage for action and to legitimise their voice in decision-making

- accountability for actions and decisions by ensuring that individuals and groups can challenge decisions that affect them adversely.

**1.16** The Inquiry did not seek to identify new or specific rights for trans people. Rather it took the rights set out in the Universal Declaration of Human Rights, part of international human rights law and to some extent domestic New Zealand law, and asked whether trans people experienced those rights to the same extent that other New Zealanders do.

**1.17** Evidence throughout the report illustrates the extent of discrimination, stigmatisation and marginalisation experienced by trans people. Equally the submissions reflected an extraordinary resilience and the courage and determination of trans people to be true to themselves and to live in the sex they know themselves to be, despite the obstacles.

## Inquiry process

**1.18** In developing the inquiry process and procedures emphasis was placed on participation of and accountability to the widest possible range of trans people.

**1.19** The understandable anxiety that many trans people have about disclosure, and their dislike of sensationalist, voyeuristic media coverage, meant the Inquiry had to offer people a range of ways to contribute to the proceedings. Confidentiality had to be guaranteed when it was requested. At the same time the Inquiry team was conscious that the voices and experiences of trans people are crucial to both public and official understanding and support for change. Visibility of the diversity of trans people is the most effective challenge to stereotypes, which all too frequently blight their lives.

**1.20** To build awareness of and confidence in the Inquiry, briefings of trans people and organisations were held in Auckland, Wellington, Christchurch and Dunedin in August and September 2006. Initial contact was made with key government agencies and health-sector personnel. Public and private hearings were held in main centres from

October to December and included a hui/fono. Some people from smaller towns or rural areas travelled long distances to public hearings, while others made written submissions. An online submission form was available. Submissions closed in December 2006.

1.21 During the submission phase the Inquiry met with some 200 people aged from early teens through to people in their seventies. Many came as individuals – trans people, their partners, parents, other family members, friends and colleagues. Others represented trans advocacy organisations, community groups and unions. Submissions also came from health professionals, academics and government agencies. Trans people who made submissions included farmers, business people, nurses and caregivers, community workers, librarians, artists, students and academics, sex workers, scientists, tradespeople, project managers, parents and grandparents. They came from a wide range of ethnicities and nationalities, including New Zealand European / Pākēha, Māori, Samoan, Rarotongan, Tongan, Indian, Japanese, Dutch, English, American and Australian.

1.22 Research undertaken for the Inquiry examined legislation, policy, experience and best practices in the United Kingdom and Western Europe, North America, South Asia, South Africa and Australia.

1.23 A *Summary of Submissions* was published in April 2007 (Human Rights Commission 2007). The summary served two purposes. First, it allowed trans people and others, to check what the Inquiry had heard and whether it had accurately and fully understood, and fairly reflected, the significance of what it had been told. Secondly, it provided a basis for more in-depth engagement with trans people, government agencies and health professionals about the changes necessary to secure for trans people the same rights as others and about possible recommendations that the Inquiry might make.

1.24 The main findings and recommendations of this report were then tested in a series of meetings and exchanges with submitters and other relevant parties. Where significant gaps were identified, focus groups or targeted forums were convened. Finally, a draft report was distributed for comment and corrections and all comments were considered before the report was finalised.

1.25 Some Inquiry material was translated into Māori and Samoan for consultation purposes. There were challenges in translating Western concepts of sex and gender identity, including terms such as 'intersex':

1.26 The Inquiry was privileged that Human Rights Commissioner Merimeri Penfold translated many key concepts. The term 'taitamatāne, taitamawahine hoki' compares the space between the West Coast and the East Coast to the full spectrum of gender identities between maleness and femaleness and has been used as the te reo translation of the words 'Transgender Inquiry'.

## Terminology

**Sex:** A person's biological make-up (their body and chromosomes), defined usually as either 'male' or 'female' and including indeterminate sex.

**Gender:** The social and cultural construction of what it means to be a man or a woman, including roles, expectations and behaviour.

**Gender identity:** A person's internal, deeply felt sense of being male or female (or something other or in between). A person's gender identity may or may not correspond with their sex.

**Gender expression:** How someone expresses their sense of masculinity and/or femininity externally.

**Gender reassignment services:** The full range of medical services that trans people may require in order to medically transition, including counselling, psychotherapy, hormone treatment, electrolysis, initial surgeries such as a mastectomy, hysterectomy or orchidectomy, and a range of genital reconstruction surgeries.

**Transitioning:** Steps taken by trans people to live in their gender identity. These often involve medical treatment to change one's sex through hormone therapy and may involve gender reassignment surgeries (sometimes referred to as gender realignment surgeries by trans people).

**Intersex:** A general term used for a variety of conditions in which a person is born with reproductive or sexual anatomy that does not seem to fit the typical biological definitions of female or male. Some people now call themselves 'intersex'.

**Treatment pathway:** A specific plan which outlines the various steps that a patient will take from their first contact with a health professional and any referrals until the completion of their treatment, outlining what is likely to happen at each stage. In this report, treatment pathways mean the steps trans people can take to access the combination of available gender reassignment services that best meet their health needs.

**Standards of care/clinical guidelines:** Tools for describing best practice for specific health conditions. In this report, clinical guidelines for providing gender reassignment services are referred to as standards of care, reflecting the title of the most commonly cited clinical guidelines in this area. These are based on scientific evidence and expert opinion, generally developed by trans people and health professionals.

Many people raised the importance of language and wanted the autonomy to define terms used. Gender identity and its expression vary greatly and not all trans people fit neatly into one of the definitions below or their broad descriptions. This diversity is acknowledged and cannot be overstated.

Where it has been necessary to use a generic term, the more neutral terms 'trans' or 'trans people/person' have been adopted to include all the people listed below and others who may face discrimination because of their gender identity. Many trans people who had transitioned preferred to be known simply as a man or a woman. People who made submissions also used a range of specific terms to describe themselves, some of which were:

**Whakawahine, Hinehi, Hinehua:** Some Māori terms describing someone born with a male body who has a female gender identity.

**Tangata ira tane:** A Māori term describing someone born with a female body who has a male gender identity.

**Transgender:** A person whose gender identity is different from their physical sex at birth.

**Transsexual:** A person who has changed, or is in the process of changing, their physical sex to conform to their gender identity.

**Takatāpui:** An intimate companion of the same sex. Today used to describe Māori gay, lesbian, bisexual and trans people.

**MtF / trans woman:** Male-to-female / someone born with a male body who has a female gender identity.

**Genderqueer:** People who do not conform to traditional gender norms and express a non-standard gender identity. Some may not change their physical sex or cross dress, but identify as genderqueer, gender neutral or androgynous.

**FtM / trans man:** Female-to-male / someone born with a female body who has a male gender identity.

**Fa'afafine, Fakaleiti, Akava'ine, Mahu, Vaka sa lewa lewa, Rae rae, Fafafine:** Terms that Pasifika trans and 'third sex' people who came to the Inquiry used to describe themselves and which also have wider meanings that are best understood within their cultural context.

**Queen:** Another term for someone born with a male body who has a female gender identity.

**Cross-dresser:** A person who wears the clothing and/or accessories that are considered by society to correspond to the opposite gender.

When attributing quotes, the report tries to reflect the diversity of words trans people used to describe themselves. Pronouns in this report are based on a person's gender identity. For example, a trans woman, MtF, whakawahine or fa'afafine is referred to as 'she'; while a trans man is referred to as 'he'.



## Peri Te Wao (Te Arawa)

E ngā iwi, e ngā reo, e ngā karangatanga maha o ngā hau e whā, tēnei te mihi atu ki a koutou katoa

Ko Te Arawa toku waka

Mai Maketu ki Tongariro

Ko Te Arawa toku iwi

Ko Ngati Te Roro o Te Rangi te hapū

Ko Karen Te Wao toku hoa wahine

Ko Peri Te Wao toku ingoa

Peri Te Wao is a Māori man born into a female body. He feels he has spent his whole life struggling and fighting for what most biological men would take for granted – daily living. “I started life with no confidence or self esteem – until that day I looked in the mirror and looked beyond the flesh – I looked within myself. I was proud of what I saw.”

Peri realises some whānau find it hard to understand and accept transgender people. “It requires them to cope with a situation that at times feels like it is questioning the kawa of the whānau.” As a result, transgender people may be treated like outcasts. “But why punish the innocent person for being true to themselves?”

Peri knows how damaging that rejection is to a person’s mana and wairua. He has friends who did not have the strength to transition without support, and some have taken their own lives. Peri is heartened by Māori elders who embrace all whānau members and recognise potential leaders, regardless of their gender identity.

Today Peri has reached a place of tolerance, forgiveness and leadership. “My journey in life was decided before I was born so I certainly don’t regret where I am now. It has taught me tenacity and patience and has paved a way for many of the men who are transitioning today.”

## Why punish the innocent?



Peri founded FtM Aotearoa in 1999 to provide support to other men like him and their families. He and his wife Karen belong to many community groups and feel this helps break down barriers and builds respect for transgender people in the wider community. “Most of the time I am simply Peri, the Māori guy who is a friend and support person to everyone. I am firstly Māori, secondly a husband, and thirdly a friend to many communities.”

### Sarah Lurajud (Christchurch)

“Transitioning nearly killed me and I consider myself a very strong person,” says Sarah who was born a biological male but knew from the age of two that she was female. “As I got older I realised that there was a name for how I was born, I was a transsexual. I also came to understand that there was little or no place for transsexuals in mainstream society.”

## I am at peace with myself.



Sarah felt shame, which turned into fear. Hiding became her way of life and was one of the reasons she joined the police where she earned a ‘tough-guy’ reputation. Sarah is very proud of her career as a police officer. It includes receiving a police bravery award in 1994 for rescuing an injured 84-year-old woman from a blazing building.

After a work-related breakdown in 2003, Sarah could no longer ignore being transsexual. To her amazement her family, friends, the Police and most of her colleagues supported her. “I got treated fairly, with kindness and respect.” Sarah acknowledges it was also hard on others, especially her wife of 20 years. They separated but remain good friends.

Transitioning was hard. “It was like fighting on half a dozen fronts all at the same time.” Sarah was eventually brought to the point where she made a suicide attempt. Access to mental health services was poor and did not include anybody that specialised in gender dysphoria. “What saved my life was money. You pay for absolutely everything and it is an expensive business if you want to transition successfully. There is always a bun fight for money in the health system and there is no recognition that this is a condition that you are born with.” Sarah feels very sorry for those who do not have the money and are continually on the back foot trying to get the health services they need. In September 2005 she started her life as Sarah and in March 2007 had gender reassignment surgery. “For the first time in my life my mind and body are singing from the same song sheet. I am finally at peace with myself.”



## Gemmah Huriwai (Ngati Porou)

Ko Hikurangi toku maunga  
 Ko Waiapu toku awa  
 Ko Horouta toku waka  
 Ko Ngati Porou toku iwi

When Gemmah was young she didn't know it was possible to transition, but then she saw Carmen, the pioneer Wellington transsexual.

"Then I never looked back. I borrowed my sister's dress and her husband and I walked down the street on his arm, in drag." As her sister Hera says, "I lost a dress but gained a sister."

Gemmah's sisters weren't surprised. Eunice says, "At school all her friends were girls, she wore her schoolbag like a girl and she walked like a girl. When she went into a dress I was just pleased she was what she wanted to be. It didn't matter to me. I would have always loved her."

Gemmah is optimistic when she describes her life, even "the blurry days" when the street and drugs were her life. "It was fun at the time. Even now I have no regrets. I am glad I did what I did when I did." Gemmah left those days behind when she came out of Mt Eden Prison. She began working with a headstrong and talented transgender woman called Gay. The two of them, along with Gemmah's sister Eunice and a friend Rosa, founded Nga Kaimahi o te Po (Workers of the Night) to improve the sexual health of street workers.

At the same time Gemmah was doing voluntary work in prison. She thought she wouldn't be allowed back in "because I'd been a previous tenant", but there was no one else doing the work and she was well received.

When her mother got sick, Gemmah returned to Auckland and from there joined a kapahaka group, Te Waka Awhina a Takatāpui. Today Gemmah and another whakawahine, Shannon, run te reo, tikanga and kapahaka courses at Odyssey House, a place that assists those suffering from the problems associated with substance abuse and addiction. Gemmah and Shannon find it a very affirming experience for them as whakawāhine. "We are up the front and it is not about our gender it is about what we know in terms of things Māori."

Gemmah considers herself one of the lucky ones. Even going to jail had positive outcomes and made her determined to do things when she was released. "I studied psychology and it made me realise that things don't have to be how they seem."

Gemmah has never left her family. "I know a lot of transgender people who get disowned and then don't keep the family contacts alive. When they do go home they get called by their boy name, I don't get that. I have always been Aunty Gemmah to all the nieces and nephews and the mokos. I have heaps of places to go for Christmas. I have the love and support of my family; I have a partner who is a good man, a cat, a job and a house with a lawn. For me that is quite a lot."

# I have always been Aunty Gemmah.

## We don't often get jobs in the public view.

### Allyson Hamblett (Auckland)

Allyson Hamblett, an artist, lives with her cat, Idgy. No one would know that Allyson has lived as a transgender woman (MtF) for the last nine years.

Allyson had gender reassignment surgery in June 2005 but says, "I was female well before my surgery". Not many people would have noticed the difference that surgery made but Allyson finally felt complete. It also meant that, after eight years, she could finally go swimming again.

Allyson loves that she can live 'stealth' (that is, most people do not know she is transgender) and she is accepted as herself. However, she does not shy away from taking opportunities to support other transgender people. She edits the newsletter for trans organisation *GenderBridge*, has spoken out in the media and fronts up to rallies and other public gatherings of the trans community.

But it is in the wider community that Allyson really likes to be involved – whether it is socialising at the gym, sharing ideas in an art studio or relating stories from her life at local Playback theatre performances. It is this community involvement that makes her a well-known identity in the Ponsonby area of Auckland.

Allyson has cerebral palsy and has discovered many parallels between the disability and trans movements. "In the area of employment we don't often get jobs that are in the public view. Employers don't like people who are visibly different," she says.

Allyson is proud to be the first New Zealand citizen to get a declaration from the New Zealand Family Court enabling her to obtain a United Kingdom Gender Recognition Certificate and amended birth certificate. She wishes that her New Zealand citizenship certificate could also be changed to have her correct name and sex, rather than just providing her with an evidentiary certificate.



## Shigeyuki Kihara (Auckland)

Shigeyuki Kihara, known to many people as Yuki, is a visual and performance artist described by a *New Zealand Listener* art critic as a *provocateur*. Her father is Japanese and her mother is Samoan. She identifies as Fa'a fafine and transgender.

"My father told me that my name depicts a transition period in Japan between autumn and winter seasons in the high mountains." Yuki says that while her name is reserved for male children, "my physical presence is expressed in the feminine gender. I occupy the 'va' or the liminal space of the Samoan Fa'a fafine – a concept which most closely relates to the Western notion of 'third gender'."

## You need to call the shots.



Yuki considers that, in contrast to the West, fa'afafine are traditionally an accepted part of the fabric of Samoan society. They are able to do heavy gardening work with men as well as weave a fine mat with women. Yuki believes that with the arrival of Christian missionaries the word fa'afafine took a new meaning, one of shame, to describe individuals who did not fit the missionaries' moral stance on gender and sexuality.

In her artworks Yuki draws on her gender and her background as a fashion stylist. In her 2005 series 'Fa'a fafine: In a manner of a woman', Yuki created photographs of herself based on the type of photos taken during the 18th-century Orientalist art movement. At that time her ancestors were romanticised and objectified by images that did not reflect who they really were. Many of those photographs were produced in Europe as postcards, with semi-naked images sold as pornography. Yuki considers there are many parallels between that process and the treatment of fa'afafine. She believes the stigma of deviance that is attached to Western transsexuals is being imposed on fa'afafine too.

Yuki is passionate about the importance of education and career opportunities as keys to success for fa'afafine. "Once you're successful, people can't mess with you. You no longer have to adapt to them, because you are calling the shots."



### Maria Welborn (Dunedin)

Maria Welborn was born male and identifies as androgynous. The inspiration for her name came from the band *Rage Against the Machine's* song, *Maria*:

... she regenerates  
And like the sun disappears only to reappear  
She's eternally here ...

Maria legally changed her name when she was 16, with her parents' support. The school did not allow her to use the female toilets. "I had to use the male toilets and was abused for this by my male classmates."

Maria lives with Asperger's syndrome so it is important that she has access to good mental health services. "In the public health system my transgender issues tend to dominate discussions with practitioners even when this is clearly not the cause of my mental health issues. My gender issues have long since been resolved and are not the cause of my experiencing Asperger's syndrome, depression and psychosis."

Maria has felt uncomfortable trying to access health services because of health professionals' attitudes to her gender identity and sexuality. "One health specialist made remarks about my lifestyle and asked when I would turn straight and get a boyfriend." Maria feels the medical profession largely discounts the idea that androgynous identified people exist and she felt forced to pretend to be solely female because it was the "closest fit in their mind".

For the same reason, Maria prefers to be known by gender-neutral pronouns, such as hir in place of him/her and zie in place of he/she. "There are other variations, but these are the ones I like."

Maria would like there to be a third option on all forms and official records where she could identify as androgynous. Without that option she has no documentation that recognises her gender identity. "My driver's license is registered as male, while almost all my other official records except for my birth certificate itself are as female."

"As a person who identifies as neither wholly male nor wholly female, the requirement to 'pick a side' is frustrating."

**Having to pick a side is frustrating.**





## We are not the same.

### Phylesha Brown-Acton (Auckland)

Phylesha Brown-Acton is a health promoter, a dancer and a dance troupe director. She is a former beauty queen and an experienced events coordinator and makeup artist. She is a sportsperson extraordinaire (having represented New Zealand in volleyball and Niue in touch rugby) and is an important part of her extended family. Phylesha is Niuean, Samoan, Cook Island, and Pākehā and, above all, a person who is very comfortable with her identity.

Phylesha's whole family is supportive. She never had to "come out" to them. When she was about to tour as a showgirl to Japan her mother said, "You don't need to go all the way to Japan to tell me who you are. We love you and know you are different, so just be yourself." Her family have never felt the need to remind Phylesha of her religious duties and they know she has made peace with her God. "Yes there are barriers, but I don't believe in jumping the barriers. I believe in dismantling them slowly and gradually."

One thing that Phylesha feels strongly about is that gender reassignment surgery (GRS) is not the final transition for everyone. She will live as she is for the rest of her life for cultural, spiritual, religious and financial reasons. Fafafine

have been accepted in the Niuean and other Pasifika cultures for the past 2000 years. She thinks this is reflected in the low number of Pasifika who elect to have GRS. Phylesha feels fafafine have a strong cultural foundation and that society needs to smooth the process for obtaining legal documents that recognise this diversity.

"There are so many people out there, all unique, all looking for different types of support. Our stories are similar but we are not the same. We are as different and unique as any other sector of the community."

Phylesha has experienced a lot of discrimination in the sporting arena. She lives as a woman but, when she plays sport, is told she can only play as a man. In one competition she was ordered to tape down her breasts and take off any make-up. She refused and walked off the court. In 2004

Phylesha was selected to play for the New Zealand mixed netball team at the inaugural Men's and Mixed Netball World Cup in Fiji. The rules stated that either two or three of the seven team members must be male. Other teams realised Phylesha was transgender after the *Fiji Post* printed a positive story about her. As a result, the Fijian and Australian teams protested because they had assumed Phylesha was female and now disputed her right to play as a female. "To come to the World Cup and have other countries discriminating was really hard." However, the protest failed because Phylesha's team had registered her as one of their three male players, to fit in with regulations. Phylesha had her team's support and was allowed to play.

Phylesha's current work at the New Zealand AIDS Foundation's Pacific People's Project grew out of the awareness she gained after drifting into sex work. "I thought that by being a sex worker I would find a male partner and love". Sex work also offered the lure of quick money.

Phylesha had also seen things that scared her – young fa'afafine getting into drugs (something Phylesha has never done), suicide and hopeless situations. She decided it was time to give back and bring parts of the community together.



### Tom Hamilton (Auckland)

Tom slumps over the final tower of chairs he has stacked. "I thought once I became a bloke I'd stop cleaning up at the end of events. Instead the MtFs disappear, and I'm still left tidying up. What's that about?" he asks cheerfully.

Tom Hamilton is a FtM. He works for a community law centre and is also an accomplished performer. Tom left New Zealand as a young woman and returned three years ago as a man. Tom had played high-level competitive sport but stopped when he started to transition. For three years he bound his chest to hide the part of his body that meant others still saw him as female. It was a painful procedure and meant he could not engage in such basic activities as swimming or going to the gym.

While living in the United States of America he was part of a supportive and open trans network which helped him to find work, friends and healthcare. "I wasn't aware of the utopia I was living in." Tom has found it hard to access health services in his home country. Most interactions involve him having to deliver the 'Trans 101 course' before they even get started. Tom received a letter from the local DHB saying that it was not possible to get a hysterectomy or chest surgery through the public system. He worked long hours at two jobs to save enough money to pay for his own surgery. Tom feels lucky to have 100 per cent family support and with their help was able to travel to Thailand to have chest surgery.

Tom had never felt the need to be "stealth" until he returned to Auckland. "Initially I was not confident that the gay and lesbian scene here knew what FtMs were."

## Headlines display us as frauds and freaks.

Gradually he met other FtMs, but that initial isolation showed him how important visibility can be. It has influenced his decision to talk publicly about being trans, though he understands that it is not a role all trans people are comfortable with. Tom says, "It is essential to guide the media away from headlines that display us as frauds and freaks."

Tom has a relationship and his partner and her children live in the United States. Because he was not born male their relationship is not recognised in that country and they cannot live together as a family. "I constantly fight with depression when I think that I may never be able to be with my chosen partner." It is very important to Tom that trans people are able to legally change their sex, and have that documentation recognised in other countries.

In the meantime Tom is busy here, supporting other trans people and helping to build stronger trans communities. He is active in GenderBridge and NZtransguys, and supports GenderQuest's work with trans youth.





### Natalie Shearer (Wellington)

Natalie is self-employed within the building industry, an abseil instructor, tramp, partner, parent, and someone who loves shopping and looking pretty.

Natalie was born almost half a century ago, and while her birth was registered as male she knew from her earliest memories that she wanted to be a girl. She was discovered dressing in her mother's clothes and told "people like you got put into jail". As a result, Natalie hid her gender preference and constantly felt ashamed. She was teased about her body and looks and found it hard to make friends: "I hoped it would go away when I got a girlfriend."

In her teens Natalie met a girl she wanted to marry. "A month before the marriage she found my stash of clothes and all hell broke loose." Natalie's fiancé threatened to call

## I am 100 per cent human.

the wedding off. "I promised her that I would change, that it was something I could control." Over the 25 years of their marriage Natalie tried very hard to be a good husband and man. But she could not bury the real Natalie, despite threats that her cross-dressing would be exposed and that she would never see her children again. Eventually Natalie and her wife separated.

Natalie has finally accepted her gender identity and remembers shaving her beard off as a significant step. "As the beard came off, everything else came out. I was scared it would be the end of the relationship . . . it was just the start. . . . My new partner encouraged me to be who I am, and told me that she loved me."

This doesn't mean life is always easy for Natalie and her partner. "When society looks upon me as being different then, by association, my partner must be different too." They have been yelled at and abused on the street. Natalie realises that people who cross dress or are genderqueer like her can be particularly visible and therefore vulnerable. "I am not 100 per cent man or 100 per cent woman within current social constructs, but I am 100 per cent human."

## Dana de Milo (Wellington)

Dana de Milo remembers how hard it was to grow up feeling different. "I used to pray I'd get an asthma attack so I didn't have to go to school". Dana dreamed of the day she would return home as a woman, in a convertible with the top down, flanked by three black and three white poodles.

In 1960 at the age of 13 Dana ran away from her Auckland home and became a ship girl. In 1963 she moved to Wellington and went to the hospital to ask a psychiatrist about having a sex change. That was the start of regular visits to the hospital where she would be made to lie on a cadaver table for hours. Medical staff came to see her, and would make comments made about her body as if she was not there: "Every man and his dog would come in to look and touch me," she said. In the end the doctor told her: "Go home, you'll never be a woman, you'll never make anything of your life. Snap out of it."

When Dana was 21 she wrote to her mother saying she was living as a woman "and if you don't want to know me I'll understand". Dana's mother was shocked and scared, but supported her from that day on. She travelled to Wellington and contacted the head psychiatrist at Victoria University saying, "I've got a daughter who isn't my daughter who should be and I want to do something about

it." Everything changed after that. Tests showed Dana has an intersex condition, Klinefelters syndrome, where her chromosomes are XXY. When Dana had surgery in Egypt it was like a dream come true after living in limbo for 17 years. Her only regret is that her mother was no longer alive to share her joy.

It has not been an easy journey and one of the huge difficulties for Dana in the 1960s and 1970s was her treatment by the Police. She remembers being put in Mount Crawford Prison after police rounded up all the Queens for being 'idle and disorderly'. Their heads were shaved and other officers were invited in to look. "They didn't always arrest you, they knew where you lived and would follow you home (with the lights and sirens on so your neighbours knew what was happening)."

## I couldn't change.

Dana could not deny her true self. "I refused to go out in butch clothes. I couldn't change." When Dana was arrested the police raided her house and found a prescription for hormones, which the doctor had written out under the name Miss D. Pickering. Her birth certificate was in the name of Darren Pickering and because she was living as a woman, her doctor had made out the prescription to "Miss". She was charged with using a false name. "It means that on my record I have a fraud conviction, and I think that is wrong."

Dana has fond memories of a policewoman who refused to arrest her for using the women's toilets. Lawyer Shirley Smith also showed compassion and kindness and worked hard to protect the legal rights of Dana and the other 'girls'.

Housing was another area of difficulty for Dana and whakawāhine she knew. "I'd have to get someone else to get the flat for me even though I was the one with the tenancy record. I'd get one of the transgender girls who weren't so tall, [to get a flat] you had to be a blue-eyed blonde and act normal."

Dana is glad that some things are easier. "Today, if the police see people harassing you they move them on – in the past they would have said, 'Give it one for me!'"



## 2. Social Context

### Horopaki ā Iwi

*Many societies allowed for more than two sexes, as well as respecting the right of individuals to reassign their sex. And transsexuality, transgender, intersexuality, and bigender appear as themes in creation stories, legends, parables, and oral history. (Feinberg, 1996)*

**Historically, societies in all parts of the world included people who, today, would be described as trans. Traditionally ‘trans people’ were often revered and given specific religious or sacred roles. Yet, throughout the ages, there have been periods when people were punished severely for defying strictly defined categories of what was morally or legally appropriate behaviour and dress for women or men. Trans people were included in these attacks because their gender role or identity did not match their biological sex.**

2.1 In New Zealand, there is evidence that traditional Māori communities were inclusive of whakawāhine:

*First contact European explorers around the shores of Aotearoa on several occasions noticed the striking beauty of Māori maidens, however they soon realised when in more intimate circumstances, these female companions were actually male like themselves. (Salmond, 1993 cited in NZAF, 2005)*

*...Māori tribal society provided space for transgender people to live within the comfort and confines of their whānau. (Herewini, 2003 quoted in NZAF, 2005)*

2.2 In Pacific countries, female social roles (such as fa’afafine in Samoa, fakaleiti in Tonga and mahu in Hawaii) were traditionally accepted for some males. However, attitudes today have been significantly influenced by Christianity and by European concepts of masculinity.

2.3 In the twentieth century, feminism and other social movements questioned assumptions that the biological differences between males and females account for the markedly different gender roles women and men often perform. People disputed ‘the binary construction of sex and gender’: the view that there are just two fixed sexes (male and female) with corresponding gender roles.

These assertions were accompanied by a growing recognition in some societies that a person’s deeply felt personal sense of whether they were a man or a woman

(their gender identity) might not match their biological sex. Trans people challenged the view that someone born with a male body was always a man or, indeed, that a person always identifies as either a man or a woman, rather than as belonging to a third gender or sex.

2.4 Scientific knowledge has contributed to these debates by increasing understanding about biological sex differences, including the role of chromosomes and hormones. The availability of hormone treatment and gender reassignment surgeries has opened up opportunities for trans people to not only claim their gender identity but to change major aspects of their physical sex.

2.5 Scientists also debated whether there might be a biological explanation as to why some people’s gender identity does not match their anatomical sex. The scientific argument that people may have a ‘brain sex’ that matches their gender identity (rather than their body) has been provided as expert evidence in court decisions about the human rights of trans people. This remains an area of considerable academic debate (Lawrence, 2007; Kruijver et al., 2000; Zhou et al, 1995). Acceptance of transsexualism as a medical condition opened the door for greater levels of acceptance elsewhere, but raised concerns that gender diversity was depicted as an illness, specifically a mental illness. As a result, trans people’s descriptions of their gender identity have become an important demonstration of autonomy and freedom of expression. For some,

these self-chosen terms contrast markedly with medical diagnoses of transsexualism, gender identity disorder or gender dysphoria.

2.6 In its 2004 report on the status of human rights in New Zealand, the Human Rights Commission noted that it is generally well known that 'sex' refers to the biological distinction between males and females:

*What is not well known – let alone well understood – is that the sexual characteristics of some people are not so tidily differentiated. Estimates of the number of children born with genitalia differing from the norm vary widely, from 1 per 37,000 people to 3 per 2,000 (Whiteford, 2003). The variations within this group are also considerable, as even a small change in chromosome or hormonal structures can affect both internal reproductive and external genital characteristics. The process by which this occurs is generally well understood, but what to do about it is not. Most children with ambiguous sexual anatomy do not require medical intervention for their physiological health (although some do), but the psychological and social consequences of either intervention or non-intervention can be devastating.*

2.7 Language plays an important part in shaping identity. The Inquiry found there is no single word that encompasses all trans people. However, everyone is entitled to dignity, equality and respect, whatever words they use to describe themselves. The Inquiry was provided with Māori terms denoting someone whose gender identity is different from their biological sex, including whakawāhine, whakaaehinekiri, tangata ira wahine, hinehi, and hineua (for trans women) and tangata ira tane (for trans men) (New Zealand AIDS Foundation, 2005).

In relation to Pacific people in New Zealand:

*... the "Third Sex" has continued to be a visible part of the Pacific culture where they are known by a collection of terms reflective of the region they represent: Fa'afafine (Samoa), Mahu (Hawaii), Fakaleiti (Tonga), Akava'ine (Cook Islands) Vaka sa lewa lewa (Fiji), Rae rae (Tahiti) and Fafafine (Niue).*

(New Zealand Aids Foundation, 2005).

2.8 There are few sources of information about the number of trans people in New Zealand and these are likely to significantly underestimate the size of the trans population. The Inquiry was provided with indicative membership numbers for some trans organisations and email networks. This information suggests that between 400 and 800 people belong to such groups. However, no specific data was provided for networks or groups that predominantly include Māori or Pasifika trans people and many trans people do not belong to any trans community groups.

2.9 The Department of Internal Affairs provided data on the number of trans people who have applied to have sex details changed on their passport or birth certificate. In April 2007, almost 400 people had New Zealand passports that marked their sex as indeterminate. As the Citizenship chapter notes, this is often the option taken by trans or intersex people who wish to travel and are not able to legally change their sex details from male to female, or vice versa. A smaller number of people have been able to obtain a birth certificate with their sex details changed. Since 1995, 114 people have applied to the Family Court to change the sex details on their birth certificate from male to female (or from female to male). The Inquiry considers that even if these figures were combined, they will exclude many trans people (particularly those who have not changed their birth certificate and do not hold a passport).

2.10 Estimates of prevalence may be required to support the case for improved knowledge, attitudes and behaviours and are helpful for assessing demand for some services. Such estimates are not needed to support a case for upholding human rights. International literature suggests that as prejudice towards trans people reduces, their visibility increases (Collins et al., 2004).

2.11 Today the rights of trans people are increasingly asserted. Using the foundation of human rights, trans people and human rights advocates are highlighting concerns and demanding equality. Some trans people have aligned themselves with the lesbian and gay rights movements, for safety, social or political reasons. Others have remained separate. As the diversity of trans people has become better recognised they have become more

vocal in asserting their distinct identities, and articulating human rights issues and specific demands for equality. In October 2004 the issues for trans people were highlighted by the introduction of Georgina Beyer's Human Rights (Gender Identity) Amendment Bill.

2.12 Gender identity issues and the rights of trans people are increasingly part of the international human rights dialogue. In some cases they are discussed under the terms 'sexuality' or 'sexual minorities'. These terms encompass a broad range of sexual diversity issues, including gender identity, sexual orientation and the rights of intersex people and others whose bodies do not conform to narrow definitions of male and female.

2.13 The internet has made it possible for more links to be built between trans people and organisations in New Zealand and overseas. The Inquiry received documents such as the International Bill of Gender Rights, first drafted and adopted at the second International Conference on Transgender Law and Employment Policy in Texas in 1993. It starts by asserting that all human beings have the right to define and express their own gender identity. The Bill states that each of the ten rights within it 'are universal rights which can be claimed and exercised by every human being'.

2.14 Fourteen years later, the International Commission of Jurists and the International Service for Human Rights, on behalf of a coalition of human rights organisations, published a set of international legal principles on sexual orientation and gender identity. Developed and adopted following a meeting of human rights experts in Yogyakarta, Indonesia in November 2006, these were published in March 2007. The 'Yogyakarta Principles' affirm standards set out in binding international human rights instruments as they apply to issues of sexual orientation and gender identity, including the rights to dignity, equality and security.

2.15 Taken together these developments make a strong case for an inquiry into the nature and extent of discrimination experienced by transgender people in New Zealand.

All human beings have the right to define and express their own gender identity.



## 3. Children and Young People

### Ngā Tamariki me ngā Taiohi

*My nannies always said, “get here with us, you won’t ever be sitting up the front with the men”. (Whakawahine)*

**From an early age young trans people knew they were different. This often led to tension and distress at school and at home. The Inquiry identified an urgent need for better information to provide a clear, thoughtful context for young trans people at school, at home and when seeing health professionals.**

#### At home

**3.1** Children live, learn and grow as part of families, whānau and communities. While they have rights, children are dependent on others (such as parents and teachers) to give effect to their rights. This reliance is partly due to their development needs as they grow from infancy to early childhood and into young adult life. As children mature, they move from being completely dependent on others, to interdependence, and finally to independence. At each stage a child’s right to participate in decisions that affect them also develops. Children are a vulnerable group; protecting and promoting their human rights requires particular attention. This chapter outlines the issues affecting children and young people at home, at school and in early childhood services, when out and about, and in relation to health, work and the law.

**3.2** Young people, and those supporting them, brought a variety of issues to the Inquiry. In addition, many adult trans people reflected on their childhood and their experiences as young people. Many of the childhood incidents they relayed took place in the 1950s, 1960s and 1970s. Yet there were elements of their experiences that resonated with younger trans people, particularly in relation to stereotypes, stigmatisation and marginalisation.

**3.3** All trans people emphasised the importance of growing up in loving families with information and support for them as children, their parents and other family members. Many described knowing or feeling that they were “different” from a very young age. This was often evidenced in a variety of behaviours relating to, to give an example, the clothes they wished to wear, their friends and their preferred activities:

*I’m a transsexual and have been since the age of ten. (Whakawahine)*

*I was really happy in [place] and very happy being with Mum. It’s what I enjoyed aged 5, 6 and 7. I was always uncomfortable doing things with boys... When I was with older women they commented on my hair, my eyelashes and my eyes [and said] – what a shame it was that they were on a boy. (Cross-dresser)*

*I played dress-ups with girls in kindy school. (Trans woman)*

**3.4** For a few very fortunate children their parents supported this behaviour. In some cases a wider cultural acceptance of diverse gender identity behaviour provided a pathway to family and social acceptance:

*All my life I’ve been how I am. I was allowed to wear female attire. (Whakawahine)*

**3.5** For most trans people, however, childhood experiences at home were marked by confusion, fear and conflict with parents and others in response to their gender identity related behaviour. Some submitters described not wanting to wear boys’ or girls’ clothes. Others went to extraordinary lengths to dress themselves as the boy or girl they believed themselves to be:

*The school first picked up Gender Identity Disorder when he was 8. He used to chop up dresses and steal my partner’s underwear. (Parent)*

**3.6** Stable, secure families with positive relationships between young people and the adults in their lives are critical to the wellbeing of children and young people. Trans people talked about parental responses. In some cases responses were characterised by stereotypes about trans people, fear of gender difference, and lack of acceptance, even of very young children:

*When I was nine or ten my father said, 'this is totally wrong, you'll end up in jail'. (Cross-dresser)*

3.7 Some trans people said their parents felt guilty, disgusted and ashamed that their child was not 'normal', making it difficult to ask for help. Many trans people said that as children they felt very alone, unable to understand their experiences until much later in life. Some were vulnerable to abuse:

*I was beaten and tortured by my father. And sexually abused for seven years by three people ... I left home aged 14 and could not read or write. (Trans woman)*

3.8 The Inquiry heard moving accounts of the difficulties experienced by parents in coping with their child's behaviour. Many parents struggled with the issues and described difficulty in knowing how to respond: whether to ignore the behaviour, try to 'correct' it, or do something else. Parents said that it was extremely difficult to find good information and health and other professionals often rebuffed them. Some were told their child would 'grow out of it' (even when, in some cases, the child had exhibited behaviours from an early age and for many years) or that the child was gay:

*I started dressing from my earliest memories. When my mother found me she said nothing at all. She didn't know how to provide support and society was very different and she didn't know what to do. I was dressing in her clothes, she said nothing. The only thing I was told was that I mustn't steal the clothes from my mother's or sister's room and please leave my sister's clothes alone. (Cross-dresser)*

*Being put in the lesbian/gay box was an invalidation of [my son] as a person. There was no understanding that children as young as him will be exhibiting such strong symptoms. He knew exactly who he was. No one wanted to accept it. (Mother of a trans young man)*

3.9 Conflict at home, combined with a lack of resources and poor parental support, resulted in some trans people leaving home at a young age. A parent of a trans teenager told the Inquiry she was afraid for his safety on the streets, particularly if others realised he was trans.

## Education

3.10 Outside the home, early childhood services and schools are the places that have most impact on children and young people's development. Education is both a human right and essential for the development of human potential, enjoyment of the full range of human rights and for learning to respect the rights of others.

3.11 Trans children and young people experience barriers to education and participation in school life in relation to the appropriate name on school records, school uniforms, participation in sports, and safety.

3.12 School records provide a way for trans young people to have their gender identity affirmed. One person said she legally changed her name when she was 16 years old, with the support of her parents. However, her high school refused to re-issue school reports under that name and required her to use the male toilets and changing rooms, where she was harassed.

3.13 A young trans man legally changed his name with the support of his parents. He enrolled at a new high school to make a fresh start. The school used his old name and listed him on the girls' roll. He was bullied by other students and when he retaliated was suspended and then expelled:

*Since then I've not found one school in [this city] that will take him. Boys' schools say they won't take him and there aren't that many co-ed schools. He's been doing correspondence school since 14. He's very bright and it's just not him. It's been a disaster. (Mother)*

3.14 A school counsellor related the experience of a student who transitioned when she was 14 years old:

*The kids automatically called her by her female name but the teacher said the male name because "I've called him that for so many years". It wore her down. The kid dropped out of school because it was too difficult. [The teachers] haven't been able to adapt. It's like refusing to pronounce Maori names right. (School counsellor)*

3.15 A few trans parents had young children and spoke of the acceptance their family experienced from staff at their early childhood centre or primary school. In one case a parent was transitioning and the children were starting to use a new name and pronoun:

*They were straightforward. Their role was to support the children. I don't live in a particularly liberal area so I have a lot of admiration for how they dealt with it. (Trans man)*

3.16 Many schools have uniforms that are different for boys and girls and all students are required to comply with the uniform policies. These policies cause considerable difficulty for young trans students, particularly if they are required to wear the uniform of their biological sex. In some cases schools permit trans students to wear all, or part, of the uniform appropriate to their gender identity:

*I know two Christchurch schools that let MtFs wear the girls' uniform at school. (Youth worker)*

3.17 Some older trans people said that as young people they had feared the simple daily task of getting dressed and going to school. Young trans people said they had difficulties wearing the uniform they considered appropriate. In some instances this caused conflict between the school and the trans student:

*At intermediate school he'd change into tracksuit pants and try not to put on a skirt. The school did not deal with that, and he got detention after detention. If he was naughty, they made him put on a skirt as a form of punishment. (Parent)*

3.18 Some trans students avoided situations where they could not dress or behave in accordance with their gender identity, or where other people might see their body:

*He would always have to play [water polo] with a rash vest. (Mother of young trans man)*

3.19 In one case the mother of a young trans woman allowed her child to wear female clothes to school, but the school did not support this. Other parents told of being pressured to make their child conform to the girls' (or boys') school uniform policy:

*[People said] 'why don't you just make him wear that school uniform?' We fought, till we realised that it wasn't working and we said 'he can get clothes at Hallensteins'. (Parent of young trans man)*

## Sport

3.20 Barriers to trans students' ability to participate at school were also evident in sport. Some schools, particularly primary schools, let girls and boys run or play together or have mixed sports teams. At secondary school, the problematic nature of sex-segregated sporting events resulted in some trans young people avoiding physical activities. Others found it difficult to play in their preferred sports team at school or in other places:

*I only play men's netball because I can't play women's ... but I have to wear men's attire and use my birth name, even if I legally changed my name. It's just a name, but it's my name. (Young fa'afafine)*

3.21 Sport and recreation plays an important role in the physical and mental wellbeing of young people. Yet trans youth are excluded from sporting activities that support many other young people through difficult times.

## Safety

3.22 Schools have a legal responsibility to provide a safe environment where students are able to learn. Barriers to participation can be created if a child is isolated or not accepted at school. Trans youth said they are bullied and harassed at school, often simply because they stand out as different. Older trans women recalled significant concerns about their safety within male schools. Harassment also occurred in co-educational schools:

*I was traumatised at school by teachers and students, especially as it was an all-boys' school. (Trans woman)*

*There was physical violence at school from other teens. I tried to tell teachers but no one listened. (Trans young person)*

*I went quiet and quietness was the way I buried the unbearable reality of what it was like to be feminine while inhabiting a male world and the brutality of an all-boys' school. (Trans woman)*

3.23 Parents expressed concerns about the effects of bullying on their children. A mother noted her son had often absconded in response to bullying at school or when his gender identity was disclosed to others. Being absent

from school would then result in disciplinary action. A cycle of poor behaviour and poor response was created, escalating the conflict and causing more difficulties for her son. Where students had support from friends or staff their experiences were better:

*I think all the teachers knew and they cleared the path for me. (Fa'afafine)*

**3.24** Leadership from trans young people can also be effective. In one case young trans students simply decided they would band together. As a result, the other students and teachers responded positively.

**3.25** Schools appear to have few resources specifically related to trans students. Some trans youth said some school counsellors were good and responded well to their issues. In other cases it appeared schools did little to address issues for trans young people or had difficulty finding helpful material:

*It's a minefield trying to fit in and be accepted. (Youth worker)*

*There aren't the support services to encourage schools to take chances. (Youth worker)*

**3.26** The Inquiry heard from the Council of Trade Unions (CTU) and the Post-Primary Teachers' Association (PPTA) who noted the importance of initiatives to improve the safety of trans students. In particular, they noted an organisation called SS4Q (Safety in Schools for Queers), formed in 2004 with representatives from the New Zealand AIDS Foundation and its queer-youth development programme Out There, the PPTA, the Human Rights Commission, the Family Planning Association, Rainbow Youth, transgender and intersex communities. This initiative resulted in diversity groups being established in schools:

*Out There has observed over recent years that support and social groups that once were typically gay and lesbian focused have diversified to include all young people with diverse sexualities and genders... Increasingly these groups are becoming platforms through which diversity can be affirmed in the places that youth development happens, particularly in schools. (Out There)*

**3.27** Out There went on to stress the need for training to build queer youth workers' knowledge about gender identity issues. There is likely to be a broader requirement for such training given not all trans youth will seek support from groups set up primarily for gay, lesbian and bisexual students. Heterosexual trans students (or trans young men or women who have had to resist other people's attempts to label them as lesbian or gay respectively) may seek peer support from mainstream youth groups.

**3.28** Groups involved in SS4Q noted the need for policy work around schools' responsibilities to create a safe environment where trans students are able to learn. These submissions stated that while there have been some excellent initiatives that should continue to be supported, safety was still a significant issue for trans young people. Out There indicated that 'harassment because of non-normative gender identity or expressions is the most prominent [form of discrimination] and is widespread in single-sex schools, particularly boys' schools'. They considered that more work needed to be done to 'ensure schools are catering for the wellbeing of transgender students'.

## Tertiary education

**3.29** The Inquiry was provided with details of trans people's difficulties gaining selection for undergraduate and postgraduate courses because of concerns they might not fit in or could find the course difficult because they were transitioning. Some students described negative comments from other students or tutors and recounted complaints from other students when trans men used male toilets or vice versa. In one instance a trans man resorted to using bed-wetting medication so he could avoid using the toilets at his polytechnic.

**3.30** Trans students often had difficulties changing name and sex details on their academic records, which can have longstanding career implications given these documents are used to verify a person's qualifications. One tertiary students' organisation approached staff at the local university and polytechnic to clarify processes for changing such details. They described the institutions' willingness to ensure previous names can be restricted

so they do not appear on transcripts and to accept applications from trans students to change their user identification details. At this university, sex is a mandatory field on student enrolment records and is not changed without legal documentation, usually a birth certificate or passport. After discussion, the university's Registry staff suggested a statutory declaration would suffice:

*The process of obtaining information uncovered some gaps in knowledge and processes, and raised further questions, which staff were proactive about addressing. Several people said that it would be useful to clarify or develop existing procedures, and, as a result, have begun to do so. (Tertiary students' organisation)*

**3.31** Trans students encounter barriers in their educational environments and schools are not always a safe environment for them. Many are vulnerable when moving from intermediate to secondary school, particularly with the onset of puberty. School uniforms and sex-segregated sports and other activities can make participation in school life problematic. Trans students may be at greater risk of dropping out of school, being stood-down, suspended, excluded or expelled, particularly if a school does not know how to support them. Schools, like parents, currently lack adequate information about the issues faced by trans children and young people and the most appropriate ways to respond. These issues continue in tertiary education institutions, with longer-term impacts if academic records fail to reflect a trans person's appropriate name and sex details.

## Social life

**3.32** Young people's development is shaped by having positive connections with many social environments. The social transition from youth to adulthood is also affected by laws, which regulate the various ages at which legal capacity and autonomy develops. For many young people the transition to adult legal capacity can provide new opportunities for social participation. The ability to obtain a driver's licence, socialise in public places (for which various forms of identification might be needed), and to consent to medical treatment often become rites of passage for young people as they move towards independence.

**3.33** Yet trans young people may find safe navigation of these activities extremely difficult. The Inquiry was told that a requirement to provide proof of age or identity (such as proof of enrolment in school, a student bus pass, or an 18+ card) could be problematic. A young person may have opted for a preferred name, and be known by that name socially, but often will not have changed it on their birth certificate. This may be for financial reasons and because until someone is 18 (or married or in a civil union), any such application must be made by their guardians. As a result, a young person is likely to have identification containing a name different from the one they commonly use and that does not match their gender identity.

**3.34** This can result in trans young people not wanting to go out, fearing their form of identification will be questioned and the embarrassment of being refused entry or the suspicion of identity fraud. The Inquiry was told that these barriers to social participation can 'lead to isolation [and] missing out on many life-affirming moments'.

**3.35** A trans young person might also be steered away from support options because of stereotypes about trans people, for example:

*...advising transgender young people not to attend support groups 'because they are full of prostitutes and will be a bad influence' (Trans youth organisation)*

**3.36** Participation was also affected by social isolation. Many trans people described feelings of immense loneliness when they were young.

## Health

**3.37** The Health chapter of this report deals more fully with the health-related aspects of the Inquiry's terms of reference. Some health issues for children and young people and their families are mentioned briefly here.

**3.38** Puberty is a difficult time for teenagers generally, but there are additional and specific issues that many young trans people face. As their bodies begin to develop and grow, physical changes can serve to sharpen the contrast between young people's bodies and their gender identity. This can be very difficult for a trans young person:

*At puberty I cried myself to sleep. (Trans woman)*

3.39 Lack of acceptance and the discomfort of showing their body to others can result in young people being unwilling to seek help, even for routine medical matters unrelated to their gender identity. Trans young people usually rely on an adult to access health services for them, yet parents were sometimes unaware that their child needed medical help because their child was too afraid to ask for support:

*He'd be too scared to go to the doctor and wouldn't tell me, and end up in hospital. (Mother of young trans man)*

3.40 Parents told the Inquiry that it was very difficult for them to find health professionals who would work respectfully with their children. One parent related what she described as 'one of the worst experiences of [her] life' where 'a clinician loudly disclosed' her child's medical history in a hospital ward and thereby her child's status as a trans person. The Inquiry heard that few health professionals could refer parents to resources or information and generally parents were left to find it for themselves. Most were unable to do so.

3.41 The Health chapter outlines significant difficulties trans people experienced trying to access health services to transition. Those barriers were compounded for trans young people because the small number of experienced specialists often provided services solely to adults. General practitioners and paediatricians who worked with trans young people reiterated the unmet need for early support (including medical intervention where appropriate).

3.42 Trans adults told the Inquiry of a few instances where they had been committed to psychiatric institutions as young people in order to treat their 'gender identity behaviour'. These submitters described the use of behaviour modification treatment, electroconvulsive therapy and prescription drugs.

3.43 A submission from a trans youth organisation noted that young people sometimes receive inconsistent or disrespectful treatment from health professionals. Some health practitioners changed their minds about the age at which a person could be prescribed hormones, refused to provide treatment, did not listen adequately or had little information about the medical issues or current developments. In addition, a tertiary students' organisation

highlighted the need for improved knowledge and practice 'to ensure that Student Health's generally well-regarded, low-cost service is equitably available' to trans students:

*Recent changes have meant that students may now only access Student Health if they nominate that practice as their Primary Health Organisation. This becomes problematic for trans students whose experiences with the service means they need to attend a general practitioner elsewhere for transition, for example to prescribe or administer hormone treatment or monitor blood results. (Tertiary student organisation)*

### At work

3.44 Most parents and careers advisers know very little about trans people's lives and, as a result, they often have only negative stereotypes to draw on. This can affect young people's perceptions of the opportunities and choices available to them. Trans people are often told their life choices are severely limited because of their gender identity. The impact of such comments was particularly severe for trans children and young people:

*Where do they get the idea at 13 that their only job opportunities are sex work or stripping? (Health professional)*

3.45 When young people seek employment they have to show documentation to verify their age and identity. Frequently this will be a passport or birth certificate. Presenting a birth certificate is stressful for trans youth that often have not been able to change their name and sex details. Many trans young people will use a gender-appropriate name socially but may only have the option of working under their old name and sex (including wearing sex-specific uniforms). This is a significant barrier to their employment.

### Young people and the law

3.46 In a small number of cases the Inquiry heard that trans youth had come to the attention of the police if they had run away from home or if they were living on the streets.

3.47 One parent described the difficulties she experienced with trying to keep her son at home when his response to problems at school was to run away. With little support from the school or health professionals, she lived in fear



that her son would end up in real difficulties and that she would lose contact with him. Finally, after several years trying to obtain counselling and support through the education and health systems, a Youth Court Judge made an order directing that her son receive the assistance he needed. Local police, including the Youth Aid Officer, had also previously enabled her son to be placed in a youth justice residence based on his gender identity.

## Conclusions

**3.48** From a very early age some children behave in ways which show they may have a gender identity that is not congruent with their body. The outcomes for them lie entirely in the hands of the adults around them. Trans people emphasised the importance of a loving home and the need for support for parents, families and trans youth.

**3.49** Negative stereotypes about the lives of trans people affect the perceptions of parents and those around them. This has an impact on how families respond to a child's gender identity and the assistance they receive. The Inquiry saw that when parents responded with love and support for their trans children, and had backing from caring professionals, they were able to find their way. As a result of the paucity of information available, such positive experiences are rare and often a matter of pure luck. Parents wanting to do the very best for their children had to work extremely hard to get appropriate support for them. Most could not do so.

**3.50** With few role models, and little or no information, trans children and young people are often isolated and subject to other people's fear and stereotypes. This leaves trans children and teenagers vulnerable to abuse at home and at school. The absence of family or peer support can have devastating consequences. The Inquiry met the sister of a young trans woman who had committed suicide and other parents and community groups who were gravely concerned about the vulnerability of trans youth.

**3.51** Trans children and young people have the human right to be accepted for who they are. They are often dependent on others (such as parents and teachers) to ensure those rights are understood and protected. The visibility of some trans young people has highlighted the major

barriers they face within schools, at work, playing sport, accessing health services and actively participating in their community. It is the responsibility of society at large to address these concerns so that trans children's rights, including their right to education, are realised. In particular, there is an urgent need for information and resources for trans children and young people, their parents and families and schools.



It's a  
minefield  
trying  
to fit in  
and be  
accepted.

## 4. Equality and Freedom from Discrimination

### Te Mana Ōrite me te Whakawātea mai i te Aukati

*Being 'trans' isn't a lifestyle, and it isn't a choice. It's part of who I am. It doesn't define who I am; it only defines the process I have to go through to get the world to see who I am. What I really want is just to be able to be myself.*  
(Trans man)

**The incidence of discrimination faced by trans people is high. Four out of five submissions described examples of discrimination that ranged from harassment at work to vicious assault and sexual abuse. For some trans people discrimination has become so common they have come to expect it. Trans people require support to advocate for their place and to overturn stereotypes that lead to public and institutional discrimination.**

#### Family

4.1 Trans people in New Zealand experience discrimination that affects all aspects of their lives. It undermines the ability to have a secure family life, to find accommodation, to work, to build a career and to participate in community life. At its worst, discrimination threatened personal security through constant harassment and vicious assaults. The Inquiry heard of the daily challenges to simply be accepted and to do the things that other New Zealanders take for granted.

4.2 The Inquiry heard from trans parents and grandparents, married couples, and from parents who had supported their trans children. The strength and resilience of both trans people and their families was apparent:

*I was brought up by my Auntie. She allowed me to be the person I am. And Mum too, we had a good relationship. With Mum it was tolerance and Auntie was acceptance. (Whakawahine)*

*I consider myself lucky because I have the love and support of my family. (Whakawahine)*

4.3 Fa'afafine, fakaleiti and others pointed to Pacific concepts of gender identity which, in some cases, created pathways for them to be accepted in cultural and family life:

*In Samoa the fa'afafine are the kings and queens of my country. (Samoan community member).*

*I am fa'afafine. Samoan people, my own community, sometimes look with discrimination, especially*

*[towards] New Zealand born. They are going through their own identity crisis and don't understand fa'a Samoa. (Fa'afafine)*

4.4 The Inquiry heard from family members, including some who accompanied trans people to the Inquiry hearings. Some said they had struggled to deal with the idea that a family member could be transgender and that it was difficult to find resources or information to help:

*When it happens to you, there's nothing in the manual for you. You have some kind of picture and it never crosses your mind that anything else is in store. Everything changes – what your hopes and dreams are change ... You do have dreams that you have to give up and that's really hard too ... It hasn't been the most pleasant experience and in the beginning it was terrifying ... I had pictures of bad things, I didn't have any good pictures. For middle-class New Zealand their experience is drag queens ... drugs, sex and living on the streets. It has isolated us; we have lost some friends. (Parent)*

4.5 Some trans people lost contact with their families or had been estranged for many years. Many spoke candidly about events that accompanied their transition and their vulnerability at the early stages. This was exacerbated if they were ostracised by friends and family members:

*My wife's parents went so far as to turn up on our doorstep unannounced, having travelled all the way from [another city] to 'catch us out' .... They quickly found I was quite 'normal' in looks and behaviour,*

*but clearly this was not what they expected of 'a transsexual'. Despite this, there is still limited communication between my wife and her parents, they did not attend or acknowledge our wedding, and we are excluded from family Christmas get-togethers. (Trans man)*

*[After] my mother's death, there was a break in the link. I could go my own way... I have a daughter who's 30 and a granddaughter who's 12. They don't really want to know. I've maintained contact but I don't get any replies back. (Trans woman)*

4.6 Some married trans people told the Inquiry about coming to terms with their gender identity within a marriage, frequently over a number of years. Many said that neither their marriages nor their friendships survived once they began to transition. Where marriage relationships did last, a partner could be marginalised too:

*It's not just the trans person who might have to come out, it's the family too. It's not an issue if you pass well, but my partner doesn't. (Partner of a trans woman)*

4.7 Supportive families can have a profoundly positive long-term effect on the lives of trans people. While trans people told the Inquiry they value a stable and secure family life, many had faced rejection from some family members. One Pasifika woman spoke frankly of her family's inability to accept their child was akava'ine, despite a cultural frame of reference for it. She recalled various attempts by family members to 'correct' this young person's feminine behaviour resulting in some strained family relations. Some trans parents and grandparents said that family members had indicated contact with their children would be limited or withdrawn because they were trans. Others said family members made negative comments to their children:

*My wife's ex and his family strongly discourage the children from mentioning me in their household, and have made comments to the children along the lines of my being sick and disgusting. The children themselves (who are now aged 13 and 11, and are aware of the fact) simply accept me as their stepfather. I know that they find the derision from others somewhat incomprehensible. (Trans man)*

4.8 Trans parents highlighted the needs of their children:

*When I transitioned my children were four and eight years old. I searched for information about how to tell them. This lack of advice and information about the impact on my children...was very distressing and in the end I simply had to hope for the best. (Trans woman)*

4.9 The Inquiry also heard from one trans person who had been a foster parent for many years:

*I put in as a Maatua Whangai foster parent and then Child, Youth and Family took over and put me through a police check six times. When I retired last year I was the longest serving [foster parent] in the South Island and had brought up 70 [kids]. (Trans woman)*

4.10 Two trans parents who had been involved in cases before the Family Court described inappropriate references to their gender identity made by lawyers, counsel for the child, a court registrar and a court-appointed psychologist. Both told the Inquiry that it was assumed their gender identity would have a negative impact on their children's wellbeing and in turn detracted attention from the custody and access or domestic violence issues before the Court.

4.11 A trans man involved in one case acknowledged the efforts of a Family Court judge to take attention away from his gender identity:

*Prior to the custody hearing a great deal was made of my condition in the affidavits, where I was without exception belittled and referred to as he/she. The judge warned the lawyers beforehand that they were not to make a circus of my condition. (Trans man)*

4.12 An issue raised with the Inquiry was access to assisted reproductive technologies. A trans man explained that a fertility clinic would not recognise him as the legal father unless he changed his birth certificate. He was concerned about the implications of this for trans parents because parents' details listed on a child's birth certificate cannot be amended at a later date:

*The father doesn't have to be biological but he must have a male birth certificate and once the birth certificate is lodged, you can't go back and change it. (Trans man)*

## Housing

4.13 The Inquiry heard that finding a home was not always easy for trans people. Those who transitioned as young adults were usually dependent on shared rental accommodation, particularly in flatting situations. Social marginalisation and negative attitudes towards trans people affects access to shared accommodation. A trans woman told of being offered a room in a flat but was later turned away when the other tenants realised she was trans. One trans man described the stress of boarding in a large house where flatmates continually harassed him by referring to him as “she”.

4.14 Housing offered for rental must be provided without discrimination. Trans people said local government housing was an excellent option for those eligible as it gave them some privacy and safety, especially if they were still transitioning. However, in some cases the density of housing, such as apartment buildings, could cause difficulties. A trans person described being subjected to abuse and intimidation from other tenants for some months before being moved to other council housing:

*I feel a lot better. I don't have anxiety building up, panic attacks or depression.... I feel safe. I was always looking over my shoulder at the other place. I've met a few of the tenants here and they're really nice. As my mother said, 'It's a new start for you'. I'm able to put the past behind me and move on. (Tangata ira tane)*

4.15 The Inquiry heard that some letting agencies require a birth certificate from prospective tenants as proof of identity. This caused considerable anxiety for a trans woman who had not changed the sex details on her birth certificate.

## Public life

4.16 Trans people told the Inquiry that their right to participate in public life is severely restricted by the high levels of discrimination. They are treated poorly by many members of the public, are seldom consulted on issues that affect them, and have restricted access to facilities in public places.

4.17 A trans person is typically required to have a diagnostic assessment by a mental health professional

before a health professional will prescribe hormones or approve other treatments. That assessment includes considering the extent to which the person is living in the appropriate gender (also known as undergoing a ‘real-life’ experience). Seen in this light, discrimination against trans people in public places has a particularly harmful effect and can make transitioning problematic, especially if a person is easily identifiable as trans:

*... the Harry Benjamin Standards of Care require a transgender person to live in their preferred gender for a year before they are even allowed to have certain surgery, although it may be a lot longer than a year, if ever, before you can afford that. This means transgender people are obliged to be ‘out of place’ in terms of many people’s perceptions of ‘who ought to be where’ in restrooms. (Trans man)*

4.18 Trans people received discriminatory treatment in restaurants, were subjected to public ridicule and were refused service or followed around in shops. Widespread negative attitudes towards whakawāhine, fa’afafine and Queens meant they or their friends were treated with suspicion and excluded from nightclubs. Some trans women said that they had been excluded from women-only or lesbian events. They expressed a desire for communities to be more inclusive.

4.19 Trans people said they are rarely consulted about issues that affect them. Some are reluctant to advocate for themselves because of the nature and extent of discrimination they face.

4.20 The Inquiry had contact with a range of trans organisations and networks, often working with whakawāhine, trans women, trans men, cross-dressers, or Pasifika trans people. These groups include Agender, GenderBridge, and Gender Quest. Other community organisations such as UniQ, Out There, Rainbow Youth, and the New Zealand Prostitutes’ Collective were actively supportive and made submissions or participated in focus groups. Many trans people commented that the Inquiry had brought these different groups together, in some cases, for the first time.

4.21 The distribution of these groups varies. Agender has networks in a number of cities, while GenderBridge is based in Auckland and both have websites with resources and links to other material. Internet-based groups (such as NZtransguys) provide peer support, including links to larger communities and specialist health services overseas. Overall, trans groups tend to be small. Some are new, and they are typically very protective of their participants, partly because of the discrimination most trans people experience.

4.22 Some government agencies have consulted with trans people. Trans people have been involved with the work of the Social Inclusion and Participation Unit of the Ministry of Social Development. The New Zealand Police have included trans people in the training of Diversity Liaison Officers. Research into the impact of the Prostitution Reform Act 2003 on the health and safety of sex workers will include data on trans sex workers. Some trans people had also been consulted in the development of the Department of Corrections' policy on transgender prisoners.

4.23 Where consultation had occurred, trans people expressed concerns that their views were not adequately taken into account. Agender New Zealand did not consider there had been adequate consultation with trans people over the introduction of Special High Cost Treatment Pool funding for gender reassignment surgeries. GenderBridge expressed similar concerns:

*When services are provided there is no attempt at engaging with the transsexual community or groups to ascertain what in fact the needs are or to get feedback on how well or poorly those needs are being met. Whatever policies are in place are not published or transparent and it is left to each individual to deal with the system as best they can, with often quite different results based, we suspect, on how compliant and easy to deal with the individual is. If a patient is unhappy with the outcome there is no mechanism for a second opinion or for support by a patient's advocate.*

4.24 By definition 'public places' must be accessible to everyone who seeks to use them. However, ensuring fair access to public places will always require consideration of the various interests and rights of the diverse members of the public and balancing these in practical ways. Many

public facilities are sex-segregated to provide protection from harassment, to secure intimate privacy, and to ensure that those using the facilities have legitimate, not improper, reasons for doing so. Many women using public facilities use sex-segregated facilities, including mothers' rooms, because these feel safer and are more private.

4.25 Trans men and women faced difficulties when they wanted access to toilets or changing rooms. Trans women said they would be refused access to the female toilets, but using a male toilet was both inappropriate and unsafe. Inability to access public toilets had a major, daily impact on many trans people. Fear of these situations and the embarrassment they created led some trans people to limit the places they would go. Some were assertive enough to explain why it is important for trans people to be able to use the appropriate toilet and were then able to do so. Others did their best to find other options, such as leaving a restaurant or workplace and walking to the nearest unisex public toilet.

4.26 Where common sense prevails, practical solutions can be found. One trans woman was able to use the women's changing room at a local swimming pool after they put up a curtain to give her and other women greater privacy. The Human Rights Commission has also been able to assist in resolving some enquiries using a common sense, practical approach on a case-by-case basis.

### At work

4.27 Employment was another significant issue that trans people brought to the Inquiry. The key themes were access to employment, job retention and promotion (particularly during transition), and workplace safety.

4.28 The Inquiry heard from some exceptionally talented trans people with their own businesses, in business partnerships, and in senior corporate or public-sector positions:

*I have a manufacturing business... dealing with engineers, spring makers, factories etc. in Christchurch. No one bats an eyelid unless you do something to make them bat an eyelid. It never gets discussed and I drive up in a pink Mercedes. I'm sure they talk after I leave. (Trans woman)*

4.29 Other trans people experience significant difficulties finding employment, particularly if they seek employment while in the process of transitioning. It was not uncommon for positive responses to written job applications to turn negative as soon as the prospective employer met the trans person. One trans woman felt “disenfranchised from the world” when she transitioned and received 147 rejection letters before gaining a job. Submissions noted:

*It is extremely difficult to continue to survive on a benefit and to retain hope that things will improve significantly when you have skills and experience but continue to be denied equal employment opportunities. (Trans woman)*

*I was dropped overnight as a candidate for a job when my 'secret' was discovered. I phoned the interviewer and he made awkward statements along the lines of having to 'consider the feelings of other staff' and take into account how well I would 'fit in'. I felt too disheartened to try to persuade him that I was not a social misfit, especially as he informed me he had already given the job to the other candidate. (Trans man)*

*[We need] some effort made for skill development for street workers. They become comfortable in that scene. It becomes home, solidarity and support and the \$s are easy if clients are out there. It seems like they don't believe they can do anything else ... It's more than just getting off the street but about belonging to society and being a citizen. (Transsexual woman)*

4.30 Some older trans people reflected on the effects these stereotypes had played in limiting their employment options:

*The only visible place that transgender people my age existed at this time [1970s] was in sub-communities in the sex industry. I worked for many years in the sex industry because this was one arena where I was treated as a woman and had support from some peers ... but [even] when you have few other options it is not always the greatest place. (Trans woman)*

4.31 Other sex workers described why they had chosen this work:

*Being a sex worker gives me the freedom to choose when I can work without being told what to do by someone else. (Trans woman)*

*I liked working, I liked the money, I liked the company but I have a new job and a new life. Do I have any regrets? No, not at all. (Trans woman)*

4.32 Some trans people find support and peers through contacts in prostitution. For some, but not all, this is a valid start towards self-discovery and acceptance. The New Zealand Prostitutes Collective has provided social support to trans people for over 20 years, with trans sex workers instrumental in establishing this organisation.

4.33 The career options of some trans people are limited by discrimination. One trans woman described being forced out of her computing job and deciding to retrain as a registered nurse. She told the Inquiry she has been unable to get meaningful employment ‘despite having a very good quality degree and gaining a very good mark in my State Examination’.

4.34 Experience of discrimination heightened trans people's concerns about disclosure of information about their trans status. There was confusion about the circumstances in which information concerning a person's gender identity could lawfully be withheld and when it had to be disclosed to a prospective employer. In one case a referee was given legal advice not to provide a reference under the trans person's new sex and name.

4.35 Police clearances are lawfully required for employment in some occupations. Such clearances might require that a trans person disclose all of their previous names so that checks can be run against each name. Trans people told the Inquiry that while they understood the need for these checks, they had concerns about the impact of providing previous names. This information would also disclose they were a trans person. They were not worried about criminal records being checked, as many do not have criminal convictions. They were, however, worried that disclosure that they were a trans person would result in discrimination against them:

*Other people's curiosity is no excuse to override my privacy rights, yet my manager somehow sees that as a consequence of the process I am in, everyone else somehow has an automatic right to know my past rather than to simply meet me as an individual. (Trans woman)*



4.36 One person said he had attempted unsuccessfully to negotiate an alternative process whereby the Police were given all previous names but those details were not passed on to the employer. He had asked whether the employer could simply be given the final results of the vetting procedure. Others were concerned that potential employers would not employ them on the basis of this information.

4.37 In a few cases where trans people obtained a police clearance, they remained concerned that information obtained during that process might be used to discriminate against them. In some cases the fear of disclosure resulted in trans people leaving jobs to avoid the risk of discrimination and adverse treatment in the event that they were identified.

4.38 A trans man told the Inquiry that he looked for a new job after his employer and co-workers became aware of, and began taunting him with, his previous female name. This employer subsequently requested a Police check. Another changed his job after a health worker inappropriately disclosed information resulting in the fact that he was a trans man becoming widely known at his workplace:

*Early in my transition process I encountered a difficult working environment after information about me was shared with my General Manager by a health worker. While he already knew, his response to hearing about it from another person was to panic and then to tell other people in the workplace, including a senior manager in another department who was extremely antagonistic. (Trans man)*

4.39 Trans people have different views about how information about their trans status should be used. Once they have transitioned, some simply wish to blend into the background. In some cases this was to avoid potential prejudice and discrimination. In others it was because, having gone through a long and often difficult journey to be recognised in a sex that matched their gender identity, they had absolutely no wish to be seen as 'trans' in any way. For this reason, some expressed serious concerns that disclosing their past meant they would never be accepted simply as a woman (or man):

*I suspect I am not alone in my attempt to be entirely unremarkable ... I suspect that the 'ultimate success' for many transgender people is not to be known or identified [as trans gender] at all but rather simply to be normal people. (Trans woman)*

4.40 The Inquiry met trans people, who were very comfortable being publicly known as trans, yet they too described the stress of having this information raised at inappropriate times:

*I suffer anxiety about disclosure. I think everybody does. (Trans man)*

4.41 Others, particularly those who were easily identifiable as trans or fa'afafine, wanted to be visible without being marginalised. A key issue was how to provide clear guidance that takes into account the respective rights of trans people to be free from discrimination and to have their privacy respected, for employers to know the identity of their employees, and the obligations to undertake Police vetting in certain occupations. This issue is discussed more fully in the Citizenship chapter of this report.

4.42 Harassment and intimidation affected trans people at work, with the result that some are under-employed, and others are dismissed or leave jobs:

*The Manager put me stacking shelves. He said, 'you wear a lot of makeup, it scares the customers'. For the six months I worked there, I never [got to work at the counter]. I got threatened by staff, derogatory comments, really horrible sexual comments. (Trans woman)*

*One restaurant fired me because a customer complained I could give them AIDS by touching their plate (my HIV status is negative). They did not fire the out gay maitre d', however. I got a job in a fashion store just after my surgery in 1986 and when someone outed me to the manager I was asked to stay in the storeroom for the rest of the day. I was fired at the end of my shift. Even as recently as 2003 I was turned down for jobs because the employer realised I was transsexual. (Trans woman)*

4.43 Another trans woman told of being dismissed from a professional occupation and subsequently being advised by



a former colleague that the decision was based solely on her gender identity. Staff harassed a trans man working in a factory, including when he used the male toilets, and he struggled to get time off work for required health appointments. His lawyer noted:

*I was representing a trans person in low-paid almost casualised employment. The reasonable requirements he had for needing time off work became a huge problem. Terrible stuff was happening each day at work – language, gestures and sabotaging of his work. He was hugely victimised and the employer was refusing to do anything. (Union lawyer)*

4.44 Trans people who have the support of their employer and colleagues successfully transitioned at work. Some were long-term, valued employees and considered this had helped them and their colleagues:

*My transition within my family and workplace has been a joyful and totally accepting experience. I have never had any negative comments but have received innumerable positive ones. New Zealanders are always willing to give people a fair go and that is exactly what transgendered New Zealanders want: a fair go – at all levels. (Trans woman)*

*They had no experience of this beforehand and the HR person hunted around on the internet and found a booklet. I went away on holiday and had written something out that [my boss] could use. He told everyone that the next day when I came back I would be [known by new female name] and living and working as a woman. I came back and people said ‘Congratulations’, and ‘Well done’. (Trans woman)*

4.45 A supermarket manager described her policy of actively seeking to employ trans people. One trans woman spoke positively about the EEO policy and programme at the university where she worked, which addressed specific issues for trans applicants and staff. In another case, a trans businesswoman advised her employees and customers that she was trans and received a mainly positive response, although she was asked to not attend some business events.

4.46 Some trans people experienced difficulties getting leave from work for health reasons related to their

transition, particularly if the employer considered the leave was only necessary because of the trans person’s ‘lifestyle choice’. In other cases trans people said they were effectively ‘moved out’ of their job through workload increases or other measures:

*They said ‘you did say your new medication would impede your work ability’. I didn’t [say that]. It got to a stage where I couldn’t go back. I just left because the stress was too difficult ... and stress makes my MS worse. (Trans man)*

4.47 Trans people in professional occupations said they generally had flexible working arrangements. In higher paying jobs they had fewer difficulties affording health services and were better able to take time off work as required. However, some remained concerned about the potential impacts on their careers:

*Living on a waiting list means that you are unable to change careers or jobs easily as there is a need to keep enough sick leave and annual leave in credit for surgery and recovery. This can be detrimental to your career progression – especially if you are unable or unwilling to explain the reasons why. (Trans man)*

4.48 Given the experience of stigmatisation and marginalisation, trans people seldom ask for assistance or complain about the treatment they receive. The Inquiry did hear that trans people sometimes seek legal information and assistance from unions and community groups and some took complaints and enquiries under the Human Rights Act 1993 or the Employment Relations Act 2000.

4.49 In summary, trans people experience discrimination throughout the employment cycle: navigating pathways to work, dealing with on-the-job issues, or changing jobs. Negative stereotypes about career options, few visible positive role models, fear caused by prejudice, lack of acceptance in the workplace, and discriminatory practices combine to create barriers to employment, which for many are insurmountable.

## Safety

4.50 Trans people said they have many strategies for standing up for themselves. The Inquiry heard from some with high levels of resilience, who were accepted in the

communities in which they were safely living. Others are afraid to do simple daily tasks such as shopping, going out for a meal, or buying clothes. Their fears resulted from, and were reinforced by, their experiences of harassment, discrimination, assaults and other forms of violence:

*The biggest thing I'd like to see this Inquiry address is the fear held by trans people. (Cross-dresser)*

4.51 The Inquiry's Summary of Submissions briefly outlined some of the safety and security issues raised by trans people. Following release of that document, a number of submitters expressed concern that this element of trans people's lives (the fear they felt and the level of violence directed towards them) had been understated and that there were very significant issues that needed to be highlighted.

4.52 Forms of discrimination and harassment ranged from low-level (avoidance and insults) to very severe (violent physical and sexual assaults). Most were low level, but in some severe cases people suffered ongoing health issues. In one case a trans woman who had fully transitioned suffered injuries during a rape. She told the Inquiry she was unable to qualify for reconstructive surgery for internal physical damage from her injuries because this surgery was deemed 'cosmetic'. Trans people recalled people who had been unable to cope, and remembered some who had committed suicide as a result of their experiences.

4.53 The pervasive and debilitating effect on trans people of such violence was readily apparent to the Inquiry. Trans people recounted being denied access to, or singled out negatively in, public places and public transport:

*... I have been punched in broad daylight on a busy street with no one coming to my aid. I have been called names and put up with staring and people talking about me behind my back, often within my hearing. (Trans woman)*

4.54 Submissions provided sobering evidence of harassment of trans people, but they are invisible as victims in crime statistics and crime surveys.

### Criminal justice system

4.55 Trans people said they experience victimisation based on their actual or perceived gender identity. One told of an incident in the early 1990s:

*One beating [by my partner] was so bad that he fractured four vertebrae in my back. Two years later he beat me and tried to strangle me I decided to contact the police for help. They took me to the hospital and went back to arrest my husband. He informed them that he had just found out I was a transsexual and beat me out of anger at being lied to. He had always known I was a transsexual. The police told me that I deserved what had happened to me and didn't do anything to him. (Trans woman)*

4.56 The Sentencing Act 2002 sets out the principles that are to guide sentencing decisions and the factors that the Court must take into account when sentencing or otherwise dealing with an offender. Section 9(1) of the Act directs that the Court must take into account a number of aggravating factors, where applicable. These include:

(h) that the offender committed the offence partly or wholly because of hostility towards a group of persons who have an enduring common characteristic such as race, colour, nationality, religion, gender identity, sexual orientation, age, or disability; and-

(i) the hostility is because of the common characteristic; and

(ii) the offender believed that the victim has that characteristic.

4.57 The Department of Corrections' Community Probation Service manages approximately 68,000 new community-based sentences and orders per year and provides reports to the courts and the Parole Board on matters such as sentencing. The Department did not collect information on sentencing reports systematically and was unable to advise the number of pre-sentence reports that had been prepared specifically referring to section 9(1)(h) of the Sentencing Act.

4.58 Trans people also had experiences as offenders. Taken as a whole, the Inquiry found that these experiences spanned many years. Trans people in their sixties and seventies described growing up in New Zealand in the 1940s and the 1950s. Others described the days of borstals and reflected on criminal justice reforms over the last 30 years. It is not surprising, then, that the Inquiry heard of vastly differing experiences. Many trans people indicated

that stigmatisation and discrimination can lead them to live on the margins of society, putting them at risk of engaging in illegal activity and interactions with the criminal justice system.

4.59 The Inquiry heard from some trans women who were involved in the sex industry when soliciting was prohibited. They described routine harassment by police officers and prosecution for minor offences. Some told of being detained in police cells, being beaten and abused and left without help. Some recalled prosecutors referring to them by their male name even where it was obvious they were trans women. Another recalled her lawyer advising her to plead guilty because 'transvestites never get off these cases'.

4.60 Over time, however, there have been major changes. Some trans people told the Inquiry that prostitution law reform had significantly increased their safety. Whereas in the past the police were to be feared, now the police would respond to protect them if they were attacked.

4.61 In another case a trans woman was regularly harassed by a man who would shout abuse. She complained to the police:

*The police visited him. He told them that he had done it all his life. They told him that the law had changed during his lifetime and that it was now illegal, and that if anything happened to me or my children or property, he would be the first suspect. After that he left me alone.*  
(Trans woman)

4.62 Trans people welcomed the introduction of diversity liaison officers into the New Zealand Police and the availability of victim support services. The Inquiry received a submission from two officers, including a diversity liaison officer who was a trans woman. On balance, there have been considerable improvements.

4.63 Some judges have had a positive effect on trans people's lives. In one case, a trans woman was involved in an argument with a social worker who had found out that she cross-dressed. When the trans woman appeared in court for a prosecution arising out of this incident, the judge immediately dismissed the case, telling the social worker not to 'waste the court's time'. Another person told of being called upon for jury selection:

*I rang and asked that they change my name on the papers so that I don't get called my legal male name. They agreed so I can be comfortable about being there as a trans person.* (Cross-dresser)

4.64 Courts have no power to direct where an inmate is to be held. The Inquiry heard of the considerable difficulties for trans people who are arrested, detained or imprisoned. Some trans people will never be able to legally change their sex for a variety of reasons. However, many live fully in the gender matching their gender identity. Yet, upon entering the criminal justice system, trans people are dealt with on the basis of the sex recorded on their birth certificate or a physical examination by a medical officer to determine whether they had completed gender reassignment surgery.

4.65 Submissions were received from trans women who are or have been prison inmates. All had been detained in male prisons. They recounted limitations on their ability to be recognised as female such as enforced male dress codes and use of previous male names. The Inquiry was told that some Corrections officers 'made a point of reminding you that you were born male' as a punishment and would confiscate trans inmates' feminine belongings:

*The girls inside wanted so little – just to be allowed to wear bras and knickers, to have a mirror and some tweezers and a bit of eyeliner.* (Whakawahine)

4.66 Agender New Zealand noted that several problems can occur for trans woman within male prisons, including physical and sexual harassment or abuse. Agender stated that restrictions on trans inmates' freedom to express their gender identity and a failure to address the causes of offending 'can inhibit positive changes in behaviour' and may delay effective rehabilitation. Concerns were raised about the lack of safety for trans inmates, including their need for segregation when in transit.

4.67 The Inquiry did not receive submissions from trans men about their experiences in prison. However, trans men raised concerns about their potential vulnerability within prisons particularly their physical safety within a male prison, but also the extent to which their male gender identity would be recognised if they were sent to a female prison.

4.68 Only a small minority of trans men will have completed all gender reassignment surgeries. Therefore most would not be assessed as male if physically examined by a prison medical officer. However some in this situation may have taken sufficient medical steps to obtain a male birth certificate, raising questions about how they would be treated within the criminal justice system.

4.69 Access to hormones while in prison was a concern to some inmates. Unless they had been prescribed prior to sentencing it was not possible to obtain hormones or to begin hormone treatment.

The Inquiry was told that it is not uncommon for fa'afafine and whakawāhine to start transitioning by using hormones shared from a friend's prescription. Lack of continued access to hormones while in prison has physical and emotional effects, and will reverse aspects of the transition process.

4.70 The Inquiry heard from one whakawāhine who had been in and out of prison for many years. She said having one person who believed in her had changed her life. She stopped taking drugs, started going to the gym, and began studying at a polytechnic. By the time she spoke with the Inquiry she had full-time work and had been out of the criminal justice system for eight years.

4.71 The Inquiry was approached by a trans woman who had applied to work as a Corrections officer, fully disclosing her gender identity. After passing all stages of the assessment process, her application was declined. She recounted being told that the prison environment would not be safe for a trans officer and that she would not be able to perform strip searches, which were considered an essential part of the role.

### Government agency responses

4.72 Following the release of the Summary of Submissions the Inquiry raised the concerns of trans people about their treatment in the justice system with Police and Corrections officials. Both organisations responded constructively and provided helpful information about current policy and practice. The Citizenship chapter outlines the responses to issues about recognition of a trans person's gender identity. While there is some overlap between these two matters,

this next section deals more specifically with the aspects of discrimination that trans people brought to the Inquiry.

### POLICE

4.73 The Police advised that information identifying the number of complaints or enquiries they receive from trans people is not readily available. The numbers of incidents involving harassment or discrimination against trans people are not separately or specifically recorded. The Police noted that they have no specific methodology for recording 'hate/bias-related crimes', although they were aware that some overseas jurisdictions do so. In addition, the Police indicated that they do not generally collect information about the gender identity of persons seeking assistance or making enquiries. Instead, where they do collect such information, they do so solely for the purpose of assisting activities or responding to requests.

4.74 The Police have taken active steps in recent years to improve their responsiveness to the communities they serve. In 2004 the New Zealand Police established the Diversity Liaison Officer network, with the intention of having such officers available in each policing district. Their role includes liaison with gay, lesbian, bisexual, transgender and intersex communities. Both transgender and intersex people have been involved in the annual course for diversity liaison officers. The Police noted that, like other members of the public, trans people may apply to become police officers and, if they do, must meet the recruitment criteria.

4.75 In relation to trans people's experiences of treatment by individual staff, the Police acknowledged the concerns raised by trans people, noting that:

*The historical nature of those incidents is in line with our expectations, and the New Zealand Police are pleased to note the positive submissions received by the Human Rights Commission, especially the positive changes in the relationship between the Police and transgender people.*

4.76 The Inquiry heard concerns from a number of submitters about the difficulties that same-sex search policies posed for trans people. A comprehensive review of search powers is beyond the scope of this Inquiry. However, the Law Commission released Search and Surveillance Powers, Report No.9 in June, 2007 a thorough examination

of search and seizure powers of law enforcement agencies, including powers to search a person. The report does not consider the practical issues for trans people who are searched, nor does it deal with search powers exercised by prison officers. However, it emphasises the principle of respect for the individual's dignity:

*The starting point for our consideration of search of the person is that 'a violation of the sanctity of a person's body is much more serious than that of his office or even of his home'. As the New Zealand Court of Appeal has noted, 'personal search is a restraint on freedom and an affront to human dignity'.*

4.77 The Inquiry was informed that all searches conducted by the New Zealand Police are guided by Police General Instruction S102: *Treatment and Rights of People Being Searched*. The basic principle guiding all searches is set out in para (1):

*Persons who are being searched must be treated with such dignity, privacy and respect that the situation and the safety of people dealing with them will permit.*

Para (6) provides:

*When searching transsexuals, consideration should be given to the view of the person as to the sex of the [person] who will conduct the search. The transsexual's expression of preference should be witnessed by more than one member.*

4.78 Police advised the Inquiry that specific references to trans people are included in General Instructions relating to searches (S103) and strip searches (S104). The Police also have a training package, 'Searching a transgender person'. Taken together, these provide a clear set of guidelines for the search of trans people. In short, the instructions state that a trans person should be asked which gender they identify with and that due accord be given to their answer where practicable. Police are encouraged to have the trans person write and then sign their gender identity in the constable's notebook. Once gender identity is established, the search should be conducted by someone of that gender.

4.79 Police advised that practical training on searching trans people and treating them with respect forms part of a four-hour inclusiveness training session at the Royal New

Zealand Police College. The College has also developed a 15-minute training package which, Police advised, 'most staff ... consider ... very useful and important'. All sworn staff members have human rights training.

4.80 The Police's written response concluded:

*New Zealand Police has been aware of this Inquiry for some time, and has indicated support for the Human Rights Commission. We welcome any information or findings from the final report that may assist us in ensuring that our policies and practices surrounding our treatment and dealings with transgender people are robust and unambiguous.*

4.81 The Inquiry asked about the placement of trans people in Police cells. The Police noted that staff 'try to ensure that transgender prisoners are not placed in cells with other prisoners, partly as a safety consideration for the trans individual'. However, options for placement of trans people are frequently limited by the availability of suitable space.

## DEPARTMENT OF CORRECTIONS

4.82 The Department's response to the issues raised by trans people focused solely on the issues for trans prisoners and noted:

*Transgender prisoners present a unique and broad set of prison management issues. The Department's current transgender prisoner policy addresses these issues taking into account the physical and emotional needs of transgender prisoners, the Department's limited resources, and the very small number of transgender persons in our prisons. It is difficult to ascertain the exact number; however, it is considered that at any one point in time that there may be between 10–20 transgender persons imprisoned.*

4.83 The Department prepared a thorough response to the issues affecting prison inmates and subsequently met with the Inquiry to discuss this. The Department referred to its policy document: *Transgender Prisoners (National Policy) D.07*. This policy requires a person to be housed in a prison according to their sex and provides that a person may be moved between institutions where they have transitioned. The Department indicated it bases decisions about the

appropriate prison on whether or not a trans person has had full gender-reassignment surgery and, in practice, relies on the assessment of a prison medical officer. The Inquiry was told this policy was necessary for it to meet its obligations under international human rights law to house male and female inmates separately.

4.84 In relation to access to hormones being restricted to those who have been prescribed hormones before entering prison, officials noted that 'it would be negligent of the Department' to allow inmates to continue using hormones if they were doing so without a prescription before they were imprisoned. This reply did not indicate that any medical assessment is made to determine whether hormone treatment is necessary or advisable for an individual trans inmate. This raises concerns about whether trans inmates are receiving their entitlement to health services as defined by the Department of Corrections. These are a primary health service 'reasonably equivalent to that they could expect in the community' or 'access to any secondary and tertiary health care funded by the District Health Boards on the same eligibility criteria as any member of the public'.

4.85 Searches within prison are governed by the provisions of the Corrections Act 2004. The Act requires that rub-down or strip searches are carried out by a person of the same sex as the person being searched. In addition, a strip search must not take place in view of any person who is not of the same sex as the person being searched. The general principle is that all searches must be conducted:

*...with decency and sensitivity and in a manner that affords to the person being searched the greatest degree of privacy and dignity consistent with the purpose of the search.*

4.86 The Inquiry notes that the Police and New Zealand Customs Service also have the legislative power to undertake personal searches. In each case, formal policies have been developed clarifying that, despite the requirement that personal searches must be carried out and witnessed by someone of the same sex as the person being searched, trans people are able to specify which sex would be most appropriate. Police are then required to give 'due accord' to the response, while Customs Officers 'shall apply professionalism and sensitivity to these considerations'.

4.87 The Inquiry notes the steps taken by these agencies to acknowledge the particular vulnerability of trans people during a personal search and to accord them the respect of having their gender identity recognised. Within prisons, improvements can be made to better protect the dignity of trans people while securing the safety and accountability of prison officers.

## Conclusions

4.88 Discrimination, and the fear it creates, isolates trans people and their families, further compromising their safety. It limits their ability to do the ordinary day-to-day things others enjoy, such as shopping or going out for a drink. Discrimination and stereotypes mean that trans people often face barriers finding or keeping a job or rental accommodation.

4.89 Trans people are often excluded from both male-only and female-only facilities such as changing-rooms and toilets. This severely impacts on their ability to live, work and participate in their community. There are additional safety issues for trans people who are detained in the criminal justice system, particularly if the facility does not recognise and respect their gender identity.

4.90 Typically, policies and practices that impact on trans people's lives have been developed without sufficient information or consultation with trans people themselves. In many cases they focus inappropriately on whether or not an individual has had all gender reassignment surgeries. This approach fails to recognise that every trans person has human rights, and that the Human Rights Act protects all, whatever their gender identity and whether or not they have taken steps to transition medically. These issues are analysed in detail within the Legal Framework chapter.

4.91 Trans people often play a key role in educating their families, friends and work colleagues about gender identity issues. However, in an environment where such issues are ignored or dismissed as 'a lifestyle choice', the discrimination they face is often not recognised as the breach of legitimate human rights. This ignorance or hostility can make it difficult for trans people who take up leadership and advocacy roles.



4.92 This places added responsibilities on those in a position to recognise and protect the human rights of trans people, whether they be government agencies, businesses, unions or community agencies. Submissions to the Inquiry illustrate the significant achievements made when trans people have confronted prejudice and discrimination with such support.

4.93 The Findings and Recommendations chapter identifies specific areas where action is needed to ensure trans people can enjoy the same protection from discrimination as others in New Zealand:

*My story is not a victim story but I have been the victim of many things. There is still a need for positive role models and more compassion from the general community. However, the trans community have a responsibility to move from victim to victory, to live their lives to the fullest and contribute to the wider community. We have a wealth of experiences that give us a unique insight into the human psyche and the wider community will be better off if they meet the real people we are, not the sensational headlines on TV or in papers. (Trans woman)*



Being  
trans  
isn't a  
lifestyle,  
and it  
isn't a  
choice.

## 5. Health

### Hauora

*One of the most important things for me is being able to expect consistency of treatment across provider services. Consistency of treatment should mean that wherever you go, up and down the country, you should be able to receive the same advice and the same treatment – not based on any individual's opinion or attitude, but based on fair and equal standards of care. We deal with discrimination and misunderstanding from individuals every day, we shouldn't have to deal with it from our health providers or other services as well. (Trans man)*

**Trans people and health professionals consistently raised the difficulties trans people have in obtaining general health services and being treated with dignity and respect when they did use them. The Inquiry has identified major gaps in availability, accessibility, acceptability and quality of medical services required by a trans person seeking to transition. The provision of public health services is patchy and inconsistent. Trans people and health professionals need to work together to address these issues.**

5.1 The Human Rights Commission, reporting on the status of the right to health in 2004, adopted the widely accepted United Nations framework for assessing the extent to which this right is promoted and protected in New Zealand:

- Availability, which envisages a sufficient number of functioning public health services, facilities and programmes being available.
- Accessibility, which means that the services and facilities are available to everyone without discrimination, are physically accessible, affordable, and people should be aware of their existence.
- Acceptability, which means that the services must respect medical ethics, be culturally appropriate and respect confidentiality.
- Quality, which means that health services must be scientifically and medically appropriate, and of good quality.

While each aspect of this framework requires assessment, they can intersect. The Commission noted that: *Accessibility is also affected by acceptability, as people may often suffer in silence rather than use a service where they feel unwelcome or uncomfortable or if the service is culturally inappropriate.*

5.2 In New Zealand this framework is supplemented by the

Code of Health and Disability Services Consumers' Rights. This sets out the rights of health consumers and the duties and obligations of those providing health and disability services. The Code applies to all health consumers. The right to be treated with respect; to freedom from discrimination, coercion, harassment and exploitation; and the right to dignity and independence are particularly relevant for trans people.

### Trans people's experiences

5.3 Trans people face difficulties when accessing the same general health services as other New Zealanders. In addition, many trans people undergo medical treatment to transition, to change their body so they can live in their appropriate gender. There are very significant barriers for trans people at each stage of a medical transition process. For many, genital surgery is a very long-term goal and the more immediate hurdles will be seeking information, counselling or psychotherapy support, trying to access hormone treatment, obtaining electrolysis (for MtFs) or chest surgery (for trans men). Without such medical interventions, many trans people struggle to be themselves or to participate fully in their communities.

5.4 This section outlines trans people's experiences accessing general health services, before tracing the complex paths they might follow to obtain gender

reassignment services. It then explores the views of health professionals and outlines some health policy developments relevant to trans people.

## General health services

5.5 Some trans people spoke very highly of health professionals:

*I have not personally faced any barriers to accessing general health services. Indeed I have been significantly impressed by many of the health professionals I have encountered, who have been friendly and non-judgmental. (Trans man)*

5.6 Trans people also told the Inquiry of health professionals who went out of their way to provide support, whilst acknowledging their limited experience with and knowledge of trans people or their health issues. In some cases doctors were willing to work with their patient to address these gaps:

*My GP is fantastic. I spoke to him about ongoing care after lower surgery and he's willing to learn and read up. (Trans man)*

5.7 But many trans people told the Inquiry they were often afraid to seek medical help, even for minor matters. Many braced themselves for a simple visit to the doctor and found that their general practitioner lacked knowledge or awareness about trans people:

*Most importantly I wish that people, especially doctors, would understand and accept me. (Trans woman)*

5.8 Some received extremely poor service from their doctors. The Inquiry heard of general practitioners who asked trans people to pray with them about 'their condition', lectured them on morals, or referred them to inappropriate treatments:

*Back in 1993 I left the family doctor who was retiring and went to another health centre. I was there for 10 years and the doctor refused to send me for hormones. In 2004 I changed doctors and that day she put me on to what she could and wrote a referral. (Trans woman)*

5.9 Conversely, the Inquiry heard of health professionals who assumed that all medical symptoms were related

to gender identity issues and prematurely dismissed consideration of other health conditions. In one case a trans woman was prescribed powerful anti-psychotic drugs. Symptoms of a brain tumour (including deafness) were dismissed as psychosomatic. Frustrated with attempts at diagnosis, she went to another doctor without disclosing she was trans. There she received a referral to a specialist and later a scan confirming the existence of a brain tumour:

*I had a year taken out of my life because [they] refused to listen to me. (Trans woman)*

5.10 Discrimination and marginalisation appeared to pervade the experiences of trans people. Frequently this was demonstrated in the most basic ways and in relation to fundamentally simple aspects of dignity, such as the way an individual was referred to by health professionals. Trans people said often they would not be called by name, but referred to as 'it', or snide comments would be made, sometimes in front of other people.

5.11 Some health professionals appeared to deliberately refuse to use the gender pronoun that a trans person indicated was most appropriate. A trans man described being placed in an all-male ward after surgery and then experiencing the indignity of being referred to as 'she' by nursing staff in front of medical students and other male patients. One man who had transitioned overseas ten years previously was listed as female on hospital records, effectively removing any privacy about his transgender status. In every subsequent encounter with health professionals he was referred to as a female.

5.12 Some trans people have particular sexual-health needs. The New Zealand Family Planning Association said:

*...that transgender youth may be especially vulnerable to entering into prostitution due to the levels of discrimination they experience and that 5 per cent of sex workers are transgender and an estimated 50 per cent work on the street. We are aware that this section of the community may have more complex sexual and reproductive health needs due to higher levels of sexual risk-taking, exposure to violence and coercion, and increased exposure to STIs.*

5.13 To protect themselves from discrimination, many trans people wanted to be able to both change the sex details on their health records and have restrictions placed on access to their previous name and sex details. It was considered this would prevent their trans status being disclosed, avert unauthorised or inappropriate use of information, and avoid the indignity of being referred to incorrectly. Some trans people raised concerns about specific health conditions where not disclosing their biological sex may potentially have a negative health impact. These included the need for many trans men and women to be screened for cervical and prostate cancer respectively.

5.14 In some cases trans people were able to get national health index records amended. In other cases they were unable to do so, despite attempts by various clinicians. Health information privacy is discussed in more detail in the Citizenship chapter of this report. The next section of this chapter outlines trans people's experiences when accessing specific health services.

### Starting out

5.15 Very few trans people or family members started out with any prior knowledge or information about gender identity issues, including medical options if they wanted to physically change their body to match their gender identity. In the first instance most sought out other trans people, often using the internet to find contacts with people or groups in New Zealand or overseas. A number of New Zealand groups had websites with practical information, offering support and some resources. These are listed in an appendix to this report.

5.16 Many trans people went to their general medical practitioner seeking initial medical information. In most cases, unless the doctor had other trans patients they were unlikely to have any prior knowledge about trans health issues:

*You don't know anything at first. You ask your local GP and they don't know. (Trans woman)*

*My previous partner was a GP and neither she nor her five business partners knew what the transition process was or about post-transition care. (Trans woman)*

*I was their first trans patient and had to tell them about doing liver function tests etc. (Trans woman)*

*I always have to start from the beginning and teach them rather than concentrate on my own wellbeing and have them help me. (Trans man)*

5.17 A general practitioner has a crucial role in ensuring a trans person can access other services, particularly through referrals to secondary specialists. Treatment typically started with referral for a diagnostic assessment or some other evaluation from a mental health professional or with referral to a hormone specialist (usually an endocrinologist). Yet some general practitioners were not always aware of the services available in their area or assumed that none were available:

*The first GP I approached in 1998 couldn't get me out of the office quickly enough. His only advice was that 'New Zealand doesn't do sex changes these days'. His receptionist, however, tried to find someone for me to contact. She went to a great deal of trouble and I appreciated her efforts. (Trans man)*

5.18 Trans people said that they were sometimes referred by health professionals to community health services, sexual health services or community groups, such as the New Zealand Prostitutes' Collective. Often these groups had more information about the services that were available. However, not all trans people were comfortable approaching these groups and would have preferred to obtain information from a doctor they already knew. Trans people and organisations said postgraduate training options for general practitioners were necessary. However, attempts by one organisation to establish contact with the Royal College of General Practitioners had been unsuccessful.

### Getting support

5.19 Trans people said the initial stages of transitioning can be extremely stressful and support was important. But many struggled to find counselling or other support services. Frequently they provided each other with peer support, either individually or through trans community groups. The Inquiry heard that accurate information and opportunities to discuss the pros and cons of transitioning

were important in order for trans people to make decisions on the basis of fully informed consent. There were concerns that non-availability of services in the public health system might result in those who could afford private services overseas making decisions without getting adequate support, including from other trans people. Others wanted support so that decisions could be made at their pace, fully understanding all the implications at each stage:

*At the end of the day, it should be the transgendered individual who bears the responsibility for their decisions, with the support (not judgement) of medical professionals. (Partner of a trans man)*

5.20 Trans people and health professionals considered that some treatment models used by counsellors were inappropriate, for example, those attributing gender identity issues to childhood trauma or addiction or viewing them as somehow immoral. Trans people were not always successful in finding professional support:

*I was nervous at the thought of the necessary announcement at work to several hundred people, and felt I needed some support and advice with how to proceed... [the health professional's] attitude couldn't have been more unhelpful – she made comments such as 'you people don't stop to think about how enormously embarrassing you are to others – you shouldn't even think of announcing it at work but should get another job'. (Trans man)*

5.21 A diagnosis of Gender Identity Disorder (GID) is frequently required before a health professional is able to refer a trans person to appropriate secondary health services (such as a hormone specialist). Some trans people rejected the implication they had a mental illness and did not want GID listed in the American Psychiatric Association's Diagnostic Statistical Manual of Mental Disorders (DSM IV). One trans man had successfully obtained an assessment focused on his wellbeing (and that transitioning would do no harm) rather than a diagnosis of mental illness.

5.22 Trans people who had previous experiences of mental illness had sometimes found their gender identity issues dismissed as a symptom of another mental health

condition. Some trans people said they were at 'crisis point' when they acknowledged their gender identity and it was still difficult to access mental health services:

*I believe access to mental health services is incredibly poor if not non-existent. My only free psych care was after a suicide attempt... I'm one who has hidden, we tend to break down and come out in our 40s. Coming out then is very dramatic and sudden and [we have] lives that we're in the process of tearing down, and you need help... I really needed help initially to survive and function and then I guess I needed help to come to terms with and learn to accept myself for who I was. (Trans woman)*

5.23 Trans people who required an evaluation by a mental health professional in order to access other services, told the Inquiry they struggled to obtain such services within the public health system. Some were referred for assessment, but waited months only to be told the services were not available for trans people:

*[The receptionist] said that due to a directive from the Director of Psychiatric Services nation-wide, 'gender people' were specifically excluded as available funding for that service had to be allocated to those with 'real' problems. (Trans man)*

5.24 In other cases an assessment might require a number of privately funded appointments and sometimes a second opinion was needed. Inconsistent approaches and the absence of clear guidelines concerned many trans people:

*I went back and he'd mixed up the facts and told me to reconsider and come back in six months.... I saw someone else who said I would need two or three sessions. After half an hour she had no doubts and referred me to an endocrinologist (Trans man)*

5.25 Most trans people paid for their own mental health assessments or evaluations and found these expensive (costing up to \$1,000). In one case a trans man was told the public system no longer provided such assessments. On a low income, he struggled to pay \$200 per hour for a consultation with a trainee at a private residential mental health service.

5.26 The Inquiry received a submission from a health researcher who had completed a doctoral thesis in 2006 analysing New Zealand trans people's relationships with their clinicians. She highlighted several points, including that:

- *All transsexual participants in the study encountered difficulties accessing health or mental health services*
- *Many participants encountered inconsistent referral and prescription practices as well as inadequate treatment monitoring*
- *Many transsexual participants first contacted a clinician seeking information and advice rather than instant access to GRS or hormone therapy*
- *Although transsexuals also hope to access empathetic and respectful clinicians, this was not always their experience. Some clinicians avoided dealing with transsexual patients or issues around transsexuality.*

5.27 This submitter noted that confusion about the role of clinicians and their ignorance of the health issues affecting trans people, caused many to view health professionals as incompetent. As a result trans people were not motivated to follow their advice. She suggested a handbook catering to the wide range of needs and noted that:

*... unclear or divergent views about the purpose of the clinical contact can easily lead to misunderstandings and friction, especially for transsexuals in the often unpredictable process of contacting clinicians, waiting for various appointments and trying to make important decisions on desired treatments.*

### Initial physical transition

5.28 There is a range of services that can assist a trans person to transition medically. The steps taken, and in what order, will depend on the needs of the individual. Typically for trans women the removal of facial and body hair is an important step in their transition. These services are not available in the public health system and one trans person said she paid \$18,000 for such procedures.

5.29 Hormone treatment enables secondary sex characteristics to develop, so that a trans person's body changes to increasingly match their gender identity. So,

appropriate hormones will produce facial and other body hair and a lower voice for trans men, and aid breast growth in trans women. There are some side effects associated with different kinds of hormone treatment, and care is needed to ensure that the particular treatment is the most appropriate for the trans person's circumstances. Usually endocrinologists are the medical specialists who prescribe hormones in the first instance.

5.30 Some trans people said that where their general practitioner did not have sufficient information about hormone treatments they attempted to make appointments with an endocrinologist directly to discuss options. However, this was difficult to do in many parts of the country without an initial assessment or evaluation by a mental health professional:

*[The endocrinologist] required a psych assessment before a consultation, even though I just wanted information at that stage. (Trans man)*

5.31 In one city endocrinologists had stopped accepting new trans patients and referrals were being sent to the district health board's sexual health clinic. Some trans people were concerned they were being referred to such a clinic because of negative views endocrinologists held about trans people:

*Some endos refuse to treat transsexuals because they see it as lifestyle choice or because of religious views. (Trans organisation)*

5.32 International best practice guidelines require monitoring of hormone levels, particularly in the initial stage of hormone treatment. A few trans people expressed concern about inadequate follow-up and monitoring of blood tests because they could not see an endocrinologist through the public health system.

### Initial gender reassignment surgeries

5.33 For a considerable number of trans women, access to hormones coupled with privately funded electrolysis enables them to live day to day in the appropriate sex. For others some surgeries are also required. The Inquiry heard that many who would benefit are unable to have these procedures. In some cases this is because while such surgeries are necessary for the trans person's health, the

procedures are considered inappropriate because they involve other health risks:

*I have had another deep-vein thrombosis followed by a pulmonary embolism last month. This means I can never have oestrogen ... I can never have gender reassignment surgery as the flight to Thailand followed by the op and the flight home would also likely be a death sentence. (Cross-dresser)*

5.34 The Inquiry was told that chest surgery was a very high priority for trans men, who often bound their chest tightly for years until they could afford to pay for this surgery. They described the impact of binding, which included pain, restrictions on their ability to play sport or be intimate, breathing difficulties, isolation, reduced self-esteem and depression. For these reasons international best practice guidelines suggest this surgery may be an early step in a trans man's transition.

5.35 Where surgeries are considered both necessary and advisable for a particular individual, in most cases they will not be provided in the public health system. Almost all trans people therefore paid private health providers for the procedures.

5.36 However, some of the surgical procedures required by some trans people are available for other patients within the public health system. These include hysterectomies, mastectomies and orchidectomies (removal of the testes).

5.37 The Inquiry heard that some district health boards accepted referrals for these and other surgeries, while others did not. Trans people did not always know why their requests for referral had been turned down. Many questioned whether decisions were based on objective criteria and feared that refusals were based on discrimination. In other cases, trans people were able to be referred by their doctor, but were advised they were unlikely to receive a high ranking on waiting lists. Despite having little or no hope of priority for services, some had reapplied in the hope that their referral would be accepted:

*My doctor's referrals for an orchidectomy have been turned down by the urologist for the past two years. Without surgery, I have been on hormones that have been linked to the growth of some cancers and tumours. (Trans woman)*

5.38 Problems were experienced when clinicians did not understand or accept the need for surgical treatment even though such treatments meet international standards:

*... I received an appointment ... to see a gynaecologist. I'm not sure if the referral had not adequately explained the situation to him, but he was absolutely horrified when I told him why I wanted a hysterectomy ... He point blank refused to perform a hysterectomy and agreed only to remove a tumour from one ovary ... saying that no surgeon is permitted to remove healthy tissue, even if the patient doesn't want it. (Trans man)*

5.39 This person said the gynaecologist subsequently wrote a letter of complaint to the referring doctor 'castigating him strongly for encouraging my delusion'.

Trans people had difficulties in obtaining almost any surgeries through district health boards and said they felt pressured not to complain if complications arose, even if they had paid privately for the procedure:

*I mentioned my dissatisfaction with the [chest surgery] results to my GP, who was aghast that I would even think of complaining to the plastic surgeon as 'this doctor has performed surgery out of the goodness of his heart and doesn't have to help you'. (Trans man)*

5.40 A few had experienced positive, co-ordinated responses to their health needs. One trans man had his hysterectomy approved by a medical officer in a district health board (he considered this was probably because he had polycystic ovaries). Once within the hospital system his other health needs were assessed and he was accepted onto the waiting list for a mastectomy:

*My entry and access to services has been brilliant. The goodwill has been there and I have been treated with more respect than I ever hoped. (Trans man)*

## Further gender reassignment surgeries

5.41 International standards of care suggest that in some cases particular surgeries are needed for trans people to live fully in their gender identity, including surgeries to create appropriate genitalia. The Inquiry was informed that for trans women a vaginoplasty removes penile tissue and testes and constructs a vagina, clitoris and labia using the



remaining skin, nerves and blood systems. For trans men, a metatoidoplasty removes the vagina and labia and extends the urethra through a micro-penis, while a phalloplasty creates a full-size penis and testes.

5.42 The Inquiry heard that a small number of trans women had had these surgeries in New Zealand through one clinic, but it was reviewing its provision of these services. Historical information indicated that at least one trans man had received a phalloplasty operation through the New Zealand public health system, though his surgeon has since died. Within the last 10 years at least two metatoidoplasty operations were performed by a private surgeon.

5.43 Trans people said that while surgeons might assist particular individuals, they were not always supportive of gender reassignment surgeries:

*I have had one surgeon tell me that he categorically will not perform gender reassignment surgery on 'men' because they are merely 'weak and ineffectual men with character problems'. He was happy to perform surgery for me because I was 'making a positive choice'. The surgeon completely failed to see that the condition is the same whichever gender one starts out as. (Trans man)*

5.44 The vast majority of those who had genital surgery had paid for their own operations, which were usually performed by experienced surgeons overseas. Typically trans women had these surgeries in Thailand, sometimes in conjunction with facial or breast surgery. This was cheaper than surgery in New Zealand and offered the option of a technique that was not available in New Zealand:

*I had full sex reassignment surgery ... in Thailand ... My general practitioner was trying to persuade me to have surgery in [New Zealand] ... [the Thai specialist] has performed about 600 operations over 10 years ... I knew who was better experienced to deal with my issues, but when I went to Phuket I felt as if I was going against my GP's recommendation. (Trans woman)*

5.45 Some trans men who had travelled to Australia and Europe for phalloplasty operations made submissions to the Inquiry. They described the extensive costs of travel and surgeries, coupled with limited or no income while they

were away from work. The Inquiry was informed that post-operative complications were not uncommon, including for certain surgeries performed on trans women in New Zealand. Yet the small number of trans people having such surgeries, together with generally low levels of knowledge about trans health issues, resulted in very few health practitioners having experience in post-surgical care.

## Treatment pathways

5.46 Trans people and health professionals raised a range of issues related to steps required to access gender reassignment services. The Inquiry has used the concept of treatment pathways to describe the need for clear steps that trans people can follow to get the health services they require in order to transition. Those services need to be available, accessible, acceptable and of good quality.

5.47 A broad, common theme was the high level of inconsistency or 'ad hoc' practice. Trans people were unclear what services district health boards were required to provide and whether those without appropriate specialists were obliged to make a referral to another district health board:

*There is no consistent, nationwide policy for what services should be supplied by DHBs. (Trans woman)*

5.48 Trans people acknowledge the need to ration health services. However, some considered current practice excluded them from access to gender reassignment services, without assessing their specific needs and the impact on their quality of life.

5.49 There were only a handful of trans people who told the Inquiry that they had been able to receive an integrated package of care with access to counselling, a hormone specialist, psychiatric assessment, and initial gender reassignment surgeries through the public health system. The Inquiry heard that in most cases no single health professional had a sufficient overview of the range of health issues facing a trans person. This resulted in significant delays and hurdles. It was rare for trans people to know what services were available, and then receive appropriate referrals and treatment. There was a strong call for such treatment pathways.

## Standards of care

5.50 Trans people frequently described needing to advocate strongly on their own behalf, at a time when they were often drained by the transition process:

*Not everyone has the ability to articulate their wishes or deal with the unbalanced power structure that sometimes exists between doctors and patients .... [There is] a need for someone to be available and trained in helping those who are negotiating the health system. It is possible this could be linked with the standards of care. (Trans man)*

5.51 The Inquiry was told of the need for uniform standards of health care, setting out best practice guidelines for health professionals who support trans people to transition. Most cited the Harry Benjamin Standards of Care (which have recently been renamed the World Professional Association for Transgender Health's Standards of Care for Gender Identity Disorders). These standards focus on the five elements of clinical work for health professional involvement with trans people: diagnostic assessment, psychotherapy, real-life experience, hormone therapy, and surgical therapy. The guidelines are considered to be the minimum requirements for 'treatment of persons with gender identity disorders' (although in practice these are not always followed). The document also deals with matters such as prevalence rates, the natural history of gender identity disorders, cultural differences and consideration of gender identity disorders as mental disorders.

These standards note:

*The designation of gender identity disorders as mental disorders is not a licence for stigmatisation, or the deprivation of gender patients' civil rights.*

5.52 Many were not clear what status, if any, these had in New Zealand. Trans people said they had been treated by health professionals who had not heard of these standards or did not use them. Experiences from other countries will be useful. Public consultations recently took place in the United Kingdom on guidelines for the assessment and treatment of gender dysphoria.

5.53 Some suggested these standards of care might need to be modified for New Zealand because of the comparatively

small population and the low number of qualified specialists. A trans woman listed a range of comparable countries then asked:

*Is it possible to obtain documentation regarding standards of care from each of these countries and for us to develop a similar system based on the parts most compatible with New Zealand? (Trans woman)*

5.54 Many felt that it was crucial for trans people to be involved in developing any standards or best practice guidelines:

*There needs to be a panel set up to develop guidelines and to make recommendations about prospective services for TG folk. This group needs to be made up of lay persons from the community as well as professionals who do now, or could in the future, work with TG [people]. (Trans woman)*

5.55 Trans people outlined the detrimental impact of costs associated with gender reassignment services being excluded from health insurance cover. This exclusion is based on insurance companies deeming such services to be cosmetic. Yet internationally recognised clinical guidelines such as those developed by the World Association for Transgender Health state that gender reassignment services are not cosmetic. The Inquiry considers that this is an area where discussions between the insurance industry and trans people would be beneficial.

## Health professionals' experiences

5.56 The Inquiry has worked with Ministry of Health officials and is very grateful for their support, encouragement and the frank nature of their submissions. Submissions were sought from a broad range of health professionals and organisations that represent them. Very few professional bodies responded, although a number of health professionals who made submissions are active within their professional bodies and have raised the Inquiry within those organisations. Responses were received from 16 health professionals and another six met with Commissioners in April 2007 or supplied written information. The Inquiry was contacted by another 11 health professionals and continues to receive requests for information.

The professional groups included general practitioners, nurses, psychiatrists, psychologists, psychotherapists, social workers, counsellors, sexual health practitioners, paediatricians, endocrinologists, plastic surgeons and health academics. Those who did respond told the Inquiry that the issues emerging warranted detailed consideration. Many expressed support for the Inquiry and the attention on the issues for trans people:

*I'm delighted that it is an ongoing process and not just a benchmark where people say 'why hasn't that happened?' and then wash their hands. (Health professional)*

5.57 The Inquiry was informed that when trans people first contacted a health professional they often sought information and advice and did not have an expectation of immediate referral to gender reassignment services. Often health professionals are unable to provide the information their patients require:

*My knowledge before relatively recently has been very limited because it's something most GPs don't have to deal with. It's been a huge learning curve and I do the best with the knowledge I have. There's not much in textbooks. I got a resource book from [a trans patient] and use the internet and rely heavily on secondary services. I didn't receive any undergraduate training [in this area]. (GP)*

*In my experience transgender people cannot assume to be understood by health service providers and are required to network to locate supportive and adequate health services.... I have observed that it is the transgender person who must educate and inform practitioners about their transition process.... Service providers must understand that transgender people can be well-informed, healthy individuals concerned to receive treatment that they trust. (Psychotherapist)*

5.58 Health professionals emphasised that general information about gender identity issues should be available within undergraduate medical training (perhaps co-ordinated across psychology, gynaecology and sexual health courses). One health professional involved in such training suggested that more specific clinical training in gender dysphoria was 'best arranged through the

postgraduate services for general practitioners or specialists where the content is more relevant to practice'. One person searched a wide range of medical, psychological and social work databases and found 'an abysmal number of clinical and research articles on the topic in Australasian professional journals':

*As a result, few Australasian professionals have acquired knowledge and developed expertise to remedy the problems transgendered people present. Therefore, while respecting the tradition of academic independence of various training schools of health professionals, I would support the Human Rights Commission if it were to encourage them to address the clinical and research needs of this minority group. (Mental health professional)*

5.59 Health professionals said there is a lack of information available to assist their work with trans people:

*For counsellors and psychotherapists like myself it is very difficult to find definitive accessible information to assist our clients with their gender-related issues. (Psychotherapist)*

5.60 Mental health professionals told the Inquiry of significant pressures on their services. These pressures affected their ability to assess the suitability and readiness of trans people for gender reassignment services. Some district health boards provide no assessments of trans people. In others there were lengthy delays. In one case the community mental health team had provided assessments, but the services were withdrawn. The workload fell to other staff, who had limited resources to undertake assessments and no funding to provide therapy or counselling:

*We believe there is a need for appropriate psychiatric and psychological assessment and support for people with transgender disorders. In our experience, public mental health services lack clarity around funding provision for such services. As a result assessments for suitability and readiness for hormone treatment or reassignment surgery are neither timely nor as comprehensive as would be desirable for best practice. We acknowledge that all health care is rationed,*

*but consider that the basis of this rationing, particularly in relation to mental health services for transgender people, is ambiguous at best. (Mental health professionals)*

5.61 In some cases, unless a person was suffering from acute symptoms of mental illness they were unlikely to receive assistance:

*Some of the people we've done the best for started off the worst because they had automatic call on psych services for other reasons. (Mental health professional)*

5.62 The significance of a mental health assessment or evaluation as a means to securing other services created challenges for health professionals as well as trans people. These concerns were heightened if a trans client did not have other support during the assessment process:

*People think it's an exam they have to pass. I want to say I'm on their side. But they're right, we are an obstacle they have to get through. (Mental health professional)*

*Some of us also find it ethically challenging to undertake assessments in an almost adversarial role (as opposed to a supportive therapeutic approach), and for there to be no resources to provide ongoing support and therapy for people struggling with gender transition. (Mental health professional)*

*A GP is often left holding non-results and rejections from psych assessments. (Health professional)*

5.63 A researcher on New Zealand trans people's relationships with their clinicians noted that, in the absence of clear criteria to guide someone's readiness, some clinicians 'invented their own criteria according to cultural norms or personal understanding or left the final decision on treatment to another clinician'.

5.64 The Inquiry heard that there is some debate about whether gender identity dysphoria is a mental illness. Some health professionals stated that while Gender Identity Disorder is listed in the Diagnostic Standards Manual IV, they do not consider it to be a mental illness:

*Psych assessments are required because it's in the DSM IV. But it is not a mental disorder. Someone who is transgender is normal and more normal once they have had surgery. (Health professional)*

5.65 The Inquiry was advised that a similar distinction between mental illness and mental health or wellbeing is noted in a recently published discussion paper on best practice models for the assessment, treatment and care of trans people in Victoria, Australia. The paper states:

*Professionals and members of the transgender and transsexual communities are working towards the removal of GID as a mental illness. Regardless of how or where GID is defined, the impact of gender identity disorder on mental health and emotional wellbeing is well recognised and people need access to therapeutic support.*

5.66 As noted earlier, endocrinologists are the specialists who oversee hormone treatments required by trans people to physically change their secondary sex characteristics. Health professionals said that access to an endocrinologist through the public health system was sporadic and referral processes differed around the country. Some counsellors and psychotherapists working outside district health boards questioned why they were unable to make referrals directly to a specialist:

*The system of referring clients to other specialist services such as endocrinologists is confusing and unclear, and sometimes appears to only be available to therapists working within the medical system. This disadvantages transgendered clients who have made a positive connection with a counsellor or therapist and want to remain with this established support or those who feel uncomfortable or unsafe in the medical system and need an 'outside' ally to be a go-between in these connections. (Psychotherapist)*

5.67 Endocrinologists emphasised the importance of ensuring they worked alongside other health professionals who were better placed to assess the trans person's eligibility and readiness for hormone treatment:

*The joint clinic that [a psychologist] and [an endocrinologist] had in the past was great. They shared*

*patients, and that's what you want a clinic for. (Mental health professional)*

5.68 Limited availability of mental health professionals for assessment purposes caused significant delays in referral to other gender reassignment services. In some cases only those able to afford a private assessment could attend a district health board's endocrinology clinic:

*Our medical practice has typically been to start the process of managing a transgender patient in the endocrine or gyne-endocrine clinics. This was followed by a one-off review by the psychiatry department to ensure that the patient was stable enough emotionally and an appropriate candidate for hormonal therapy. This provided an excellent safety net so that we provided care only to appropriate patients. Unfortunately, the psych department has withdrawn its involvement, which essentially means that we are no longer seeing any transgender clients in the public hospital system. (Hormone specialist)*

5.69 In some parts of the country general practitioners took over responsibility for issuing prescriptions and ongoing monitoring of blood tests once an endocrinologist confirmed that a trans person's hormone levels had stabilised. However, health professionals indicated there can be two problems with this approach. Firstly, one of the hormones used by trans women can only be prescribed by a specialist. Secondly, general practitioners often do not have sufficient information and training about hormone treatments for trans people:

*There is a lack of understanding by some general health practitioners of the medication required for gender reassignment and appropriate doses. This arises from the fact that most of the care of transgender people has been done by hospital specialists. There is often a reluctance to provide repeat prescriptions which means that drugs may be stopped and started due to access issues. Many doctors are reluctant to become known as 'sympathetic' to transgender people for fear of being inundated with clients. (Specialist)*

5.70 Health professionals said there was a lack of clarity about the responsibility of district health boards to provide

trans people with access to hormone treatment through their endocrinology services. One hormone specialist explained that this was linked to the fact that hormone services used by trans women were funded as a treatment for biological women, while those required by trans men were available as hormone replacement for biological men:

*Hormone therapy is not approved / funded for gender reassignment purposes. Arguably we accept the self-identified sex and treat women for hirsutism and men with male hormone replacement. (Hormone specialist)*

5.71 Stereotypes about trans people affected some health professionals' perceptions of the appropriate gender reassignment services that should be provided. Some health professionals were concerned about providing hormones when trans women did not want to have any surgery. Others considered it was important to recognise the diversity of trans identities and the range of treatment options and possible pathways for them:

*The hospital does a really good job with orthodoxy but is learning slowly with unorthodox people, including street queens and fa'afafine. Non-standard gender is highly challenging to them. (Health professional)*

5.72 International standards of care provide that gender reassignment surgery is an effective and necessary treatment for some trans people:

*In persons diagnosed with transsexualism or profound [Gender Identity Disorder], sex reassignment surgery, along with hormone therapy and real-life experience, is a treatment that has proven to be effective. Such a therapeutic regimen, when prescribed or recommended by qualified practitioners, is medically indicated and medically necessary. Sex reassignment is not 'experimental,' 'investigational,' 'elective,' 'cosmetic,' or optional in any meaningful sense. It constitutes very effective and appropriate treatment for transsexualism or profound Gender Identity Disorder. ((World Professional Association of Transgender Health, Sixth version, February 2001, p. 18)*

5.73 Despite clear international standards, trans people said some district health boards have prioritisation criteria



for services which appear to operate as a blanket exclusion of applications made on the grounds of Gender Identity Disorder. This was supported by correspondence from health professionals:

*I spoke with two of my consultants and to our knowledge unfortunately neither breast surgery nor hysterectomy and oophorectomy [removal of fallopian tubes] are available for transgender disorder in the public system in [this city]. This will probably come as no surprise to you. (Health professional)*

5.74 In other district health boards, some initial gender reassignment surgeries are approved under alternative codes. The Inquiry was told that an orchidectomy could be approved under 'risk of cancer', as this is a potential side effect of the anti-androgen hormones taken by trans women prior to surgery. Some health professionals had difficulties with the current system:

*Managers say it is not part of their contract with the DHB. The reduced funding is because hospitals are fragmented into fiefdoms.... Now we have to broker each independent service. (Multi-disciplinary group of health professionals)*

5.75 The Inquiry heard of attempts since the 1950s to provide some gender reassignment services through the New Zealand public hospital system. Material submitted to the Inquiry documented the work of a small number of clinicians, supported by the decision of at least one Area Health Board's Ethics Committee (which had taken into account the need to balance the fair allocation of scarce resources). One mental health professional described his frustrations about what they had been able to achieve:

*Yet the prejudice persisted, and transsexuals received treatment more surreptitiously than openly in public hospitals. Although [the hospital] allowed the assessment of cases referred by medical practitioners, and supported endocrinological intervention where considered appropriate, it paid lip service to providing surgery no matter how deserving the applicants. We were stymied consistently by a faceless bureaucracy that kept promising to make decisions but never did. (Mental health professional)*

5.76 Health professionals questioned whether it was ethical to assess whether someone is eligible and ready for gender reassignment surgery, when there was no public provision of those services:

*We note the paradox that public mental health services are under an apparent obligation to provide at least assessments for transgender surgery ... but that there is a near absence of any public money for transgender surgery of a reconstructive nature. (Mental health professional)*

5.77 Some gender reassignment surgeries are available upon application to the Ministry of Health, which administers a Special High Cost Treatment Pool of funding for specialist services, which are not available in the New Zealand public health system. Information about how this funding relates to trans people is outlined in the information about recent policy developments later in this chapter.

5.78 Health professionals stressed the need for an integration of treatment approaches that included specialist clinicians but also 'clear treatment pathways described and available to general health practitioners'. Many highlighted gaps in the current provision of services.

5.79 There was considerable support among health professionals for the development of standards of care, based on the internationally recognised models:

*There is insecurity because we are not benchmarked to international standards. There is some liaison with colleagues overseas but this is not the main area of speciality for any of us. The Harry Benjamin Standards of Care are great. We can apply them as guidelines and go beyond them. (Health professional)*

5.80 Some health professionals said they follow all or most of these guidelines, taking into account that some of services detailed in it are not available in New Zealand. Others said it would be helpful to have clear New Zealand standards or guidelines that took into account the services that are actually available here.

5.81 Health professionals raised concerns about the quality of care available to trans people, often due to inadequate

understanding, in some cases compounded by out-of-date medical views:

*To experience conflict between one's innate sense of gender and one's physical body clearly leads to emotional and psychological distress. In my experience, this can be misunderstood as psychopathology, often in the range of personality and mood disorders. This pathologising further alienates the transgender person from family and community, from their own experience, and does not result in appropriate support. (Health professional)*

5.82 This health professional cited the analysis of psychotherapist Arlene Istar Lev who has published material in the United States of America for other clinicians working with trans people:

*The difficulty lies not in professional assessment processes or diagnostic competency, but rather in the perspective that assumes psychopathology in all gender-variant people without understanding the context of their difficulties.*

## Health policy developments

5.83 The Inquiry has consulted with the Ministry of Health throughout its process. The Ministry noted that 'the relationship and trust between clinicians and trans people is central to any interactions between the two parties and crucial to improving the therapeutic relationship'.

5.84 The Inquiry understands that in 2003 the Ministry reminded district health boards of their obligation to provide trans people with hormonal treatment, psychological and psychiatric services and surgeries such as mastectomy, orchidectomy and hysterectomy. The Ministry convened a meeting of seven health professionals to canvass and discuss options for the provision of 'gender dysphoria treatment', the development of standards of care and a possible register of clinicians. The Ministry had intended to involve trans people in the development of this material and to ensure it focused, in the first instance, on improving services other than gender reassignment surgeries. However, the Ministry advised the Inquiry that while that meeting did take place (and the health

professionals involved found it extremely useful), the momentum to develop the proposed material was not sustained.

5.85 The Ministry of Health also advised that in 2003 it conducted a survey of district health boards about the services provided to patients with gender identity dysphoria. Almost all boards responded (17 out of 21), although three of the larger boards, providing services in two major cities, did not. Eight district health boards indicated no services at all were provided, with another listing services that were not provided. Two boards noted they would provide mental health services if the trans person was within the qualifying criteria (that is, the 3 per cent of the population diagnosed with the most severe degree of mental illness). Four district health boards provided assessments by mental health professionals and either provided follow-up hormone therapy or made a referral to other district health boards for those services. A further two made referrals to adult mental health services. One indicated that it provided services on an individual basis and that there were no co-ordinated services and another did not appear to undertake assessments but provided endocrinology services.

5.86 Only one appeared to provide comprehensive services. These included assessment, mental health services, psychiatry and psychotherapy services (through both adult and children and adolescent facilities), some support through its Public Health Unit, general surgical services and made referrals to another district health board for appropriate plastic surgeries.

5.87 In the light of survey responses, there appeared to be gaps in the provision of services regionally and nationally. The Ministry of Health notes that although the survey information is now four years old, this is still the situation within district health boards. In addition, the Ministry confirmed:

*Each DHB will take account of the particular needs within the community to be served, in order that access and communication is effective and responsive, and that services are safe and effective for all people. DHBs define their population health needs and then prioritise services. Accordingly, there needs to be appropriate access to services and if services are not available at a*



*DHB then a transgender patient needs to be referred to another DHB where there are specialist services.*

### Special High Cost Treatment Pool

5.88 The Special High Cost Treatment Pool is a pool of funding set aside by the Ministry of Health for one-off treatments that are not otherwise funded by the public health system. District health board specialists can apply, on a patient's behalf, to the Ministry of Health (which administers the funding and makes decisions). Prior to 2003, applications by specialists on behalf of trans people were unsuccessful.

5.89 In the late 1990s a trans woman complained to the Ombudsman when her approval for gender reassignment surgery by a regional health authority was withdrawn after changes to funding arrangements. In 2002, the Ombudsman ruled in favour of the trans woman, on the basis of procedural issues. In the same year a separate complaint was made to the Human Rights Commission about access to gender reassignment surgeries. The Ministry of Health subsequently changed the Special High Cost Treatment Pool guidelines in order to allow applications from trans people for a maximum of four surgeries every two years (three for male to female trans people and one for a female to male trans person).

5.90 The Inquiry understands there have been no changes since 2003 and that this is still the current arrangement. During the course of the Inquiry, trans people expressed considerable support for the decision to allocate some special funding for gender reassignment surgeries:

*To my mind the real significance of this policy change is that it gives the condition official 'credibility'.  
(Trans man)*

5.91 However, significant concerns were raised about inadequate community consultation in establishing the funding and the absence of attention to other pressing trans health issues. One transgender organisation met with the Ministry of Health in 2002 and 2003 to discuss the health issues faced by trans people. This organisation had recommended counselling, psychotherapy, hormone treatment, electrolysis (for trans women) and chest

surgery (for trans men) should be the immediate priorities. However, the organisation said they were not consulted about the special funding proposals:

*We were surprised that as community representatives we were not consulted at all regarding the funded surgery and while pleased in principle when the funding was announced in May 2004, we were shocked that none of our other recommendations had been addressed and there was a noticeable lack of information provided to the community regarding the details, how people would access the surgery and how the system would work. (Transgender organisation)*

5.92 The Inquiry asked trans people and health professionals how the current funding arrangements worked in practice. Both said they struggled to obtain information about the process for applying, particularly in the absence of New Zealand surgeons or specialists who could support applications by trans men. Two applications were initially not processed because the Ministry considered insufficient details had been provided. In both cases the applicants were under the mistaken belief they had been placed on a waiting list for these surgeries. Many trans people and health professionals were confused about the selection process for surgeries performed in New Zealand and expressed serious reservations about the appropriateness of contracting out such decisions to a single private provider:

*There is no clear process for equitable selection of the very few people who receive publicly funded surgery.  
(Mental health professionals)*

5.93 Applicants are required to fund their initial consultations and pre-operative assessments. This currently imposes additional costs for trans men, as these consultations require travelling to reputable clinics overseas.

5.94 For trans women, surgery is only available in one New Zealand city, involving travel for those not living in that city. Not all applicants were aware that the costs of this travel were covered by the Ministry of Health's National Travel Assistance Policy and, as a result, had incurred considerable personal expense.

5.95 The policy decision to contract publicly funded services to one provider, who specialises in a specific surgical technique, limits the options for the diversity of trans people who came to the Inquiry. Evidence submitted to the Inquiry suggests mixed outcomes from this technique. Effectively, the right of trans women to quality health services is severely limited.

## Conclusions

5.96 Many trans people experience discrimination when they access health services. This discrimination affects their health and prevents many from finding the services they need. Some are reluctant to seek assistance even for relatively minor medical matters.

5.97 Advocacy by trans people on health matters has been dependent on a small number of dedicated individuals and transgender organisations. The information available about trans health issues for either trans people or health professionals is inadequate. The absence of a clear 'road map' identifying the ways in which trans people are to be treated within different parts of the health system creates barriers for trans people and compromises their health.

5.98 The paucity of information and insufficient training available to health professionals created barriers for trans people. In addition, the quality of care available is reduced unless sufficient training and resources are available to health professionals working with trans people. Many face barriers, such as the cost of private health services, affecting their right to health. Some trans people were angry or upset about the nature and extent of these barriers. Others were confused or simply resigned, seeing these barriers as either the cause, or the inevitable result, of marginalisation and stigmatisation they experienced elsewhere. Many told the Inquiry that these twin hurdles often came from the very people whose job it was to assist them.

5.99 Misinformed views about the health needs of trans people isolated some health professionals, who were wary of their colleagues' reaction to this area of their work. In some cases they found it difficult to keep in touch with emerging clinical developments. There was clear support for a more collegial, integrated, multidisciplinary approach.

5.100 There was a high degree of consistency between trans people and health professionals about the issues affecting trans people's access to health services. These included, firstly, difficulties both obtaining general health services that many other people take for granted, and in being treated with dignity and respect through that process. Secondly, there were major gaps in the availability, accessibility, acceptability and quality of medical services required to transition.

5.101 Trans people and health professionals need to work together on these critical issues. The Ministry of Health has indicated it would be keen to support development of an appropriate treatment pathway that addresses the whole continuum of care from primary care through to secondary services:

*The biggest gains for trans people in the short to medium term may be through better support in primary health care. It is where people first seek advice and information, and practitioners need the tools to provide appropriate support and referrals. Primary care may also be the area where mental health access issues could be improved, recognising the complexities of secondary mental health services.*

*The Ministry would be keen to support sector leaders, in partnership with trans people, to develop an appropriate treatment pathway. This process may also help to explore what kinds of supports would be of greatest benefit to trans people in the public health system. To help raise the awareness of these issues among health professionals, the Ministry could consider approaching an appropriate person to publish a case study as part of a response to the Inquiry's report.*

I wish  
that people,  
especially  
doctors,  
would  
understand  
and  
accept me.

## 6. Citizenship

### Raraunga

*It's about belonging to society and being a citizen. Having true access to all of the opportunities to further yourself [otherwise] you have little respect because [society] has little respect for you. When you find you have somewhere to belong, you develop a great social conscience about contributing. (Trans woman)*

**Birth certificates and passports are among the important documents that affirm citizenship, protect New Zealanders from identity fraud and allow citizens to travel safely overseas. Most trans people cannot obtain official documents that provide consistent and accurate information about their gender identity and sex. Government agencies share trans people's concern that official documents need to be accurate and trusted.**

6.1 The Inquiry uses the term 'citizenship' to convey a sense of belonging and participation in society. This wider lens of active and full citizenship is then applied to the three aspects of citizenship that appear to be most significant to trans people: official documents issued by the state, the situation for New Zealand citizens born overseas and privacy-related rights. The Department of Internal Affairs noted that the terms citizen and citizenship are defined more narrowly in the Citizenship Act 1977.

#### Official documents

6.2 Official documents have a particular significance for trans people. Firstly, such documents can affirm a trans person's gender identity. Secondly, changes to official documents usually form an important part of the process of transitioning. Thirdly, incorrect documents provide a constant reminder that a trans person's sex and gender identity are seen as incongruent, undermining their identity. Fourthly, trans people can experience discrimination when such documents are not congruent with how they physically present. It follows that these documents provide trans people with protection from discrimination and establish a basis for asserting respect for dignity and equality:

*Considerable numbers of transgendered New Zealanders suffer the indignity of not being legally recognised as being the gender they know they are. This creates considerable anxiety, especially when using official documents such as driving licences and*

*passports, because the gender stated in the document does not match their presentation. In my own case I stopped travelling overseas for a two-year period until I had proceeded through surgery and had obtained a female birth certificate and passport. (Trans woman)*

6.3 New Zealand citizenship operates across a framework of laws, with none, on its own, specifying the full rights and responsibilities of citizenship. These rights and responsibilities are affirmed in a variety of ways. Official documents deal with registration of births, deaths and marriages; legal change of name; regulation of activities (such as granting a licence to drive); or for the purposes of enabling people to travel overseas (such as passports and visas). Rights and privileges can also exist without these documents. Persons born in New Zealand to New Zealand citizens or permanent residents are New Zealand citizens, but no 'citizenship document' is ever issued to them, unless requested for a specific purpose. For most people, a birth certificate is all the proof required that they are New Zealanders.

6.4 In New Zealand there are no official identity documents and a birth certificate is simply evidence that a birth occurred. However, in practice, documents issued by the state assist most people to verify their identity and most people refer to these documents as 'forms of identity'. Such documents may include a person's name, their date of birth, their sex, and, increasingly, a photograph. Legitimate concerns about identity fraud, security of information and

other factors have resulted in these documents having an increased significance. Today people are frequently asked in a diverse range of situations to show proof of their identity by presenting these and other documents. Young people are most likely to be asked for proof of identity.

6.5 In this chapter the Inquiry focuses on six official documents: a driver's licence, passport, birth certificate, marriage or civil union certificate and a citizenship certificate. A small but significant proportion of trans people had no document that accurately reflected their name and/or sex. Many only had some of these documents. Others had been unaware, until advised by the Inquiry, that they could safely apply for them.

6.6 In addition, having inappropriate details on less formal documents raised significant privacy issues for trans people. As already noted, the Inquiry received submissions from trans people who found it difficult to change sex details on academic or medical records. Similarly, it was not always easy for trans people to have these details corrected (and previous information deleted or restricted) on records held by government agencies or private businesses such as banks. Conversely, submitters described being surprised and pleased how easy it was to change details held by the Inland Revenue and utility companies.

#### DRIVER'S LICENCE

6.7 A New Zealand driver's licence displays the licence holder's full name, date of birth, licence number, photograph, signature and categories of licence held. The licence-holder's sex is not displayed, but is recorded when a person applies for a licence. These details will appear when authorities, such as the police, check licence details.

6.8 This licence was a very important document for trans people. Many were asked to provide it as a form of identification for entry to public places, when opening bank accounts, to join a library or video shop, when making purchases, and travelling on domestic airlines. A new name, title and photo is significant because it formally verified a trans person's gender identity:

*It was hellish before then with no photo ID and was driving me mad. (Trans man)*

6.9 Trans people said that, once they had legally changed their name or started transitioning, it was not always difficult for them to change the sex details held on the computer record of their driver's licence. Although there were inconsistencies, most were treated very well by staff processing their requests:

*I refused to tick M or F. The person said, 'I've had that before, we tick both boxes and then the computer will let me move on'. (Trans woman)*

6.10 Where the sex details on a licence are changed, the original details remain available to police. Police officers told the Inquiry that it was preferable for trans people to let officers know if there may be additional information about their sex or name details on their licence. Otherwise, there could be confusion:

*If a person is stopped and they say one name and the check shows another legal name or gender, the initial reaction is that 'they lied to me'. Strike one and it becomes an interrogation. (Police officer)*

#### PASSPORT

6.11 Passports are government-issued documents which facilitate the international travel of a country's citizens, and which establish each holder's identity and nationality. There are also other types of official travel documents that fulfil similar functions. A passport operates as a request from one government to another to 'allow the holder to pass without delay or hindrance and in case of need to give all lawful assistance and protection'. A passport belongs to the government that issues it.

6.12 Different countries operate different systems for verifying the identity of a person applying for a passport, but all operate within an international system of passport recognition. The International Civil Aviation Organisation (ICAO) is the United Nations' agency that sets universally accepted specifications for international travel documents, including specifications as to the sex of persons holding such documents. ICAO standards for machine-readable travel documents indicate that where there is an unspecified sex this should be designated with an (X) in travel documents. Prior to 2005 in New Zealand passports the (X) was noted as a dash (-).

6.13 The Department of Internal Affairs issues passports according to ICAO standards. The Inquiry was advised by the Department that there are approximately 400 New Zealand passport holders whose passports have an (X) or (-) in the sex details field. They were unable to specify how many trans people had been issued a 'M' or 'F' passport after changing sex details on their birth certificate. If a trans person in this situation is applying for their first New Zealand passport, the Passport Office will have no previous record of their sex details.

6.14 Trans people considered that passports displaying an (X) were a positive option for people early on in their transition and for those who identified as androgynous, 'gender neutral' or 'gender queer'. However even these groups conveyed concerns about their experiences travelling on a (X) or (-) passport. Some described difficulties having an (X) or (-) passport accepted at airline check-in counters in New Zealand and overseas. One airline staff member who attended a briefing about the Inquiry suggested difficulties may arise because airline computer systems usually only allow a 'male' or 'female' option in the sex data field.

6.15 Other trans people did not wish to use an (X) passport when travelling:

*As I have dual New Zealand / British citizenship I hold two passports. I do not use my New Zealand passport as the gender is marked with a dash (-). I feel that this compromises my privacy and shares personal information about my life without my permission with people I do not know and who have no need to know. This information is unrelated to airline travel, safety or immigration and I believe there is no reason why the policy behind it shouldn't be able to be changed. (Trans man)*

*I think having an X [passport] will be as discriminatory as having an F. (Trans man)*

6.16 These experiences made trans people nervous about travelling overseas. The Inquiry also heard that while the ICAO standards provide an internationally agreed system for reference to sex details in passports, the system is not followed in all countries. This caused problems for some trans people:

*The border control in Japan made fun of me. This was frightening, as I was not sure what would happen to me as I had minimal knowledge of the Japanese language. I believe the dash on a passport or a gender that does not represent what you appear to be leaves you vulnerable and open to all kinds of violation at borders. I have travelled extensively since having gender reassignment with female on my passport and have not encountered the scrutiny that I experienced when I had a dash on my passport. (Trans woman)*

6.17 Many trans people were critical of the high threshold required before a trans woman could be issued a female passport, or a trans man a male passport. This meant most were still required to use a (X) or (-) passport many years after transitioning. Despite having lawfully issued passports, fear of discrimination prevented some trans people from travelling. One trans person turned down an overseas work trip because he feared disclosure of his trans status to a work colleague if border officials questioned him. Another considered it would be harder to explain his situation in countries where officials did not understand trans issues or speak English, or were legally able to detain people without questioning if they suspected identity fraud.

## BIRTH CERTIFICATE

### Change of name

6.18 Persons born in New Zealand have their name entered on their birth certificate. Making a statutory declaration can change this name. The Inquiry heard that many trans people over 18 years of age had changed their name. Almost without exception this proved to be a simple and straightforward exercise for them. In a very small number of cases a trans person told the Inquiry that they could not afford the fee and, as a result, had not yet changed their name.

### Change of sex

6.19 The law also allows for the sex recorded on a person's birth certificate to be changed. This procedure is governed by the Births, Deaths and Marriages Registration Act 1995, which provides that a person may make such an application to the Family Court. A more detailed analysis of the Act and this test is contained in the Legal Framework chapter of this

report. In short, an applicant must provide expert medical evidence to satisfy the Court that he or she has undergone the medical treatment usually regarded by medical experts as desirable for him or her to acquire a physical conformation that accords with their gender identity. The test contains both a subjective element (a trans person's own views are relevant) and an objective element (independent verification by way of medical evidence is also required).

6.20 The facility to change the sex recorded on their birth certificate was enormously important to trans people:

*My birth certificate is fixed as the world judged me when I couldn't speak for myself. (Trans man)*

6.21 The Inquiry heard that trans people are nevertheless confused about what this test means in practice. Many thought that the requirement for 'medical treatment ... to acquire a physical conformation' of the sex matching their gender identity meant that they must have had 'full gender reassignment surgery'. A number were given this advice by staff at the Department of Internal Affairs or in their local Family Court. Trans people said that the statutory test was unfair and problematic given the reality that most will never be able to access the full range of surgical procedures.

6.22 Trans people said that for many of them such surgeries are simply not available in New Zealand are too costly, medically unnecessary, or undesirable for other medical or cultural reasons. For these and other reasons most trans people did not expect to ever have full gender reassignment surgeries nor be able to meet the 'physical conformity' requirements of the statutory test:

*I can't change [my birth certificate] legally until I have had all surgeries deemed necessary, which for transguys is no mean feat if that includes 'lower' surgery. We can't get that done in New Zealand, most of us don't have to \$50-\$100k needed to do it overseas, it can involve as many as five risky operations with a very variable outcome, and many of us will never choose to have it. In short, I'm convinced this criteria was set only with reference to MtFs. No one else is legally defined by surgery. (Trans man)*

6.23 In addition to confusion about the statutory test, trans people said that it was difficult for them to obtain clear information about the process for applying to the Family Court. Lawyers with expertise in this area were difficult to find. Some trans people had successfully applied to the Court without needing legal representation, but this did not appear to happen very often. Some thought the procedures were complex, while others found it intimidating to talk with lawyers and found the legal costs high. One person indicated their legal costs had been \$2,000.

6.24 Many trans people were left in an invidious and vulnerable situation. On the one hand, the difference between the sex recorded on a birth certificate and how a trans person presents often resulted in suspicion and/or discrimination. On the other hand, the majority of trans people were simply unable to comply with the statutory test for change of sex on a birth certificate, which might help to prevent such suspicion or discrimination.

6.25 Trans people asked the Inquiry for changes to the law. Some recommended the approach taken by the United Kingdom in the Gender Recognition Act 2004. Under that Act, gender reassignment surgery is no longer a prerequisite for a person's sex to be changed on their birth certificate. Instead, a trans person may have the sex on their birth certificate changed and a gender recognition certificate issued if they can demonstrate that they have been diagnosed with gender dysphoria, have lived in their acquired gender role for at least two years and provide evidence that they intend to do so permanently. In some cases applicants have had gender reassignment surgeries, but trans people may apply for a certificate without having undergone surgery.

## MARRIAGE AND CIVIL UNION CERTIFICATES

6.26 A small number of trans women asked the Inquiry to consider issues relating to the legal status of their marriages. They had been married for many years and while married had transitioned from male to female. A number were now living as women and wished to have their birth certificates amended accordingly. This was not possible while they still remained married.



6.27 These trans women said they were constrained from altering the sex details on their birth certificate because two persons of the same sex are not permitted to marry under New Zealand law. A legal change of sex was not possible while they were legally married, with the result that they were effectively required to dissolve their marriage. They considered this an affront to their dignity. They did not believe this was warranted given that the parties to the marriage relationship were the same two people who had been lawfully married in the first instance. Some perceived a civil union to be of a lesser status than their marriage.

6.28 On the other hand, the Inquiry heard that civil unions offer some trans people more options for legal recognition of their sex and gender identity. This was because civil unions are permitted between persons of the same or different sexes. If a person changes the sex on their birth certificate, their civil union is not affected.

#### TRANS PEOPLE BORN OVERSEAS

6.29 A number of trans people spoke of procedural difficulties when attempting to gain a Gender Recognition Certificate as New Zealand citizens born in the United Kingdom. The United Kingdom Gender Recognition Act 2004 permits appropriately qualified medical persons from another country to verify evidence that will be submitted to the Gender Recognition Panel. At least three trans people had encountered difficulties finding someone in New Zealand who was eligible to verify such evidence:

*I would like to see some authority able to assist here.*

*If not, for there to be some liaison with the Gender Recognition Panel in regards to accepting reports/letters from medical professionals in New Zealand, as this leaves those born overseas in a catch-22 situation. Since there is liaison between the two countries (and others) on other matters, I can't see why there can't be on this matter. (Trans man)*

6.30 The Inquiry met two trans women who had applied to the Family Court in New Zealand for a declaration as to their sex, even though they did not hold a New Zealand birth certificate. Such a declaration would, in their view, provide the verification necessary for them to change their birth certificates in the United Kingdom.

6.31 The trans women applied to the Family Court during the course of the Inquiry seeking a declaration under the Births, Deaths and Marriages Registration Act 1995 that they 'were a person of the female sex'. One applicant was granted such a declaration. However, the Registrar-General of Births, Deaths and Marriages was not served with the application, as required by the Act. When served with the second application, the Registrar-General questioned whether the Court had jurisdiction to grant the order in relation to a New Zealand citizen born overseas (who does not have a New Zealand birth certificate).

6.32 In the second case the Family Court again granted the declaration, noting that it was not disputed that the applicant met the statutory test for change of sex details on a birth certificate. The only legal issue was whether the Court had power to grant the order in relation to a New Zealand citizen born overseas. In his judgement, Judge Ellis noted:

*The nature of the application is not to effect any direct change to the register, but simply to put on record this Court's opinion or declaration that an amendment of the appropriate records – wherever they may be – is appropriate. That is a construction and interpretation that would be consistent with providing this applicant the same rights and freedoms as enjoyed by any other citizen of New Zealand whose birth was in fact registered in this country. (W v The Registrar-General, Births, Deaths and Marriages (Family Court, 20 April 2007, Ellis DC))*

6.33 The Inquiry understands this decision is being appealed to the High Court by the Registrar-General of Births, Deaths and Marriages.

A Family Court declaration has taken on a level of significance for trans New Zealanders who were born overseas. In part this is because they are unable to change the name and sex details recorded on their New Zealand citizenship certificate. Those who had tried had been told the citizenship certificate is an historical document so is not reissued and that the only available option for updating their sex details is on an evidentiary certificate confirming they were a New Zealand citizen. A number of people born in the United Kingdom did not consider this document

to have the same status as a citizenship certificate and are unsure whether the Gender Recognition Panel would accept it as sufficient evidence of a change of sex.

## Privacy rights

### PERSONAL INFORMATION

#### *Collection, use, correction and storage of information about trans people*

6.34 The Inquiry found that most trans people experience difficulty having their rights to privacy respected and protected. In relation to personal information, there are inconsistent approaches to the application of existing privacy principles. Where they assert their rights to privacy, trans people are not always treated respectfully and assertion of rights has sometimes resulted in further unwanted disclosure of personal information:

*I would like to see one standard set of operating guidelines in place for all government and related agencies so that transgendered people can update their documentation to reflect how they choose to live. I found some agencies were very helpful, while others were resistant and unhelpful. (Trans man)*

6.35 The right to privacy is protected by a variety of laws and legal principles both under international and New Zealand law. The Information Privacy Principles contained in the Privacy Act provide a set of general guidelines, which can be applied usefully to the issues trans people have raised about the privacy of their personal information. The principles provide for collecting, storing, using and disclosing personal information, together with access to and correction of personal information. The Health Information Privacy Code is also relevant to the health information of trans people.

6.36 While legal principles are clear, insufficient attention has been paid to how these apply specifically to personal information about trans people. The collection of sex data raises different privacy considerations for them than it does for the vast majority of people, whose sex details never change. It is not surprising then that many trans people questioned why they were so frequently asked to provide information about their sex and whether the information served any 'necessary purpose'.

6.37 Information privacy principles aim to minimise the amount of personal information collected by ensuring that information collected is for a lawful purpose and is necessary for that purpose. In some cases information about sex will be necessary and in others it will not.

6.38 The Inquiry found considerable confusion among trans people about the rules that governed the collection, use, correction and disclosure of their personal information.

6.39 The Equality and Freedom From Discrimination chapter sets out a number of instances where trans people experienced difficulties when their trans status was disclosed without their knowledge or consent.

### HEALTH INFORMATION

6.40 Trans people held a variety of views about how their health information should be dealt with. Some considered it important that health professionals had access to all health information, including information about their gender identity and biological sex. Others thought this personal information was not, in most circumstances, of any relevance for health professionals. They wanted to be involved in decisions about which information would be made available, in what circumstances and to whom.

6.41 Health professionals also had mixed views. They noted that they have a variety of ethical and other professional obligations designed to ensure that they diagnose and treat patients properly. The fundamental ethical principle is 'to do no harm'. One health professional said that knowledge of biological sex was therefore important when screening for certain conditions, regardless of the change of sex on a birth certificate. Other health professionals considered this information to be irrelevant in the vast majority of cases where a trans person sought medical assistance.

6.42 The Health Information Privacy Code 1994 creates 12 health information privacy rules for health information held by health agencies. The Code allows for disclosure of health information between health agencies. It is issued by the Privacy Commissioner pursuant to the Privacy Act, which includes a complaints process. The Code modifies the privacy principles in the Privacy Act and creates special rules that apply to information held by health agencies.

6.43 The Code and the Privacy Act principles are substantially the same. However, the Office of the Privacy Commissioner noted that the most notable, and complex, distinction between the two relates to the interaction with section 22F of the Health Act 1956:

*In summary, a health agency may request another health agency to provide health information about an individual if it needs that information to provide a health service. The health agency receiving the request must disclose that information, unless, in its view, the disclosure would be contrary to the individual's interest or against the individual's wishes. In either of these circumstances pertain, the health agency may (but is not obliged to) refuse the request. Consent and/or notification of the individual is not necessary for a disclosure under section 22F.*

6.44 The Public Health Bill will repeal and amend the Health Act 1956. The Office of the Privacy Commissioner has advised the Inquiry that:

*The provisions in the Public Health Bill that deal with health information are likely to be largely identical to those in the Health Act; however, we have been working with the Ministry to improve the clarity and usability of these sections, given their importance.*

## PERSONAL SEARCHES

6.45 The ability to legally change one's sex has particular implications for state agencies that have sex-segregated facilities and those that have search powers.

6.46 Trans people have privacy-related rights that are affected by search powers of the police and prison staff. The Police, Department of Corrections and New Zealand Customs Service each have policies on these matters. Personal searches are a major intrusion on privacy. In the light of trans people's experiences elsewhere in public life, they are a particularly vulnerable group.

## Government agency responses

### OFFICIAL DOCUMENTS

6.47 The Registry of Births, Deaths and Marriages, the Citizenship Office and the Passport Office form part of the Identity Services Group of the Department of Internal

Affairs. From the outset, this group has fully co-operated with the Inquiry. Officials provided extremely helpful information about the context within which the Department operates and the rationale for its policies and services in relation to trans people. Following the release of the Summary of Submissions, the Inquiry met with departmental officials for further discussion and to raise the issues highlighted by trans people.

6.48 The Department noted that while there is a specific procedure in the Births, Deaths and Marriages Registration Act 1995 for changing the sex on a person's birth certificate, there are no similar provisions in the Citizenship Act 1977 or in the Passports Act 1992. An overview of the legal and policy framework, including in relation to the Department's responsibilities is outlined in the Legal Framework chapter of this report. Broadly, there is no single law or policy for determining the sex which should be recorded on a person's various identity-related documents.

6.49 Officials indicated that, in the first instance and where possible, they strive to take a consistent approach across policies relating to marriage and civil union certificates, citizenship and passport documents and birth registration processes. Accordingly, departmental policies for applications from trans people in relation to citizenship or passport matters have been developed taking into account the provisions in the Births, Deaths and Marriages Registration Act 1995, relevant case law, and international standards. In the light of this, officials commented on official documents generally, passports, birth certificates, issues for New Zealand citizens born overseas, and marriage and civil union certificates.

6.50 Officials emphasised the critical need for information recorded on official registers, databases and in documents issued by the state to be accurate. They said this is to:

- ensure that the documents can be trusted by people and organisations who require them both domestically and internationally
- help protect individuals against identity theft
- help protect individuals from undue inconvenience/problems by authorities if documents do not appear to be correct.

Officials noted:

*This need for accuracy, however, is balanced, to a certain extent, against an individual's right to be able to identify themselves as they see fit. This can be relevant in relation to gender.*

6.51 Information about a person's sex is frequently included in official documents because this information provides one way to assess whether the person presenting the document is in fact the person identified in the document. The Department of Internal Affairs noted that developments with biometric data may one day remove the need to collect sex data for the purposes of official documents, including travel documents such as passports.

6.52 The Inquiry raised with officials the confusion about the statutory test for change of sex on a birth certificate and the problematic nature of the physical conformity element for many trans people. The Department noted that section 28 of the Births, Deaths and Marriages Registration Act 1995 sets out a particular legal test which must be met before such a declaration can be made in respect of an adult. That test has three elements, which require that:

*(3) The Court shall issue the declaration if, and only if,—*

*(a) It is satisfied that there is included in the registration of the applicant's birth—*

*(i) Information that the applicant is a person of the sex opposite to the nominated sex; or*

*(ii) Information that the applicant is a person of indeterminate sex; or*

*(iii) No information at all as to the applicant's sex; and*

*(b) It is satisfied that the applicant is not a person of the nominated sex, but—*

*(i) Has assumed and intends to maintain, or has always had and intends to maintain, the gender identity of a person of the nominated sex; and*

*(ii) Wishes the nominated sex to appear on birth certificates issued in respect of the applicant; and*

*(c) Either—*

*(i) It is satisfied, on the basis of expert medical evidence, that the applicant—*

*(A) Has assumed (or has always had) the gender identity of a person of the nominated sex; and*

*(B) Has undergone such medical treatment as is usually regarded by medical experts as desirable to enable persons of the genetic and physical conformation of the applicant at birth to acquire a physical conformation that accords with the gender identity of a person of the nominated sex; and*

*(C) Will, as a result of the medical treatment undertaken, maintain a gender identity of a person of the nominated sex; or*

*(ii) It is satisfied that the applicant's sexual assignment or reassignment as a person of the nominated sex has been recorded or recognised in accordance with the laws of a state for the time being recognised for the purposes of this section by the Minister by notice in the Gazette.*

6.53 This test contains both a subjective element (a trans person's own views are required) and an objective element (independent verification by way of medical evidence is also required). The Act does not specify what medical interventions are necessary. The Department noted that the Court must be satisfied that the applicant has had appropriate medical treatment to acquire the physical conformation of the new sex and considered this test indicated that:

*When passing the BDMR Act, Parliament accepted this was the appropriate position to 'draw the line' between certainty and self-identification for birth certificate purposes.*

6.54 In New Zealand, little is known about the actual test applied in most Family Court cases because they are rarely published in law reports. The Department stated that 'our understanding is that the Family Court to date has often interpreted this to mean that full gender reassignment surgery is required'. However, it went on to say that 'a court might determine that "appropriate" [medical treatment] means that substantive, but not complete, surgery has taken place'.

6.55 This appears to explain the situation of some trans men who said they had obtained an order from the Family

Court under section 28 without having had ‘full gender reassignment surgery’. Such Family Court decisions might have been influenced by Australian cases which highlight the difficulty that trans men face in meeting a physical conformity threshold.

6.56 In some Australian states, hormone treatment and at least one gender reassignment surgery (such as mastectomy) meet the necessary legal threshold for trans men to amend the sex details on their birth certificate. These thresholds focus on changes to the genitals, gender/sexual characteristics and/or reproductive organs, so a person will be identified as or considered to be a member of the ‘opposite sex’. The Inquiry was informed by FTM Australia, a national network of men with transsexualism, that hormone treatment was accepted as a medical procedure that physically changed a trans man’s genitals. Those states where provisions specifically require changes to reproductive organs typically considered that a hysterectomy was also necessary.

6.57 Officials were asked about the number of applications that have been made for change of sex details on a New Zealand birth certificate. Officials updated the information at various points in the Inquiry. As at 16 August 2007, the Births Registry had received 114 applications under section 28 of the Births, Deaths, and Marriages Registration Act 1995, since the commencement of that section on 1 September 1995. In almost all cases the applications had been granted.

6.58 The Department also noted that section 33 of the Act provides that otherwise ‘the sex of every person shall continue to be determined by reference to the general law of New Zealand’. The effect of section 33 is discussed in the Legal Framework chapter.

6.59 In response to the suggestion that the law should be amended to provide for a similar regime as the Gender Recognition Act in the United Kingdom, the Department noted:

*Without commenting on the specific merits of the proposal, our initial thoughts would be that if Parliament were to adopt a Gender Recognition Act, this would not necessarily have a large operational impact for the*

*Department. We would presume that, in many cases, a Gender Recognition Certificate would replace the current Family Court declaration under s28 of the BDMR Act, for our internal processes.*

6.60 In relation to the question of changing the threshold of physical conformity, officials noted that:

The Department has a key interest in ensuring that a person is unable to maintain more than one identity for improper purposes, and takes many steps to mitigate this risk – however it may occur. The lower the threshold is, there is potentially a greater risk of a person being able to maintain more than one identity and swapping between those identities.

6.61 The Department said that any such suggestion would need to be considered on a whole-of-government basis given the potential for wider impacts, including government agencies that rely on the Department’s records.

6.62 Changes to the law require careful and thorough consideration. It is timely to consider whether the current law continues to draw the appropriate line between certainty and self-identification for the purposes of amending the sex details on birth certificates. This issue is canvassed more fully in the Legal Framework and the Findings and Recommendations chapters.

## PASSPORT

6.63 Two particular concerns frame the Department of Internal Affairs’ approach to passport policy:

- the need to secure the safety and treatment of New Zealand citizens
- the need to protect the integrity and good international reputation of the New Zealand passport.

The Inquiry considered each of these in turn.

6.64 The Department noted that New Zealand has a very good international reputation for the quality of its travel documents. Officials expressed concern that if this reputation was damaged, ‘it could potentially put various visa-free access arrangements at risk, which could lead to adverse economic and social consequences’. Safety and security of New Zealand citizens could also be put at risk.

6.65 In relation to trans people, a primary way to ensure safety in the first instance is a passport clearly showing a person's sex as either male or female. Trans people who had changed the sex on their birth certificate, after having completed all gender reassignment surgeries, found that it was generally not difficult to obtain a passport in the appropriate sex. The small number of people who had changed their birth certificate without completing all surgeries were unclear whether they were eligible for a passport matching their birth certificate. Those who had undergone some gender reassignment surgeries, but had not changed the sex on their birth certificate did not consider they would be able to obtain a passport in the appropriate sex. The Department noted:

*People applying for a passport after full gender reassignment can be issued a passport in their new sex if they provide a birth certificate showing their new sex (for people whose births are registered in New Zealand); or produce an evidentiary certificate or provide some confirmation they have undergone full gender reassignment surgery, and a medical certificate and a statutory declaration to this effect.*

6.66 In relation to (X) passports, the Department noted that these permit a trans person to apply for a passport 'prior to having undergone full gender reassignment surgery'. Officials considered that such passports should assist trans people by providing them with another means of verifying they are a legitimate passport holder. Without this, the Department was concerned that trans people might be at risk when travelling:

*While the Department is sympathetic to the concerns raised by submitters about travelling on an 'X' passport, we are concerned that pre-operative transgender people may encounter more (and potentially more serious) problems at overseas borders if the gender recorded on their passports does not accord with their physical appearance. For example, foreign officials may suspect that the passport has been forged, or that the person is trying to travel on another person's passport. Even if overseas officials are unfamiliar with an 'X' passport, the indication of an 'X' may help to mitigate these suspicions.*

6.67 For those trans people that did experience difficulties, officials noted that:

*The Department (and the wider New Zealand Government) has limited ability to address process issues occurring in other jurisdictions. The Department does, however, operate a 24-hour overseas help line to verify a passport should any questions/problems occur.*

6.68 Despite these measures, the Department noted the discriminatory attitudes of border control staff of overseas countries might persist.

6.69 The Inquiry has considered carefully both the concerns raised in submissions and the very useful information provided by the Department. Three issues have emerged.

6.70 Firstly, the Inquiry notes that in some respects the Department may be out of step with developments elsewhere in the law. In particular, the emphasis on 'full gender reassignment surgery' in both the Department's submission to the Inquiry and its policy documents suggests that the Department is using a higher threshold than that currently being applied by the Family Court when making decisions about change of sex details on a birth certificate (see the discussion in the Legal Framework chapter). In the Inquiry's view, the Department should not require a higher threshold than the Family Court. Given that the Births, Deaths and Marriages Registration Act 1995 requires the Registrar-General to be notified of all such Family Court applications, the Department is well placed to ensure its policies and practices are based on emerging jurisprudence.

6.71 Secondly, while acknowledging the Department's genuine concerns about trans people's safety, the empirical evidence presented to the Inquiry provides a compelling counter-argument. Trans people feel safer having a passport that matches their gender identity and how they present in everyday life. The Department's view that an (X) or (-) passport is safer does not equate with trans people's experiences. The Inquiry accepts that trans people are at a greater risk when identity documents are not congruent with how they appear physically in normal everyday situations. Physical safety is more appropriately gauged in relation to the typical interactions when a trans person presents their passport. The Inquiry considers it



inappropriate for such policies to be developed around the relatively rare situations where a trans person's chest or genitals might be viewed as a result of a personal search.

6.72 Thirdly, for some trans people, especially those early on in their transition, the option of a (X) or (-) passport is appropriate and welcomed. However, for most trans women and men, female and male passports respectively are required.

6.73 The Department noted that border officials were always alert for signs of a false passport or of a person attempting to use a passport illegally. Officials considered the option of travelling on a (X) passport helped ensure the good reputation of the New Zealand passport because it provided a third option for verifying the sex of the passport holder. The Inquiry asked the Department how passport information was entered into advanced passenger processing systems. Officials very helpfully made some preliminary inquiries with other agencies. While the issues need more investigation, the Inquiry heard that there are several possible reasons why some trans people may encounter additional questioning when presenting their passports:

*We were informed that the Advance Passenger Processing (APP) system which is mandatory in both Australia and New Zealand does not recognise 'X' or '-' as a gender code. This means that the check-in agent must amend the gender to indicate either male or female (which the system will accept) before the agent can print the person a boarding pass. We were also informed that the United States, which requires airlines to transmit Advance Passenger Processing information on all passengers, will also only accept codes 'M' and 'F' and that airlines which send anything other than those codes are 'penalised'.*

6.74 That information was supplied in May 2007, with an update provided in October 2007:

*The Department of Labour (Immigration New Zealand) has advised us that APP has been recently upgraded to accept passports showing 'X' in the sex field.*

6.75 The New Zealand Customs Service has advised the Inquiry that they 'have the capability to process passports

with an (X) on it and changes to people's passports, including changes to sex'.

6.76 In relation to border authorities, the Department of Internal Affairs advised:

*The Australian Department of Immigration and Citizenship (DIAC) informed us that while the New Zealand Passport Office replaced the unspecified gender value of '-' to 'X' in 2005, the DIAC systems have only recently been updated to accept the value of 'X'. This came into effect on 25 January 2007. Prior to this, the only values accepted by DIAC systems were 'F', 'M' or '-'. DIAC admits that some travellers could have encountered problems if their 'X' passport was issued before 25 January 2007 and the gender was not read properly by DIAC systems. Measures are currently being undertaken to correct the records of those New Zealand travel document holders who have held a gender record of 'X' before January 2007 and have not had a new passport issued before this date. DIAC anticipates fewer difficulties for these travellers in the future.*

6.77 The Inquiry asked officials whether the ICAO standards for sex data on passports had recently been reviewed or discussed or if any concerns had been raised about how these were working in practice. The Department told the Inquiry it was not aware of any such discussions, though it noted that ICAO members do meet regularly. Officials agreed that it would be useful for there to be some research into current operational issues and agreement on strategies to ensure best practices were followed and the standards respected.

6.78 On balance, the Inquiry considers that more work is needed to secure the safety of trans people travelling on lawfully issued New Zealand passports. The first issue is the ability for trans people to obtain passports recognising their appropriate sex details, and the threshold that must be reached before such changes are made.

6.79 The second issue is the vulnerability of those travelling on (X) or (-) passports when officials or systems are not familiar with these international standards. Analysis of the legal issues involved and suggested solutions are contained in the Legal Framework and the Findings and Recommendations chapters.

## PEOPLE BORN OVERSEAS

6.80 The Department was asked about the difficulties experienced by New Zealand citizens born in the United Kingdom seeking to obtain a Gender Recognition Certificate under the United Kingdom Gender Recognition Act. The Department noted that some of this confusion may have been created by the information that is publicly available in the United Kingdom and officials offered to contact United Kingdom authorities to help make this information clearer in relation to New Zealand.

6.81 The Department said that its position has been that people born overseas were not able to obtain a declaration under the Births, Deaths, and Marriages Registration Act 1995 as this Act only allows an order to be made in relation to a person with a New Zealand birth certificate. Officials commented that the current debate:

*... does serve to highlight the apparent lack of options available to overseas-born people who wish to obtain some kind of legal recognition in New Zealand of their nominated gender.*

6.82 The Inquiry considers that, given the very small group of persons seeking such declarations, and the disproportionate impact on them, it seems highly desirable that such declarations be made. The Family Court decision is authority to do so, although this is the subject of an appeal.

6.83 The Department noted that a citizenship certificate is an historical document:

*... recording the gender of the applicant **on the date they were granted citizenship**. A citizenship certificate is not proof of someone's identity. It is essentially only proof that the person named on it was granted New Zealand citizenship on the specified date. (Department's own emphasis)*

6.84 These certificates are issued only once. If a person's details subsequently change (such as their sex or their name), or the original certificate is lost or destroyed, the citizenship certificate is not re-issued unless it is shown that the information that was recorded on it was incorrect at the time it was first issued. Instead an evidentiary certificate is issued. The Department noted that:

*In this respect transgender people are treated no differently from all other people who get the grant of citizenship and whose circumstances change after receiving the grant. We believe the ability to issue an evidentiary certificate showing a person's new sex (or showing no sex) is an appropriate balance for the need for the Department to keep the historical record accurate, and an individual's desire to have the gender they presently identify as, recorded on a certificate.*

6.85 It is important that administrative procedures are simple and equitable. However, treating transgender people 'no differently from all other people' may have an inequitable result. Documents with information recording a person's sex and name have a special significance for trans people. Affirmation of the sex matching their gender identity in a document recording a grant of citizenship has deeper meaning. Given the handful of people affected, the Department is urged to exercise its discretion in a manner that assists to affirm and uphold the dignity of trans people in appropriate cases.

6.86 Converting their marriage to a civil union is a possible option for a married couple if one partner transitions. The Inquiry asked the Department to clarify the process involved, which does not require a marriage to be formally dissolved. A married couple wishing to change their marriage to a civil union must first complete a Notice of Intended Civil Union, Change of Relationship from Marriage. One of the parties must then appear before a Registrar of Civil Unions, make a statutory declaration and pay the required fee. When doing so they will be required to provide evidence of their marriage. The Registrar then issues the person with a civil union licence together with two copies of a document known as a Copy of Particulars of Civil Union. These documents must be given to a civil union celebrant before any civil union ceremony.

6.87 The Inquiry notes that the Human Rights Commission, in its submission on the Civil Union Bill in 2004, stated:

*The Commission considers that limitations on the right of same-sex couples to register their relationships, and to enjoy the same rights and responsibilities as married couples, cannot be sustained on human rights grounds. Arguments against legal recognition of same-sex relationships are based on private morality or religious*

*opinion and not on universally agreed human rights standards.*

The human rights of trans people, including their right to marry, must similarly be upheld.

## Privacy rights responses

6.88 The Office of the Privacy Commissioner made a very useful submission to the Inquiry. The Privacy Act, and the information privacy principles it contains, provides a framework for assessing the concerns of trans people and many of its provisions are directly relevant. Information privacy principles give trans people the ability to obtain confirmation that personal information about them is being held and, if so, to request correction where appropriate. The Office noted that:

*The ability to request correction of inaccurate personal information held by agencies is an important privacy safeguard. In the case of transgender people, there are additional barriers to ensuring gender status information held about them is accurate, and to attempting to have that information corrected where it is not.*

6.89 Agencies should consider whether it is necessary to gather statistical information about trans people and, if so, of what kind and for what purpose. The New Zealand Police advised they do not collect statistical information about the gender identity of persons seeking assistance from them. Instead, where such information is collected, it is solely for the purpose of assisting activities or responding to requests for assistance. One such purpose might be the obtaining of information about whether a trans person was victimised because of their gender identity.

6.90 Agencies that hold personal information are not permitted to use that information without taking reasonable steps to ensure that the information is accurate, up to date, complete, relevant and not misleading. The Office of the Privacy Commissioner emphasised that:

*Clearly this principle has significant implications for agencies that record and keep gender status information. Where a transgender person has for example undergone surgery and identifies with a gender other than the one recorded on their birth*

*certificate, questions about the accuracy of the recorded information will arise .... difficulties experienced by one person who contacted this Office show that accuracy of gender status information is not simply a semantic or conceptual question. Where incorrect gender status information is allowed to persist in the 'official' record the result can be very real humiliation and detriment to the individual concerned.*

6.91 The information privacy principles state that information held by an agency in connection with one purpose must not be used for any other purpose, except in limited circumstances. Similar principles apply to disclosure of personal information. Together these principles set out the very clear limits on the use and disclosure of personal information, including personal information about trans people. The Department of Internal Affairs noted the high degree of privacy applicable to a person's original birth registration entry (and information) once someone has legally changed the sex details on their birth certificate:

*... the BDM registry is generally not able to disclose that person's original birth details, except in certain circumstances as provided under section 77 of the BDMR Act. One of these circumstances is where a government agency has an interest in ensuring a person does not have more than one identity.*

6.92 In relation to privacy of health information, trans people and health professionals may at times have competing rights and responsibilities that affect their understanding about how personal health information should be used. A human rights approach to balancing these matters seeks to ensure that trans people are able to participate in decisions about their health information while assuring robust decision-making by health professionals and accountability for their decisions. One option is to explore ways to provide the clinical details necessary for health professionals to properly diagnose and treat people without a patient's gender identity being unnecessarily disclosed to any person accessing the National Health Index database. The Human Rights Commission in the review of the Health Information Privacy Code has suggested this option.

## Conclusions

6.93 Documents that accord with a trans person's gender identity affirm their dignity and secure participation as equal citizens. Trans people's right to security can be compromised if they are unable to legally change their sex to match their gender identity. The physical conformation requirement in statutory tests for change of sex details on a birth certificate is problematic for a considerable number of trans people. The effect of current law and policy is that many, if not most, trans people do not have, and cannot obtain, a set of state-issued documents that contain consistent information about their appropriate gender identity and sex. There is no automatic right for trans people born overseas, and who have New Zealand citizenship, to have their name and sex details accurately recorded on their citizenship certificate.

6.94 Government agencies share trans people's concerns about the need for security and integrity of state-issued documents. There are legitimate and significant state interests in protecting citizens from identity fraud and ensuring the integrity and trustworthiness of travel and other documents. Safety and integrity are best secured if trans people have state-issued documents that reflect their gender identity, rather than who someone else thinks they look like.

6.95 Trans people have a variety of views about disclosure of personal information. There is no consensus about the precise rules that should govern how personal information should be collected, used, amended or disclosed in all cases.

6.96 On balance, the Inquiry considers that the current law provides an adequate framework both for trans people to assert their rights to privacy of personal information and for agencies holding such information to respect these rights. However, inconsistencies in practice and the importance of these issues to trans people indicate that it would be useful to have resources that dealt specifically with how current laws apply to personal information held about them.

6.97 A strong case has been made for trans people to obtain key state-issued documents that reflect their gender

identity. In some areas this can happen without the need for law change. Considerable benefits would be gained if government agencies were simply brought together with trans people, to improve knowledge and understanding. Opportunities should be created to share best practice, assess international developments and consider appropriate training. A collaborative approach is essential if improvements are to be made.

6.98 In other instances, current practices are based on legal provisions set out in the Births, Deaths and Marriages Registration Act 1995. Chapter 8 summarises the legal framework that enables trans people to legally change their sex details so that they have documents affirming who they are. Such documents respect the dignity and equality of trans people and can provide protection from discrimination. However, as the Inquiry heard, current provisions exclude a large number of trans people. Chapter 8 considers the changes required to ensure trans people have the legal protection of state-issued documents containing the appropriate sex details.

## 7. Intersex People

### Te Ruaruanga Taha Wahine, Taha Tāne

*Sometimes I wonder about our rights as intersex people because it takes so long for other people to actually understand or listen to us. (Intersex person)*

**While the Inquiry's terms of reference were limited to trans people, intersex people made submissions that have raised significant human rights issues. These require urgent consideration and will require broader consultation with intersex people and their families, relevant government agencies and health professionals.**

#### Intersex people's experiences

7.1 The Inquiry heard that the secrecy and shame associated with intersex conditions left intersex people, especially children, vulnerable to discrimination and abuse. This section documents major concerns expressed by intersex people about medical interventions, access to and retention of medical records, standards of care, corrections/reversal procedures as adults, legal recognition, and the ability to obtain appropriate state-issued documents.

7.2 'Intersex' is an umbrella medical term that covers a variety of diagnoses and conditions where a person is born with reproductive or sexual anatomy that does not fit the typical biological definitions of female or male or where these conditions appear later in life. Various terms, such as 'hermaphrodite', have been used to define people with these conditions, but 'intersex' is the preferred term. The Inquiry was contacted by only one intersex community group, Intersex Awareness New Zealand, established as the Intersex Trust Aotearoa New Zealand. The trust has a website with information, resources and links to international organisations of intersex people.

7.3 The Inquiry's terms of reference were limited to discrimination and human rights experiences of trans people. However, some intersex people who made submissions also identified as trans, notably if they were taking hormones or having surgeries to reverse previous medical procedures.

7.4 The Inquiry also heard from a number of other people with intersex conditions. The issues raised were significant enough to warrant separate attention. Submitters used a variety of terms to describe themselves, including 'intersex',

'a woman born with an intersex condition', 'intergender', 'gender neutral', or 'transgender'. The Inquiry has used the phrase 'intersex people' to refer to those people who brought human rights issues about their own intersex conditions.

7.5 Intersex people have the same human rights as everyone else under international human rights law. But there do not appear to be any relevant international human rights standards about intersex people. There is little guidance on the application of human rights for intersex people, and this causes difficulties in some areas. In 2004, the Human Rights Commission noted that key difficulties for intersex people were:

*... the lack of recognition that they exist, and the problems that arise when they are assigned a sex which they would not choose for themselves. International literature shows that debate about the human rights of intersex people is increasing.*

7.6 The Inquiry heard that discrimination affects intersex people and their families. Secrecy and shame pervaded not only information about intersex people, but also the treatment to which many were subjected:

*I was never asked if I would agree to be changed. I didn't know I was XXY. They knew but they never told me. (Intersex person)*

*Personally me and my family should have had a lot of counselling, not to change me but to cope. (Intergender person)*

7.7 Intersex people said that stereotypes influenced the discrimination they experienced:

*Some of us are still haunted by the spectre of our identity as circus freaks in the not-too-distant past. It is time that our identities and experiences were given the same respect as the rest of the community. (Woman born with an intersex condition)*

*It's seen as a medical problem to be fixed. (Intergender person)*

**7.8** Submitters described the shock of discovering they had an intersex condition. In some cases, the information had been withheld from them for many years despite a diagnosis at birth. In such cases intersex children may have had surgical procedures performed on them within the first year of birth, been assigned a gender by health professionals, and their parents advised to raise their child in the gender that was assigned. In others cases it was hormonal and physical changes at puberty that revealed the person had an intersex condition.

**7.9** Intersex people said secrecy surrounded medical procedures performed on them, including surgery on small children to masculinise or feminise their genitals and hormone treatment. Limited information about intersex conditions left many people feeling isolated:

*As secrecy formed part of the treatment protocol, early procedures left many children unsure what had happened or why. (Intersex person)*

*We are not ashamed of who we are; those issues are created by how we are treated. (Intersex person)*

**7.10** The public visibility of one intersex person was the first information many had heard about intersex conditions. This person's openness had prompted other people to attempt to unravel their medical histories and to share information with each other.

**7.11** Intersex people had a range of views about gender, gender identity and biological sex. Some had a gender identity that was neither female nor male. Another told the Inquiry:

*My gender identity is unequivocally female, and it has been dearly won and maintained. While it seems to fascinate some non-intersex folk that there could be a state of engenderment outside a male–female binary, I find that labelling to be demeaning when applied to me.*

*Although some intersex people might want to avoid rigid gender labelling, I would not like to see a situation where a history of intersexuality was always equated with gender fluidity: I am hurt when my gender is not affirmed in the same way as the general population. The 'neither-one-nor-t'other' jokes are not funny to me. (Woman born with an intersex condition)*

## Medical interventions

**7.12** Intersex people were unhappy with decisions that had been made on their behalf about medical interventions, particularly surgery and hormone treatments:

*We need to be allowed the option of being ourselves, without surgery. (Intersex person)*

*There has been too much damage caused in the past because of so-called corrective surgery at or after birth. (Trans person)*

**7.13** Intersex people expressed serious concerns about the ongoing effects of medical interventions they received because their bodies had both male and female characteristics. Some were operated on as infants or young children and said their parents were not always aware of the procedures involved or the likely ramifications.

**7.14** The overwhelming view of the intersex people who met with the Inquiry was that, except in the case of medical emergencies, intersex children should not be operated on to remove ambiguous reproductive or sexual organs. They described the life-long impact of surgeries that had been performed without their consent, including all or partial loss of sensation in their genitals:

*In my eyes it is wrong and it should never have been done to me. I would have liked to have been left to make up my own mind. (Intersex person)*

**7.15** The Inquiry was told that the birth of an intersex child is often treated by health professionals as a 'psycho-social emergency', with a strong focus on early medical intervention. There was considerable understanding about the pressures on parents to make the best decision for their child. One person suggested that - in cases where it was not possible to delay surgery so a child could participate in the decision-making process, an independent advocate should be available to represent the interests of the child:



*All genital surgery should have a third person representing the [intersex] person, who is skilled in that area and not the doctor or parent. (Intersex person)*

7.16 Intersex adults described the trauma and continuing impact of medical procedures performed on their genitalia as children. Many considered there was a critical need for dialogue between intersex people, their families and health professionals about current medical practices and the central importance of informed consent. This included providing undergraduate and postgraduate training on intersex conditions. Dialogue and consultation with intersex people was necessary about the continued practice of performing genital surgeries on intersex children:

*In New Zealand at the moment, genital surgery on children is legal, whereas genital mutilation is not, under the Crimes Act amendments in the 1990s. Who was involved in those consultations? (Intersex person)*

7.17 Intersex people sought more support for parents and families:

*Many of the neat prescriptions for the improved treatment of intersexed infants don't address the need for strong specialised family support. Without it, the outcomes could be even worse than what many intersexed children experience today. (Intersex woman)*

7.18 Submitters said they were unable to access medical records containing details of the treatments they had received for their intersex condition:

*In the course of looking for my medical records I have been told by three doctors that I will not be able to find them if I am an intersex person, and that I should 'give up looking'. (Intersex person)*

7.19 One person took unsuccessful legal action against a district health board to obtain her medical records. The action was necessary because the onus was on her to prove that the records still existed.

7.20 Intersex people noted that young children are not in a position to give informed consent on their own behalf. They suggested medical records relating to children should contain sufficient information and be retained long enough

to ensure a greater level of transparency and accountability to them later in life:

*Medical records need to be good enough to use at a later date to evaluate the outcome. Any surgery that has not had individual consent, those records must not be allowed to be destroyed without consent. [Intersex people] must be told they exist and be able to find them. (Intersex person)*

7.21 Another person questioned whether ten years (the current timeframe for retaining such records) was adequate for intersex people:

*How do you maintain a continuous record for life-long issues? (Intersex person)*

7.22 Some intersex conditions did not become apparent until puberty or later in life. Intersex people did not consider they were given sufficient information to provide informed consent to medical treatments that took place when they were teenagers. Many questioned the appropriateness of their care, including the side effects of hormones and inadequate reassurances that surgical procedures would make their body and gender identity unambiguously male or female. One person who had undergone numerous reconstructive surgeries recounted the importance of eventually receiving an apology from a new specialist:

*My specialist apologised on behalf of the medical system. He said that what they'd done was a failure, a total disaster. (Intersex person)*

7.23 Some suggested that a best-practice model was needed:

*Intersex people recommendations seem to me to come down to balancing the rights of the intersex child following their birth (and later as an adult) and their parents, and the health professionals' responsibilities of client care and safety. Perhaps it would be helpful to establish a compulsory best-practice model for health professionals working in this area. I think that the development of this best-practice model should involve intersex people and their parents, and medical, psychological, Human Rights Commission and Ministry of Health personnel. (Trans woman)*

7.24 Some intersex people said they were now taking hormones or seeking surgery to reverse the medical interventions performed on them as children. A number noted that the public health system had provided the medical procedures required to treat their intersex conditions, but no public health funding was available to reverse these. The Inquiry heard from intersex people who considered that funding should be available through the accident compensation scheme or that health funding should be available in these instances:

*When finally everything hit the wall my doctor said he'd been waiting for this for 30 years but 'everything that we've taken away we can't put back ... if you want to have an operation to reverse this, this and this you'll have to pay for it'. (Intersex person)*

7.25 Intersex people are entitled to protection from discrimination and have the right to make complaints of sex discrimination under the Human Rights Act 1993. Intersex people said that in most cases a sex (either male or female) had been assigned to them by the time their birth was registered. For some the sex assigned at birth was appropriate. However, others felt very strongly that the sex recorded on their birth certificate was an inaccurate record of their biological sex and conflicted with their gender identity.

7.26 Intersex people's concerns about the need for legal documents that reflected their appropriate sex mirrored the concerns of trans people. However, intersex people were concerned they could face additional barriers when attempting to change their records under the Births, Deaths and Marriages Registration Act 1995. In particular, they were unsure how a 'physical conformity' test would be applied to an intersex person, and whether it would require additional surgeries to reverse operations performed when they were children. In some cases it would be extremely difficult or impossible to recreate parts of the body that had been surgically removed. The prospect of additional, often expensive, surgery was daunting for some given the trauma associated with operations performed on them as children:

*Surgery over surgery is a nightmare. (Intersex person)*

7.27 The Inquiry heard from two intersex people who considered that 'indeterminate' (rather than male or

female) was the most accurate description of their sex. Both were aware that it was possible for a child's birth certificate to record their sex as indeterminate and have attempted to have their sex details changed.

7.28 In one case, the intersex person's birth had first been registered as 'indeterminate', and was subsequently changed to 'female'. This person told the Inquiry that the application for amendment was declined by the Registrar for the following reasons:

*While I appreciate your approach, I do not believe it would be appropriate for me to determine your application simply as an error of fact on your birth registration. That is, I would have to be satisfied that the decision to assign the 'female' gender to you was wrong and that you have always, since your birth, been a person of indeterminate sex. From the supporting documentation ... which suggests that you underwent surgery to feminise your genitalia ... I would not think you could support that factual claim, at least from a physical conformation sense. (Letter from Registrar of Births, Death and Marriages' September 1999)*

7.29 The Registrar noted at the time that the provisions in the Act 'have never to date been used by a person who is applying to have the gender on their birth registration changed to indeterminate or intersex'. One submitter has recently filed such an application under section 85 of the Act.

7.30 The Office of the Privacy Commissioner noted that in 2003 it received a complaint from an individual identified as intersex at birth who underwent surgery as a baby in an attempt to assign a particular gender:

*The assigned gender was recorded on the birth certificate and for a number of years this person has been involved in ongoing struggles with various government departments in an attempt to have the birth certificate details corrected to show either an 'indeterminate' gender or the person's current gender status. They reported difficulties in applying for jobs, enrolling at educational institutions, holding a driver's licence and a number of other situations in which personal identification is required. This person described feelings of humiliation, hurt and a loss of dignity as a result.*

7.31 For intersex people who identify as neither fully male nor female, an (X) passport was the one official document offering an opportunity to have their sex recorded as indeterminate. Some intersex people had difficulties obtaining a (X) or (–) passport because the policies of the Passport Office were designed primarily for trans people, not intersex people. The absence of clear policies resulted in applications by intersex people being delayed:

*It took six months to get my sex omitted on my passport because there was nothing in the policy manual about intersex.... In the end one guy got to make the decision himself. He's been brilliant. (Intersex person)*

## Government agency responses

### DEPARTMENT OF INTERNAL AFFAIRS

7.32 The Department of Internal Affairs assisted the Inquiry by supplying the following information about the number of births where the child's sex was either not recorded, or recorded as 'indeterminate' on the birth registration:

#### Sex details on birth certificate

Since 1868	Indeterminate	No sex
Total	145	267
Live Births	32	154
<b>In last 10 years</b>		
Total	32	0
Live Births	6	0

7.33 The Department advised that care was needed in assessing this information. Importantly, it was 'derived directly from registration records' and reflected information recorded up until May 2007. The Department noted that this should not be used as official data.

7.34 The Inquiry considered this information in light of the steps that must be taken to record the sex of a newborn child. The most immediate record will be in the paperwork completed by a midwife or doctor after a baby's birth, which is then submitted to obtain the child's National Health Index number. The New Zealand Health Information

Service confirmed that where a child's sex has been noted as 'indeterminate', it is not currently able to be recorded on their database. The only options available are 'male', 'female', or 'unknown'. The New Zealand Health Information Service is currently contemplating an upgrade to the National Health Index database and processes and informed the Inquiry that they would welcome guidance on the recording of sex data for intersex and trans children including the use of the categories 'indeterminate' or 'unknown' sex.

7.35 The Births, Deaths and Marriages Registration Act 1995 sets out two processes by which information about a child's sex is recorded. The first is a notice of the child's birth which must be sent to the Registrar of Births within five working days of the birth, which is usually be done by the midwife or the hospital personnel. This is followed by actual registration of a child's birth, which, under the Act, is the guardians' responsibility and must occur 'as soon as practicable'.

7.36 The Inquiry heard that when it is hard to tell whether a baby has male or female genitals there are two options. The first is to not list the child's sex immediately. The second is to record the sex as indeterminate.

7.37 The Department confirmed that no simple comparisons can be made between the data collected when a baby's birth is notified and the birth registration data which is recorded later. Preliminary birth notice information provides independent verification that the birth had occurred. This has only been recorded on the registry's computer system since 1998 and there are limitations on what is available and how it can be interpreted.

7.38 Information from the Department of Internal Affairs confirms that by the time a child's birth is registered almost no infants will be listed as having an indeterminate sex. This reinforces the experiences of intersex people who told the Inquiry that in most cases they had been assigned a sex by the time their birth was registered. The result is that it is highly likely that most intersex people will be registered at birth as either male or female.

7.39 This view is also supported by Department of Internal Affairs' statistics on applications under section 29 of the Births, Deaths and Marriages Registration Act 1995. Section 29 enables a child's guardian to make an

application to the Family Court to change sex details on the child's birth certificate. In the case of intersex children this may include changing sex details registered on a birth certificate from indeterminate to either male or female. The Inquiry was informed that there have been no declarations under section 29 since the Act came into force in 1995, suggesting that guardians decide an intersex child's sex prior to registering the child's birth.

**7.40** The Inquiry was provided with information from the Passports Office, which is sent to people applying for an (X) passport. This information states that an applicant's name must be either unisex or have been changed so it is 'more suitable to a member of the opposite sex'. In addition, the applicant must live as a member of the opposite sex (but need not have undergone full gender reassignment surgery), or have had such surgery but not changed their sex on their birth certificate.

**7.41** The use of the term 'opposite sex' reflects an assumption that people 'changing' their sex will be transitioning from male to female or vice versa. This assumption does not reflect the experiences of all intersex people who made submissions to the Inquiry.

### Health professionals' viewpoints

**7.42** In New Zealand most infants of indeterminate sex are assigned a sex by medical intervention. In most cases the decision to assign a gender to 'correct' the child's perceived variation from the norm is taken by parents and doctors when the child is an infant, followed by repeated genital surgery and ongoing hormonal and psychological treatment, together with socialisation in the assigned gender. There is a significant risk that this surgical and endocrinological assignment of the children's sex may not be consistent with their adult gender identity or their actual biological sex. Whether (and to what extent) such intervention is necessary for the child's physical and mental health, or whether it is both physiologically and psychologically harmful, remains a contentious issue.

**7.43** In one overseas study of 16 children between the ages of five and 16 born with cloacal exstrophy, 14 were assigned female sexual, social and legal identity. Eight subsequently declared themselves male, five were living as females, one was living with unclear sexual identity and two who were raised as male remained male.

Six of those who had been assigned female identity, had reassigned themselves as male (Reiner & Gearhart, 2004).

**7.44** The issues for intersex people were raised with the Ministry of Health. Ministry officials confirmed that some surgical procedures on children with intersex conditions are funded from the Special High Cost Treatment Pool. Referrals are generally made in relation to:

*... infants for corrective genital surgery following marked genital virilisation from congenital adrenal hyperplasia...*

**7.45** Another person noted:

*Conflicting view points are good. It's good to have a balanced perspective. All I can say is that I am glad I am not a doctor working in the area, as I would find the decisions tough and confusing. (Trans man)*

**7.46** The Inquiry was fortunate to meet with a leading international health academic, Dr Milton Diamond. Dr Diamond provided the Inquiry with a considerable amount of research and information on issues of gender identity and the assignment of sex to persons with an intersex condition. In March 2007, Dr Diamond noted that there have been calls since the late 1990s for a moratorium on sex-assignment surgeries on infants, but that neither the British Association of Paediatric Surgeons nor the American Academy of Pediatrics had agreed to do so by 2001: They did, however, 'encourage more caution recommending sex reversals, they called for new research and recommended greater candour and honesty in dealing with patients and their families'.

### Conclusions

**7.47** The Inquiry did not set out to inquire into the human rights experiences of intersex people, but intersex people did attend to raise their concerns. Intersex people have the same rights as all other people to the full protection and promotion of their human rights. There are significant human rights issues affecting intersex people that merit urgent consideration so as to improve their dignity, equality and security.

**7.48** There are difficulties assessing the number of intersex people in New Zealand. The number of live births recorded

as indeterminate is not an accurate basis for estimating the size of the intersex population because most intersex children appear to be assigned a sex at birth (or soon after) and have their birth registered as male or female rather than indeterminate. Other intersex conditions will not become evident until a young person reaches puberty, and has already spent many years living as male or female. For these reasons very few people born with intersex conditions are registered as having an indeterminate sex.

7.49 There are a number of parallels between the experiences of many intersex and trans people. Both groups asserted the right to be themselves without fear of discrimination and to be treated with dignity and respect when they seek medical support. While most intersex and trans people are likely to identify as male or female, a third option is important to some intersex, androgynous or 'third sex' people. This includes the ability to obtain an (X) passport.

7.50 However, there are some very significant issues that are specific to intersex people, particularly in relation to medical procedures performed on children and young people with intersex conditions. Having access to full medical records, including those used as the basis for any legal change of sex, is critically important for intersex people. The absence of such records compounds the invisibility, secrecy and shame felt by many.

7.51 The Inquiry has attempted, within the bounds of its terms of reference, to consider these issues. However, the Inquiry has not been able to hear from the full diversity of intersex people and received no submissions from family members or New Zealand health professionals specialising in this field. Some proposals are made in the Findings and Recommendations chapter about further steps that could be taken to address the concerns of intersex people.

We are not  
ashamed of  
who we are,  
those issues  
are created  
by how we  
are treated.



## 8. The Legal Framework

### Pou Tarāwaho ā Ture

*The legal and justice matters seem to me to require options and flexibility for individuals to express their gender identity. This may seem difficult to achieve, but I think it essentially comes down to finding ways to allow transgender people to choose how they wish to be perceived legally and to be treated accordingly. (Trans woman)*

**The legal framework protecting the human rights of trans people is complex and confusing. The process for changing sex details on official documents should be simplified to reflect the reality that most trans people do not have full gender reassignment surgeries, and common law cases no longer rely on such surgeries as objective proof of someone's sex. Trans people would have clearer legal protection from discrimination if section 21(1)(a) of the Human Rights Act 1993 stated that sex includes gender identity.**

#### New Zealand law

8.1 The international human rights framework applies to everyone by virtue of their common humanity. Trans people are, therefore, entitled to respect for and protection and promotion of their human rights on the same basis as everyone else. In New Zealand, the broad foundation of human rights extends across laws that promote and protect civil and political rights such as the right to vote, the rights to life, liberty and security, the right to freedom of expression, freedom of association, freedom of religion, the right to justice and the rights of people who are detained. Economic, social and cultural rights are also protected: language rights, cultural rights and freedoms, the right to work, the right to an adequate standard of living, the right to health, the right to education, and the rights of migrant workers and their families. All of these laws apply to trans people.

8.2 Section 33 of the Births, Deaths and Marriages Registration Act 1995 provides that:

*Notwithstanding this Part of this Act [amending sex details on a birth certificate], the sex of everyone person shall be determined by reference to the general law of New Zealand.*

8.3 The general law of New Zealand includes Acts of Parliament, regulations, and the judgments made in cases decided by the courts (known as 'the common law').

Common law cases are extremely important not only for the legal principles that the Courts develop, but also for the decisions that determine how statutes are to be interpreted and, therefore, their practical effect. Common law cases have a particular importance when statutes may be open to more than one interpretation. Agencies administering laws may further define or clarify how this law guides them in policies, guidelines, and resources (sometimes with actual case examples), all of which contribute to understanding what the general law is. Together, these are the legal reference points for determining a person's sex according to the general law of New Zealand.

8.4 If a person's sex is to be 'determined according to the general law of New Zealand' it follows that it is necessary to consider what the definition of a person's sex might be according to 'general law'. This examination is critical for two purposes: for determining how the general law applies to trans people; and whether, and if so for what reasons, special provision might need to be made for trans people.

#### Legal definition of a person's sex

8.5 There is no statute that provides the legal definition of a person's sex and the general law should be interpreted consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. The Bill of Rights Act states everyone has the right to freedom from discrimination on the grounds outlined in the Human Rights

Act 1993. The purpose of the Human Rights Act is, broadly, 'to provide better protection of human rights in New Zealand in general accordance with the United Nations Covenants or Conventions on Human Rights'. Section 21 of the Act provides that the prohibited grounds of discrimination include sex, which is defined in the following way: 'sex, which includes pregnancy and childbirth'.

8.6 The effect of this is that a person's sex should be defined in a non-discriminatory way. The precise definition of a person's sex for the purposes of human rights law has, until recently, been determined predominantly by medical considerations. Cases seeking clarification of a person's sex have generally involved trans women; with medical evidence focused mainly on surgeries for male to female trans people. A trans person's sex came to be determined by whether they could be categorised as pre-operative or post-operative. The term 'post-operative' has typically been used when someone has undertaken all gender reassignment surgeries.

### Post-operative trans people

8.7 In order to recognise a person's legal change of sex the courts and those administering the law have relied upon evidence that the decision was irreversible. The trans person's views of their gender identity were relevant and surgery was generally considered the clearest objective evidence available. Where surgeries have taken place, a trans person may be referred to as post-operative. Post-operative trans people born in New Zealand are able to change the sex details on their birth certificates.

8.8 A 'post-operative' trans person who has amended the sex recorded on their birth certificate will be considered a person of that sex elsewhere in the general law. Cases in New Zealand and overseas make this clear: *M v M* [1991] NZFLR 337 and *Attorney General v Otahuhu Family Court* [1995] 1 NZLR 603.

8.9 An amended birth certificate is often treated as proof of a person's sex. A trans person can then rely upon the birth certificate for a variety of purposes, including establishing identity.

### Pre-operative trans people

8.10 What if a person has not changed the sex details on their birth certificate? How is their sex to be determined under general law? Again, the law requires evidence of both the trans person's views of their gender identity and some other, objective, evidence. Surgeries were necessary, it was argued, to minimise the risk of identity fraud or other misuse of the law. In the absence of surgeries, doubts arose as to when a trans woman would be legally recognised as female and a trans man recognised as male.

8.11 In some cases, it was argued that the sex of pre-operative trans people should be the sex that matched their gender identity. Failure to do so, it was argued, was discrimination on the grounds of sex, even if no gender reassignment surgeries had taken place.

8.12 Others argued that if a trans person could not verify their sex by reference to gender reassignment surgeries, they should be protected on the grounds that gender identity disorder was a medical condition falling within the definition of a 'disability'. Under this line of argument a trans person would be protected from discrimination on the ground of their disability, but the legal definition of the trans person's sex was still unclear under the general law.

8.13 Doubt about the legal protection of trans people under general law, coupled with an emphasis on surgery as evidence of change of sex, led to calls from some trans people for intervention by Parliament. In 2004, New Zealand's first transsexual Member of Parliament, Georgina Beyer, proposed the introduction of a Human Rights (Gender Identity) Amendment Bill. The purpose of the Bill was to amend the Human Rights Act 1993 to clarify legal protection for trans people.

8.14 A new line of court decisions was also developing. From the 1960s courts in the United States of America, the United Kingdom, Australia, Canada, and New Zealand had to consider the requirement for recognising the sex of a trans person. As the jurisprudence developed, more courts considered, and then reconsidered, whether gender reassignment surgery was necessary as objective proof of a person's sex. The developments are neatly summarised in *Re Kevin*, a 2003 decision of the Family Court of Australia:

*In all of the decided cases to which we have referred their position [the position of pre-operative transsexual persons] has been distinguished from the post-operative transsexual persons and comments have been made to the effect that this is a matter for Parliament to determine. A question arises as to whether the Courts can logically maintain the position that a post-operative transsexual person is a matter for them but that of pre-operative transsexual persons is one for Parliament.*

**8.15** In 2004 the Family Court in Australia was asked in *Re Alex* to consider whether a 13-year-old girl should be permitted to begin making the transition to be a legal male when no surgery had taken place. Chief Justice Nicholson noted:

*A requirement of surgery seems to me to be a cruel and unnecessary restriction upon a person's right to be legally recognised in a sex that reflects the chosen gender identity and would appear to have little justification on the grounds of principle.*

**8.16** In light of changing common law, international developments and various academic debates, agencies with responsibility for human rights law began to take a more expansive and purposive approach. It was becoming clearer that other means of objectively verifying a person's sex were legally permissible. In February 2005, following a wide-ranging review (Human Rights Commission, 2005b), the Human Rights Commission released a statement reflecting these developments and indicating that the Commission's policy was that:

*... discrimination against transgender people falls within the grounds of sex discrimination in the Human Rights Act;*

*that the distinction as to whether a transgender person is pre or post-operative should not be determinative of the gender the law should regard the person as having; and*

*the provisions of the Human Rights Act apply to a transgender person who has commenced, or is somewhere through the process of taking steps to live fully and permanently in the sex opposite to that assigned to them at birth.*

**8.17** A year later, debate about whether the Human Rights (Gender Identity) Amendment Bill should proceed led the Attorney General to seek an opinion from the Crown Law Office about whether trans people were protected under human rights law. This opinion, which was released in August 2006, reviewed relevant cases and concluded there was no reason to deny trans people (whether pre- or post-operative) the protection of human rights law. As a result, the Human Rights (Gender Identity) Amendment Bill did not proceed, as it was considered unnecessary.

## Beyond operative

**8.18** Debates continue among legal and other academics about the definition of a person's sex and the meanings of gender, gender identity and gender expression. Some academics generously made available articles and research papers on a variety of related topics, including extensive medical literature. Debate extends to whether and if so how 'sex' and 'gender' and 'gender identity' relate to each other and how these affect the nature of the discrimination experienced by trans people. There has also been debate about the precise meaning of the Crown Law Office opinion and its significance.

**8.19** It is apparent that the definition of 'sex' under general law has changed over time. A trans person's view of their gender identity is still a vital component. The objective evidence necessary to verify a trans person's sex no longer has to be surgery, although this is still highly relevant. Under the general law a person's sex will be determined in a non-discriminatory way in accordance with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

## Trans people's experiences

**8.20** Trans people were often bewildered by the legal complexity and concerned about detrimental effects of their sex and gender identity being treated differently for different legal purposes.

**8.21** Given the irreversible effects of medically transitioning, trans people said it is important they have the opportunity to explore and question their gender identity knowing they have legal protection against discrimination. Trans people said that often they are more visible as 'trans'

and therefore vulnerable to discrimination at the very point when they are making these decisions or have started transitioning.

**8.22** A number of submitters asked for the Human Rights Act 1993 to be amended:

*The New Zealand Council of Trade Union (CTU) urges further consideration of the need for gender identity as a specific ground of discrimination in the Human Rights Act. Such an approach is consistent with the CTU's support for clear legislative protections, especially for vulnerable workers. (New Zealand Council of Trade Unions)*

**8.23** Trans people also said that for some of them the terms 'pre-operative' or 'post-operative' have absolutely no relevance or meaning. Some fa'afafine do not anticipate ever having surgeries because they are able to express their gender identity without these procedures. Other trans people told the Inquiry surgery was not medically recommended, was dangerous, too costly, or simply unnecessary for them. In addition, trans people said these terms typically imply that there is a 'single operation' required in order for someone to transition, which does not reflect the experiences of all trans people, particularly trans men.

**8.24** In the light of these concerns, trans people asked the Inquiry to consider two matters in relation to the objective requirement for legal definition of a person's sex. First, whether a better approach can be taken to the definition of a person's sex in those situations where a person's sex appears to be defined more narrowly than the current general law (such as the policy for passports or those arrested or detained in prisons). Second, whether some amendment is necessary to the requirements for change of sex on a birth certificate in section 28 of the Births, Deaths and Marriages Registration Act 1995 to better reflect the more recent common law cases.

**8.25** Unlike the Births, Deaths and Marriages Registration Act 1995, neither the Passports Act 1992 nor the Citizenship Act 1977 contain provisions for changing sex details in official documents. Such applications will be considered under general law of New Zealand and departmental policy. A broad and inclusive approach

should be taken to ensure that travel documents are issued without discrimination on the grounds of sex. In other words, the policy should be interpreted in line with the purposes of human rights law, including non-discrimination.

**8.26** Trans people raised the issue of lack of consistency across the legal definition of their sex for both passports and amended birth certificates. A few trans people had amended their birth certificate without 'full' gender reassignment surgeries. In light of this and case law indicating that surgery is not a prerequisite for recognising a change of sex on a birth certificate, trans people said it was unfair to require applicants to show they had undertaken 'full gender reassignment surgery'. In their view, this was a higher test than they were required to meet to amend their birth certificate. If, for other reasons, they were unable to amend their birth certificate, they were also effectively unable to have a passport issued in the appropriate sex.

**8.27** Trans people considered there should be a non-discrimination approach in light of changing common law cases that are not relying on surgery as objective proof of sex. In other words, their passport applications should not depend on whether or not they have had surgery.

**8.28** Trans people asked about regulation 190 of the Corrections Regulations, which provides the basis for determining whether an inmate is placed in a men's or women's prison. Authorities must be satisfied that a 'transgender prisoner has completed gender reassignment surgery' in determining where that prisoner is to be housed.

## Government agency responses

**8.29** Few people in government agencies have expertise and experience on these legal matters. The Inquiry was extremely grateful for, and impressed by, the officials who considered the issues in a measured and balanced way. Some responses are detailed in other parts of this report. This next section looks specifically at whether there is a rational approach across government agencies to the issues brought to the Inquiry by trans people about the legal definition of their sex.

## DEPARTMENT OF INTERNAL AFFAIRS

### *Birth Certificates*

8.30 The Department of Internal Affairs said the rationale supporting their transgender policies focuses on the need for certainty and accuracy in the information recorded on the registers of births, deaths and marriages and on certificates issued on the basis of that information. Officials said: 'This need for certainty, however, is balanced, to a certain extent, against an individual's right to identify themselves as they see fit.'

8.31 The Department noted that section 28 of the Births, Deaths and Marriages Registration Act 1995 sets out a particular legal test which must be met before such a declaration can be made in respect of an adult. This test is set out in the Citizenship chapter.

8.32 In the Inquiry's view, the changing common law together with the clear evidence from trans people demonstrates that section 28 of the Births Deaths and Marriages Registration Act 1995 needs to be amended. There are legitimate and important state interests in ensuring that birth certificates and other similar documents accurately reflect the true details of a person's identity (such as their sex) to prevent the fraudulent or unlawful use of the document. Trans people have made a compelling case for ensuring that the law also protects their rights in a way that does not discriminate against them unfairly. Proposals to amend section 28 are set out in the Findings and Recommendations chapter.

### *Passports*

8.33 Officials were asked why the current policy on passport applications required 'full gender reassignment surgery' for trans people wishing to have a passport in the sex matching their gender identity. As noted in the Citizenship chapter, officials acknowledged that this requirement was more stringent than that required when amending sex details on a birth certificate under the Births, Deaths and Marriages Registration Act 1995. This higher test was justified on two grounds: concerns for the safety of trans people and the need to protect the integrity of New Zealand travel documents.

8.34 On the question of safety, officials said they were very concerned about what would happen if a trans person travelling on a lawfully issued passport was stopped by border control authorities and physically searched. Officials were worried trans people would be at risk of suspicion if a physical search revealed they did not have a 'full physical conformity' with the sex shown on their lawfully issued passport. Officials said they did not want to put trans people in this situation and therefore required a more stringent test.

## DEPARTMENT OF CORRECTIONS

8.35 The Inquiry asked the Department of Corrections about its policy in relation to trans prisoners. The Department provided a comprehensive overview of its policy and responded to the specific concerns raised in the Summary of Submissions.

8.36 The Department advised that at any one time there might be 10 to 20 inmates who were identified as 'transgender'. All were trans women who were held in men's prisons. These figures did not include trans people who had amended the sex on their birth certificate or completed gender reassignment surgery. Trans women in that situation would be recognised as women and placed in a women's prison.

8.37 The Inquiry recognises the specific pressures within Corrections facilities and the attempts to develop policies that respect and protect a person's gender identity. These policies must also take into account the rights of other prisoners and the obligations of the Department under international law relating to the treatment of prisoners and the separation of male and female prisoners.

8.38 At the same time the Inquiry can see that there are legal difficulties relying solely on 'completed gender reassignment surgery' as the basis for defining a person's sex pursuant to the Corrections Act. Such a definition does not accord with the definition of a person's sex under human rights law (because this does not require 'full' gender reassignment surgery in order to recognise a person in the sex appropriate to their gender identity). In addition, the issues appear to disproportionately affect Māori and Pacific people and trans men who appear to be less likely to have had gender reassignment surgeries. The implications

of this need to be considered more fully, along with the implications for any other agencies. Such discussions could draw usefully from principles within the Department of Correction's transgender policy, particularly the focus on acknowledgement and acceptance of an inmate's gender identity.

### Broader implications

**8.39** The Inquiry asked what work, if any, government agencies had done to assess the implications of the Human Rights Commission policy and the Crown Law Office opinion that pre- and post-operative trans people are protected from discrimination on the grounds of sex. The Inquiry found that little work has been done, although agencies did express an interest in guidance from the Human Rights Commission.

**8.40** On balance the Inquiry considers that all persons, regardless of their sex, are protected from discrimination under the Human Rights Act 1993. Because all people have a sex (whether male, female or something other or in-between), all are entitled to protection under general law. The Inquiry considered whether some amendment to the Human Rights Act 1993 is necessary. Currently the Human Rights Commission has seized jurisdiction so that trans people are not left without a remedy. However, the uncertain nature of the legal position leads the Inquiry to recommend a clarifying amendment.

**8.41** There are some exceptions under the Human Rights Act 1993. In light of the changing common law and evolving policy by agencies such as the Human Rights Commission and the Crown Law Office, the Inquiry considers a broad, inclusive approach to the definition of a person's sex should be taken and the scope of these exceptions should remain narrowly construed. In particular, the general law takes account of the gender identity of a person in determining their sex. At the same time, a common sense, practical approach is needed to balance the rights of others in order to determine when and how exceptions relating to sex (including gender identity) apply. Low-level dispute resolution processes provide the best way to resolve issues on case-by-case basis as questions arise.

**8.42** This purposive and inclusive approach is not causing difficulties in practice. The Human Rights Commission

currently accepts complaints of discrimination from a diverse range of trans people and intersex people. Over the last five years it has received a small number of enquiries and complaints, ranging from requests for information to requests for intervention in employment disputes. The Commission's experience demonstrates that a common-sense approach can give meaningful resolution to disputes. The Commission should review its policy in the light of this Inquiry and update it where appropriate. Amending the Human Rights Act to include a reference to 'gender identity' will also assist in removing any doubts about the approach that should be taken.

### Conclusions

**8.43** The current legal framework is complex and confusing for trans people. Trans people are very diverse and should not have barriers placed in the way of their human rights simply because that diversity presents legal complexity. All persons, everywhere, are entitled to respect for their dignity by virtue of their humanity. An inclusive approach should be taken to protecting trans people from discrimination.

**8.44** The definition of a person's sex should continue to be by reference to the general law of New Zealand, including human rights. Account should be taken of both the trans person's subjective view of their gender identity and objective evidence that they have taken steps to live in the appropriate sex. Section 28 of the Births, Deaths and Marriages Registration Act 1995 should be amended to reflect this. Where a trans person has amended their birth certificate, that certificate should be, for all practical purposes, conclusive evidence of their sex. A consistent and more principled approach is required to the definition of the sex of a trans person who has not amended their birth certificate. Trans people in this situation should not face a more stringent evidential requirement than they do for amending their birth certificate.

**8.45** Trans people would be better protected by a specific reference to 'gender identity' in the Human Rights Act so that a consistent, non-discriminatory, definition of a person's sex exists across all laws. The implications of this are assessed in the Findings and Recommendations chapter of this report. The elements that make up the amended provision should form the basis of policies of other agencies that issue official documents.



## 9. Findings and Recommendations

### Ngā Hua me ngā Taunaki

*I believe the grass-roots approach of transsexed people speaking out, while necessary, is not sufficiently powerful on its own. It may have some minimal effect on those within our immediate environments, but there are too few of us. I believe a top-down policy/recognition approach has far more power, and eventually 'trickles down' to public attitude. (Trans man)*

*We need to tell the rest of the world that we can do things for ourselves. We need the ones who aren't here, the successful ones too. We need to get together as a group and start going to organisations that advocate on our behalf. 'I am your key stakeholder'. It's about making people accountable. (Whakawahine)*

**The Inquiry has revealed that the lives of trans people in New Zealand are marked by discrimination, severe barriers to equitable health services and limited legal and public recognition of who they are. They face pervasive and entrenched barriers to the enjoyment of the same rights and responsibilities as other New Zealanders. Trans people have shown courage and the determination to assert their identity and needs and to live in the sex they consider themselves to be. Wider society needs to listen and government agencies should ensure their policies and practices are inclusive of all trans people.**

#### Nature and extent of discrimination

9.1 The Inquiry has found that trans people come from every community and are as diverse as New Zealand society. They strive for a life of dignity and there are many who succeed. Most have had to struggle to be themselves and live life on their own terms. As this report repeatedly demonstrates, trans people have had to triumph over severe, sometimes heart-breaking, adversities. Being trans is not a lifestyle choice; rather, it is a core part of a person's identity.

9.2 Frequently, the wider community has little or no understanding about the issues affecting trans people's lives. The evidence presented in this report demonstrates there are many critical policy areas where no consultation has taken place with trans people and decisions have been made based on limited knowledge about their impact on trans people.

9.3 As the evidence shows, trans people experience discrimination that affects all aspects of their lives and compromises their safety. This discrimination is often based on stereotypes and fear and isolates trans people and their families.

9.4 Four out of five submissions to the Inquiry described discrimination: at school, trying to find or keep a job, in the street, and in trans people's day-to-day interactions with shops, government agencies and health professionals. Many trans people told the Inquiry they 'just expect' discrimination and prejudice from other New Zealanders.

9.5 It is difficult for anyone to assert their rights in an environment of pervasive discrimination. This report acknowledges the resilience and leadership of trans women and men, whakawahine, Queens, fa'afafine and others who have confronted prejudice. In doing so they refute negative, limiting stereotypes about trans people's lives. Their visibility makes it possible for other trans people to name the discrimination they face, claim the right to be who they are and participate in decisions that affect them.

9.6 The Inquiry's first focus has been to reveal the nature and extent of discrimination experienced by trans people in order to find the ways to reduce discrimination. In arriving at recommendations to address discrimination, the Inquiry has drawn heavily on suggested solutions from trans people outlined in the Inquiry's *Summary of Submissions*.

9.7 The way forward requires two approaches. First, enabling the effective participation of trans people in decisions that affect them. This will require recognising and supporting the leadership and advocacy of trans people, with government agencies developing strong working relationships with trans people to address the priority areas in this report. Trans people are often best placed to help identify workable solutions and have indicated a keenness to be involved in developing resources and providing training.

9.8 Second, there must be no doubt that trans people are protected from discrimination under the Human Rights Act 1993. Such a clear signal is necessary if society is serious about reducing the pervasive levels of discrimination against trans people. The Human Rights Commission accepts discrimination complaints from trans people under the ground of sex, but notes questions raised by international case law as to whether all forms of discrimination directed against trans people would be considered sex discrimination by New Zealand courts. The Inquiry considers that, for the avoidance of any doubt, section 21(1)(a) of the Human Rights Act 1993 should be amended to state clearly that sex includes gender identity.

9.9 Discussions with government agencies throughout the course of this Inquiry revealed limited awareness of the August 2006 Crown Law Office opinion that trans people (whether pre-operative or post-operative) are protected from sex discrimination under the Human Rights Act 1993. Nor is there sufficient understanding that protection from discrimination requires policies and practices to be inclusive of all trans people whatever their sex or gender identity. The Human Rights Commission is well placed to facilitate discussions between government agencies and trans people on priority areas.

9.10 A phased approach to consultations with trans people will allow for the time it will take for some agencies to build links with trans communities and work with them to identify and address relevant human rights issues. However the Inquiry process has already identified government agencies in a position to move forward quickly in some areas, and a general interest in improving the consistency of services for trans people.

9.11 The Inquiry considers that a human rights education programme is necessary to improve understanding about human rights and discrimination issues for trans people. This recommendation falls squarely within the purpose and functions of the Human Rights Commission. It provides opportunities to share the extensive resources collected as part of the Inquiry process, so trans people, their families and communities are able to access information and support and participate in the Inquiry's implementation.

9.12 The Inquiry recommends focusing on three priority areas: education, employment and safety.

9.13 Education: Trans children and young people want to participate fully at school, knowing that school policies and practices are there to protect them if they are bullied or harassed. They should be able to play sport and use appropriate changing rooms and toilets without fear, humiliation or embarrassment. Collecting and sharing best practice examples is likely to reduce the isolation felt by trans students, their parents and school staff. There is an urgent need to improve the physical and emotional safety of trans students at school, so their right to education is no longer severely compromised.

9.14 Employment: Over half of the submissions to the Inquiry raised concerns about employment discrimination. Trans people experience discrimination during all stages of employment. Trans people were often particularly vulnerable to discrimination early on in their transition, or if their gender identity was disclosed to other work colleagues. Those who transitioned at work often feared losing their job and spoke highly of supportive employers and colleagues.

9.15 Inquiry submissions and enquiries to the Human Rights Commission indicate an interest in material about issues for trans people transitioning at work. There is also a need for clear information about protections from employment discrimination available to trans people.

9.16 Safety: more than a quarter of submissions to the Inquiry raised concerns about the harassment, security and safety of trans people. Some people had been violently assaulted because of their gender identity. The pervasive and debilitating effect of both was readily apparent to the

Inquiry. Yet violence against trans people remains invisible in crime statistics and crime surveys.

**9.17** Under section 9(1)(h) of the Sentencing Act 2002, hostility against someone because of their gender identity is an aggravating factor that the Court must take into account when sentencing or otherwise dealing with an offender. However, the Department of Corrections was unable to provide advice on the number of pre-sentence reports that specifically refer to this section of the Act. A concerted attempt should be made to record information about crimes against trans people.

**9.18** The safety of trans prison inmates was another significant concern raised in the Inquiry, including by whakawāhine who had previously spent time in jail. The sex-segregated nature of prisons leaves trans inmates vulnerable to harassment, with many placed in prisons where they are unable to express their gender identity. Opportunities for dialogue between trans people and the Department of Corrections would be welcomed. The Department is one of a small number of agencies with personal search powers. The Human Rights Commission is well placed to facilitate a discussion between the Department of Corrections, Police and New Zealand Customs Service about how same-sex search policies are applied to trans people.

## Public health services

**9.19** Many trans people experience discrimination when they access health services. Some trans people are reluctant to seek assistance even for relatively minor medical matters. It is vital that health professionals respect trans people's dignity and recognise the role they play in ensuring trans people have access to the same health services as other New Zealanders.

**9.20** The quality of life of many trans people is severely compromised unless they are able to access gender reassignment services, most of which are barely provided for in the public health system. The fragmentation of available gender reassignment services is hugely problematic. It leaves trans people and their families pursuing fruitless referrals, caught in a cycle of despair. At the same time, it isolates the handful of committed

health professionals who have struggled to meet their trans patients' needs, knowing that prejudice not only undermines their patients' health status but also the public health system's willingness to deliver required gender reassignment services.

**9.21** There is no comprehensive New Zealand information available explaining health issues for trans people, including medical options for someone who wants to physically transition. Trans people, their families and health professionals themselves struggle to find out what, if any, gender reassignment services are available within the public health system. Currently very few trans people are able to access all of the gender reassignment services necessary for them to live and work in their gender identity and appropriate sex. Typically these requirements include at least an assessment by a mental health professional, hormone treatment, chest surgery for trans men and electrolysis for trans women.

**9.22** Some of the acceptability issues raised in the Inquiry centred on patient confidentiality and whether treatment options are culturally appropriate. Concerns about the variable quality of care would benefit greatly from discussions that build an agreed consensus about best practice for a range of gender reassignment services.

**9.23** There was a high degree of consistency between the views of trans people and health professionals about these issues and the proposed solutions. The first priority is to build on the work of the Inquiry through the Human Rights Commission, facilitating discussions between trans people, health professionals and the Ministry of Health about developing clear treatment pathways and standards of care.

**9.24** Both treatment pathways and standards of care are essential to ensure the availability, accessibility, acceptability and quality of gender reassignment services within the public health system.

**9.25** Treatment pathways are a road map, outlining what is likely to happen at each stage of a patient's journey. Typically they are developed as a specific plan for an individual patient. At the personal level, they outline the

steps a trans person can take to access the combination of gender reassignment services that will best meet their health needs. On a broader level, treatment pathways can provide a template of available options. As an initial task, it would be helpful if the Ministry of Health and/or district health boards provided clear information about the range of gender reassignment services available within each district health board, including approved referrals when specialist services are not available locally.

**9.26** Trans people and health professionals during this Inquiry have used the term ‘standards of care’ in a wide variety of ways. The often-cited Harry Benjamin (now World Professional Association of Transgender Health’s) Standards of Care clearly state that they are to be treated as clinical guidelines. In many ways they represent a consensus statement by the Association’s membership internationally about agreed best practice.

**9.27** Any standards of care developed in New Zealand would need to take account of the services that are required and the particular way in which health services are delivered. In New Zealand general practitioners are often the initial point of contact for a trans person, so a focus on primary care and general practice is important. The range of health services and treatment pathways will also need to recognise the diversity of trans people and the health interventions they are seeking.

### Citizenship barriers

**9.28** Trans people’s human rights are protected by a legal framework that is complex and confusing. The vast majority simply wanted to be able to assert citizenship by amending the sex on their birth certificate so their formal and informal documentation is consistent and reflects their gender identity.

**9.29** The Inquiry considered three issues that affect the citizenship of trans people: official documents; the situation of trans people born overseas; and privacy-related rights. Documents that accord with a trans person’s gender identity both affirm their dignity and secure their participation as equal citizens. Trans people’s right to security can be compromised if they are unable to change their sex on official documents to match their gender identity. The physical conformation requirement for

someone wishing to change of sex details on their birth certificate is problematic for many.

**9.30** Currently many if not most, trans people do not have, and cannot obtain, a set of state-issued documents that contain consistent information about their sex. The Inquiry’s priority is to lower the threshold for changing sex details on a birth certificate to a level that enables trans people to participate more fully in society, while recognising government agencies’ concerns about the integrity of state-issued documents. The Inquiry accepts the value of setting a threshold that could be applied to any formal state-issued documents.

**9.31** The definition of a person’s sex should continue to be by reference to the general law of New Zealand. This takes into account both the trans person’s subjective view of their gender identity and objective evidence that they have taken steps to live in the appropriate sex. In line with emerging case law, section 28 of the Births, Deaths and Marriages Registration Act 1995 should be amended to make it clear that this objective evidence should not focus solely on medical procedures that are designed to produce a physical conformity with the nominated sex.

**9.32** The Inquiry would also welcome clarification (there is currently a case in front of the High Court) as to whether trans people who are overseas-born New Zealand citizens have the option of obtaining a declaration as to sex under section 28 of the Births, Deaths and Marriages Registration Act 1995. If the High Court decides the Family Court does not have jurisdiction under this Act, the Inquiry recommends the Family Court is granted specific powers under another statute, such as the Family Proceedings Act 1980.

**9.33** The Inquiry has carefully considered possible amendments and considered legislation in other countries. Specific gender recognition legislation is not necessary. On balance, the best option is to amend section 28(3)(c)(i)(B) and (C) of the Births, Deaths and Marriages Amendment Act 1995 to ensure it better reflects the actual realities of trans people’s lives, while maintaining a statutory test that is robust and ensures a high standard of integrity in official birth records. The Inquiry therefore recommends that section 28(3)(c)(i)(B) and (C) be amended in the following way:

## Section 28

**(3) The Court shall issue the declaration if, and only if,—**

**(c) Either—**

**(i) It is satisfied, on the basis of expert medical evidence, that the applicant—**

**(A) Has assumed (or has always had) the gender identity of a person of the nominated sex; and**

**(B) Has taken decisive steps to live fully and permanently in the gender identity of the nominated sex; and**

**(C) Will, as a result of those decisive steps, maintain a gender identity of a person of the nominated sex; or**

9.34 The Inquiry considers these amendments strike the appropriate balance between the need to ensure the Act reflects society's development and understanding about the lives of trans people and the need for a robust and clear statutory test.

9.35 The Inquiry saw that for many trans people medical evidence of physical conformity was problematic. The proposed amendments are tailored to this element of statutory requirement. In all other respects the Inquiry considers the statutory test should remain unchanged. The objective requirement for medical evidence is retained and better aligned with the broad range of medical steps that will be taken by most trans people to live fully in the sex they believe themselves to be. The proposed amendment also reflects the Inquiry's understanding of legislation in other jurisdictions.

9.36 Where a trans person has amended the sex details on their birth certificate, that certificate should be conclusive. In other words, sex details should be able to be changed on any other official documents too, without having to meet any additional requirements.

9.37 Where a trans person has not amended the sex details on their birth certificate the Inquiry has found some government agencies impose a more stringent test than

the current provisions of section 28 for the purposes of determining a trans person's sex. This Inquiry has found that this position cannot be sustained on human rights grounds.

9.38 The Inquiry received a number of submissions requesting that the Passport Office adopt an even lower threshold for enabling a trans woman to obtain a 'F' passport, and a trans man to obtain a 'M' passport, reflecting the United Kingdom approach:

*Great Britain, which we are sure has similar concerns for its citizens and about keeping within international conventions in terms of passport and identity security, allows the gender marker to be changed as long as the person has permanently changed gender role and does not intend to reverse this. A simple letter from a medical professional, general practitioner, psychologist or psychotherapist is sufficient to endorse this. This is unrelated to the Gender Recognition Certificate. (Transgender Organisation)*

9.39 The Inquiry acknowledges how important being able to obtain an 'M' or 'F' passport is to many trans people. For this reason the Inquiry recommends that the proposed threshold for amending birth certificates under s28 of the Births, Deaths and Marriages Act 1995 is applied to other state-issued document, including passports. This aspect of the recommendation would require changes to internal policies rather than to any law. The Inquiry considers there are merits in taking this standardised approach, whilst noting that a counter argument could be made that the United Kingdom provides a comparable, international precedent for an even lower threshold for trans people seeking a 'M' or 'F' passport.

9.40 Similarly, the Inquiry considers that while amending a birth certificate should be sufficient to amend sex details on other records, it is not a necessary prerequisite. If someone meets the proposed criteria for changing the sex details on their birth certificate, they should nonetheless have the right to amend a passport, citizenship certificate or other documents. This provision is particularly important for trans people who cannot amend their birth certificate (for example: because they were born in a country that does not allow trans people to amend birth certificates, if they are currently married, or for cultural reasons).

9.41 The Inquiry has considered the proposed amendments and whether these would pose any additional administrative difficulties for agencies providing services to trans people who have not amended the sex details on their birth certificate. A number of agencies currently apply the broad approach reflected in the proposed amendments. Experience has shown that if agencies take a common-sense approach, the test is workable and legitimates the human rights of trans people. For these reasons the Inquiry considers the proposed amendments provide a workable guide for agencies responsible for policy development and service delivery whether or not a Family Court declaration as to a person's sex has been made.

9.42 The Inquiry has considered the vulnerability of those travelling on (X) or (-) passports when border control officials or systems are not familiar with these international standards. The growing level of co-operation between border control agencies provides a valuable opportunity to promote dialogue between trans people and the Department of Internal Affairs, the New Zealand Customs Service and the New Zealand Immigration Service about ways to improve the security of New Zealanders travelling on these passports.

9.43 Trans people have a variety of views about disclosure of personal information. There is no consensus about the precise rules that should govern how personal information should be collected, used, amended or disclosed. On balance, the Inquiry considers that the current law provides an adequate framework both for trans people to assert their rights to privacy of personal information and for agencies holding such information to respect these rights.

9.44 However, inconsistencies in practice and the importance of these issues to trans people demonstrate that it would be useful to have resources that deal specifically with how current laws apply to personal information held about trans people. Special attention should be given to their concerns about privacy of health information. In addition, it would be helpful if the Ministry of Justice investigates the options available to a trans

person who is disclosing previous names for the purposes of a pre-employment Police clearance or security check but does not wish to disclose their transgender status to a prospective employer.

## Intersex people

9.45 The Inquiry did not set out to conduct an inquiry into the human rights experiences of intersex people, but intersex people did come to the Inquiry to raise their concerns. Intersex people are protected against discrimination under the Human Rights Act 1993 and have the same rights as all other people to the full protection and promotion of their human rights. Significant human rights issues affecting intersex people merit urgent consideration to improve their dignity, equality and security.

9.46 There are a number of parallels between the experiences of intersex and trans people. The option of identifying as someone other than male or female is important to some intersex, androgynous or 'third sex' people. This includes the ability to obtain an (X) passport.

9.47 The foundations have been laid for more work. This needs to be done with respect for the diverse views of intersex people. There is a need for greater education and more dialogue about the human rights of intersex people, including information about historical and current medical practices. Questions remain about the adequacy of medical training, current standards of care, guidelines on medical interventions and access to medical records.

9.48 The Inquiry recommends considering the specific human rights issues faced by intersex people through the Human Rights Commission undertaking in-depth work in consultation with them and with relevant government agencies.

## Role of the Human Rights Commission

9.49 The Human Rights Commission has a continuing role to play in implementing the Transgender Inquiry to galvanise the impetus for change that has been generated. The Commission's specific role includes providing human rights education on issues for trans people and facilitating



dialogues between trans people and government agencies. A full list of actions suggested in the report and recommendations is collated in Appendix 1.

## Recommendations

9.50 The Inquiry recommends:

### **Enable effective participation by trans people in decisions that affect them by:**

- recognising and supporting the leadership and advocacy of trans people and
- increasing government agencies' consultation and collaboration with trans people, starting with the priority areas outlined in this report

### **Reduce discrimination and marginalisation experienced by trans people by:**

- clarifying, for the avoidance of doubt, that protection from sex discrimination in the Human Rights Act 1993 includes protection from discrimination on the grounds of gender identity
- recognising that protection from discrimination under the Human Rights Act 1993 requires policies and practices to be inclusive of trans people, whatever their sex or gender identity
- the Human Rights Commission, together with trans people, developing a human rights education programme to address human rights and discrimination issues for trans people

### **Improve trans people's access to public health services and developing treatment pathways and standards of care for gender reassignment services:**

- through the Ministry of Health working in co-operation with trans people and health professionals

### **Simplify the requirements for changing sex details on a birth certificate, a passport and other documents to ensure consistency with the Human Rights Act by:**

- Amending section 28(3)(c)(i)(B) and (C) of the Births, Deaths, and Marriages Registration Act 1995 by substituting the 'physical conformity' threshold with the

requirement that someone 'has taken decisive steps to live fully and permanently in the gender identity of the nominated sex'

- allowing the Family Court to make a declaration as to sex for overseas-born NZ citizens

### **Consider the specific human rights issues facing intersex people,**

- through the Human Rights Commission undertaking further in-depth work in consultation with intersex people and other relevant government agencies

## Conclusions

9.51 The implementation of the recommendations of the report are necessary to ensure that trans people and their families enjoy the same rights as other people in New Zealand.

## Appendix 1: Actions and Recommendations

ACTION	WHO	WITH
<b>Enable effective participation by trans people in decisions that affect them by:</b>		
Providing advice and information for the development of trans-related policy, research and resources	Ministry of Social Development	Trans people
Increasing the positive visibility of trans people and dialogue about their human rights	Civil society groups and media	Trans people
Increasing consultation and collaboration with trans people on issues that affect them	All government agencies	Trans people
<b>Reduce discrimination and marginalisation experienced by trans people by:</b>		
Schools sharing best practice about trans children and young people's right to education	Ministry of Education	Trans people, SS4Q, Human Rights Commission
Developing a human rights education programme to address human rights and discrimination for trans people	Human Rights Commission	Trans people, civil society, government agencies
Reviewing policies and practices to ensure these do not discriminate against, and are inclusive of, trans people	All government agencies	Trans people
Amending the Human Rights Act, 1993 to secure protection from discrimination on the grounds of gender identity	Ministry of Justice	
Building understanding about trans people's participation in sports	Sport & Recreation New Zealand (SPARC)	Trans people
Clarifying policies and procedures for trans students to change name and sex details on institutions' records	Tertiary institutions	Trans people and student organisations
Providing information about issues for trans people in the workplace	Department of Labour	Human Rights Commission, trans people, employers, unions
Recording information about crimes against trans people including crimes motivated by a victim's gender identity	Ministry of Justice	Department of Corrections, Police
Bringing together government agencies to share best practice for search, detention and imprisonment of trans people	Human Rights Commission	Corrections, Police, Internal Affairs, Labour, New Zealand Customs Service
<b>Improve the health of trans people by:</b>		
Providing clear information about gender reassignment services available within each district health board	Ministry of Health	District health boards, trans people
Publishing a case study on treatment pathways for trans people	Ministry of Health	Trans people, health professionals
Developing treatment pathways and agreed standards of care	Ministry of Health	Trans people, health professionals, Human Rights Commission
Considering health insurance coverage for trans people	Insurance industry	Human Rights Commission, trans people

**ACTION****WHO****WITH****Enhance the citizenship of trans people by:**

Amending the Births, Deaths and Marriages Registration Act 1995 to ensure trans people are fully recognised

Department of Internal Affairs

Improving consistency in the policies of government agencies relating to change of sex details on official documents

Department of Internal Affairs

Trans people and  
Human Rights Commission

Talking with border control authorities about how to improve the safety of trans people travelling on (X) or (-) passports

Department of Internal Affairs,  
New Zealand Customs Service

Trans people,  
ICAO members

Providing guidance about how privacy laws apply to personal information about trans people

Office of the Privacy Commissioner

Trans people,  
privacy sector stakeholders

Considering when it is necessary to gather sex data and, where necessary, ensuring categories for data collection reflect the diversity of trans people

All government agencies

Trans people

Investigating options for disclosure of previous names where a Police clearance is needed for a trans person

Ministry of Justice

Police, trans people,  
employers and unions

**Improve the dignity, equality and security of intersex people by:**

Consulting with intersex people and government agencies on the issues raised with the Inquiry

Human Rights Commission

Intersex people, relevant  
government agencies

Increasing knowledge about historical and current medical practices in relation to intersex conditions

Ministry of Health

Intersex people

Increasing dialogue about intersex people's human rights

Human Rights Commission

Intersex people, civil society

## Appendix 2: Submitters to the Inquiry

### PUBLIC:

Agender Christchurch	Dr Sue Bagshaw	Maria Welborn	Nicola Vernon
Agender New Zealand (Claudia McKay)	Ed Goode with Sam Winslow	Mary Hill	Noeleena Edwina Lochhead
Alex Buckley	Edwina Junker	Matthew Glanville	Office of the Health and Disability Commissioner
Alex West	Erin	Memea Eleitino Bubby	Office of the Privacy Commissioner
Allyson Hamblett	Erin McMillan	Ma'aelopa	Out There
Amy Lara Davidson	Family Planning Association New Zealand	Michelle Attwood	Paula Howard
Angelique Eugenie	Fiona Duignan-McKay	Miriam Collis	Paula Jaye
Beth St Claire	GenderBridge	Nadia Ramaka	Pippa
Bridget Cornish	Hon. Georgina Beyer	Naiomi Winters	Post Primary Teachers' Association Safe Schools Taskforce
Cathy Parker	Howard Ross	Nancy de Castro	Rainbow Youth – GenderQuest
Christina Loughton	Jacquie Grant	Natalie Shearer	Rob Haultain
Daeron Mitchell	Janet McKay	New Zealand AIDS Foundation	Sarah Helm
Dana A Patterson	Jazz Dittmer	New Zealand Council of Trade Unions	Sarah Lurajud
David Gower	Jim Fuge	New Zealand Police National Headquarters	Selina
Deb Quested, Diversity Liaison Officer, NZ Police	Joanne Clarke	New Zealand Prostitutes' Collective, Auckland (24 people)	Service and Food Workers' Union
Denise Gordon-Glassford	John Penny	New Zealand Prostitutes' Collective, Wellington (10 people)	Shigeyuki Kihara
Dr A J W Taylor	John Thorp	Nga Whare Waatea hui / fono (30 people)	Stacey Kerapa
Dr Alison MacDiarmid	Jutta Humpfer	Nicole Duval	Steffinie Marriner
Dr Anna Fenton	Karen Robson	Nick Reddington	Suzanne Johnson
Dr Bonnie Miller-Perry with Susie Perry	Kathryn Elizabeth Truscott	Nicky Gerard	Tom Hamilton
Dr Charles Hornabrook, Dr Jo Nightingale, Dr Julian Foster with Professor Pete Ellis	Kathy Ann Noble	Nicola Talbot	Yann Hoffman
Dr John Delahunt	Kaye Barrie		
	Kieran Talbot		
	Kim Morgan		
	Mandi Price		

### CONFIDENTIAL:

2, 4, 5, 7, 16a, 19, 22, 25, 26, 27, 28, 30, 35, 45, 46, 50, 53, 62, 64, 65a, 67, 68, 72, 73, 79, 82, 84, 97, 98, 102, 103, 104, 110, 116, 119, 123, 130, 134

### ANONYMOUS:

88, 112, 113, 115, 120, 121, 122

27 people who made confidential submissions subsequently asked that it be noted that they had made a submission:

Alison Howard, Ankh Spice, Cam Michael, Dan, Diana Carrera, Dr Tess Lomax, Evan Matthews, Glen Galt, Jaime Ingram, Jana Lucas, Jeannie Pera, Joanna Robson, Juliet Scoble, Lexie Matheson, Liam Wilkinson, Mani Bruce Mitchell, Michelle Seidlin, Paul Orr, PFLAG South, Rebecca Swan, Rob Joy, Roxanne Henare, Ryan Kennedy, Stef, Tex Starr, UniQ Otago and Victor Jones

## Appendix 3: Selected Trans Organisations, Networks And Resources

### Agender NZ

<http://www.agender.org.nz/>

A national support group for transgender people, their partners and families with regional contacts in Hamilton, Tauranga, Wellington and Christchurch

### Family Planning Association NZ

[http://www.fpanz.org.nz/SITE\\_Default/SITE\\_fpanz/](http://www.fpanz.org.nz/SITE_Default/SITE_fpanz/)

Affirming Diversity is a practical guide for teachers and others discussing gender identity and sexual orientation issues with young people. A revised 2007 edition is now available.

### FtM Aotearoa

<http://ftmaotearoa.tripod.com/>

Wellington-based one-on-one peer support and mentoring for FtMs, friends and whānau.

### GenderBridge

<http://www.genderbridge.org>

An Auckland-based transgender organisation that provides support to transgender people, their family and friends throughout New Zealand

### GenderQuest

<http://www.rainbowyouth.org.nz/>

An Auckland-based social support group for youth questioning their gender identity

### Intersex Awareness NZ

[www.ianz.org.nz](http://www.ianz.org.nz)

Website of the Intersex Trust of Aotearoa New Zealand which provides information, education and training for organisations and professionals who provide services to intersex people and their families

### NZtransguys

<http://groups.yahoo.com/group/nztransguys/>

A New Zealand email network and online resources for FtMs, trans men, and those considering this as an option

### O.N.T.O.P.

<http://www.nzpc.org.nz/>

A project of The New Zealand Prostitutes' Collective (N.Z.P.C.) which provides trans sex workers with support, information and referrals

### Out There!

<http://www.outthere.org.nz/resources.htm>

safety in our schools action kit

### Pacific People's project

<http://www.nzaf.org.nz>

New Zealand AIDS Foundation's project to support Pacific peoples including fa'afafine, fakaleiti, mahu and akava'ine

### Te Aronga Hou Inaianei

<http://www.mangereeastfsc.org.nz/contact.html>

Support for Takataapui young people through the Mangere East Family Service Centre

### TransCare

[http://www.transhelp.net.nz/transcare\\_trust.html](http://www.transhelp.net.nz/transcare_trust.html)

Charitable trust set up in Auckland by a group of transsexuals to provide the resources needed for trans people in NZ to make informed choices before, during and after transition

### Trans children's resources

<http://abcnews.go.com/2020/story?id=3089992&page=1>

Overseas resources collated by ABC in conjunction with a 20/20 documentary about trans children and their families

### Transgender.co.nz

<http://www.transgender.co.nz/index.php>

A New Zealand members-only website for transgender people

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